

COMMITTEE AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB715 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Mike Dobrinski

Adopted: _____

Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

PROPOSED
COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 715

By: Jech of the Senate

and

Dobrinski of the House

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to motor vehicles; creating the Hometown Auto-jobs Act of 2022; setting certain guidelines for certain entities regarding consumer data; providing certain indemnification; authorizing certain data disclosure; requiring certain party bear burden of proof; confining certain judgments to operations of this act directly involved in the controversy in which judgment is rendered; amending 47 O.S. 2021, Section 562, which relates to definitions; modifying definitions; defining terms; amending 47 O.S. 2021, Section 564, which relates to licenses; disallowing certain authorization; making certain exception; amending 47 O.S. 2021, Section 565, which relates to denial, revocation, or suspension of license; modifying entity subject to license denial, revocation, suspension, or fine; modifying reasons for license denial, revocation, suspension, or punishment by fine; prohibiting certain standards to measure performance; requiring certain vehicles be offered at same price; requiring certain reimbursement for rental cars; requiring factories provide certain technology to new motor vehicle dealers; requiring factories offer certain upgrades or changes at equal price; making certain exception; limiting dealers to one part or labor rate request per year; providing for certain calculation; providing for exclusions for certain rate

1 calculation; modifying reasons for certain rebuttal;
2 requiring certain written notice; deleting certain
3 requirement to submit repair orders; prohibiting
4 certain recovery of costs; prohibiting factory denial
5 of certain claims and implementation of certain
6 charge-backs; providing for certain compensation
7 calculation; requiring certain method for used
8 vehicle calculations; allowing factory to direct
9 dealer in certain manner and method; requiring
10 certain reimbursement claims be subject to certain
11 limitations and requirements; placing certain limit
12 on total compensation; disallowing certain remedy
13 combinations; disallowing the use of certain
14 agreements; making certain exception; providing for
15 certain violation; allowing for certain construction
16 or renovation; providing certain rebuttable
17 presumption; prohibiting factories from changing
18 certain plans or systems; limiting license for
19 distribution; amending 47 O.S. 2021, Section 565.1,
20 which relates to succession dealerships; defining
21 term; clarifying language; requiring certain
22 adherence; amending 47 O.S. 2021, Section 565.2,
23 which relates to termination, cancellation, or
24 nonrenewal of franchise; requiring certain
compensation; amending 47 O.S. 2021, Section 565.3,
which relates to notice of proposed sale; limiting
evaluations; deleting certain protest right; amending
47 O.S. 2021, Section 578.1, which relates to
procedures for relocation or establishment; modifying
definition; amending 47 O.S. 2021, Section 580.2,
which relates to insurance coverage on loan vehicles;
defining term; making certain liability policy
coverage distinction; providing for noncodification;
providing for codification; and providing an
effective date.

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

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

1 This act shall be known and may be cited as the "Hometown Auto-
2 jobs Act of 2022".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 564.3 of Title 47, unless there
5 is created a duplication in numbering, reads as follows:

6 A. With respect to consumer data, a factory or third party
7 acting on behalf of a factory:

8 1. Shall comply with and shall not cause a new motor vehicle
9 dealer to violate any applicable restrictions on reuse or disclosure
10 of consumer data established by federal or state law;

11 2. Shall, upon the written request of the new motor vehicle
12 dealer, provide a written statement describing the established
13 procedures adopted by such factory or third party acting on behalf
14 of the factory which meet or exceed any federal or state
15 requirements to safeguard consumer data including, but not limited
16 to, those established in the Gramm-Leach-Bliley Act, 15 U.S.C.,
17 Section 6801 et seq.;

18 3. Shall, upon the written request of the new motor vehicle
19 dealer, provide a written list of the consumer data obtained from
20 the new motor vehicle dealer and all persons to whom any consumer
21 data has been provided by the factory or a third party acting on
22 behalf of a factory during the preceding six (6) months. The new
23 motor vehicle dealer may make such a request no more than once every
24

1 six (6) months. The list must indicate the specific fields of
2 consumer data which were provided to each person.

3 Notwithstanding the foregoing, such a list shall not be required to
4 include:

5 a. a person to whom consumer data was provided, or the
6 specific consumer data provided to such person, if the
7 person was, at the time such consumer data was
8 provided, a service provider, subcontractor, or
9 consultant acting in the course of performance of
10 services on behalf of or for the benefit of the
11 factory, third party, or new motor vehicle dealer,
12 provided that:

13 (1) the factory, third party, or new motor vehicle
14 dealer has entered into an agreement with such
15 person requiring that such person comply with the
16 safeguard requirements of applicable state and
17 federal law, including, but not limited to, those
18 established in the Gramm-Leach-Bliley Act, 15
19 U.S.C., Section 6801 et seq., and

20 (2) the consumer data is used by the factory for
21 internal purposes only and is not distributed to
22 third parties for use or sale other than acting
23 in the course of performance of services on
24 behalf of or for the benefit of the factory,

1 b. a person to whom consumer data was provided, or the
2 specific consumer data provided to such person, if the
3 new motor vehicle dealer has previously consented in
4 writing to such person receiving such consumer data
5 and the new motor vehicle dealer has not withdrawn
6 such consent in writing, or

7 c. data collected or received for purposes enumerated in
8 paragraph 5 of this section;

9 4. May not require that a new motor vehicle dealer grant the
10 factory or a third party acting on behalf of a factory, or use any
11 incentive that is not paid to all new motor vehicle dealers or
12 withhold any benefit from a new motor vehicle dealer to obtain,
13 direct or indirect access to such new motor vehicle dealer's data
14 management system to obtain consumer data. A factory or a third
15 party acting on behalf of a factory shall permit a new motor vehicle
16 dealer to furnish consumer data in a widely accepted file format,
17 such as comma delimited, and through a third-party vendor selected
18 by the new motor vehicle dealer. However, a factory or a third
19 party acting on behalf of a factory may access or obtain consumer
20 data directly from a new motor vehicle dealer's data management
21 system with the express written consent of the new motor vehicle
22 dealer. The consent shall be in the form of a written document that
23 is separate from the franchise agreement and is executed by the
24 dealer principal or operator and may be withdrawn by the new motor

1 vehicle dealer upon thirty (30) days' written notice to the factory
2 or third party acting on the factory's behalf, as applicable. For
3 incentive programs beginning on or after November 1, 2022, such
4 consent shall not be required as a condition to a new motor vehicle
5 dealer's participation in an incentive program unless such consent
6 is necessary to obtain consumer data to implement the program;

7 5. Shall indemnify the new motor vehicle dealer for any third-
8 party claims asserted against or damages incurred by the new motor
9 vehicle dealer to the extent caused by access to, use of, or
10 disclosure of consumer data in violation of this section by the
11 factory or a third party to whom the factory has provided consumer
12 data. Nothing contained in this section shall limit the ability of
13 the factory or a third party acting on the factory's behalf to
14 require that the new motor vehicle dealer provide, or use in
15 accordance with the law, such consumer information related solely to
16 such factory's own vehicle makes to the extent necessary to do any
17 of the following:

- 18 a. satisfy any safety or recall notice obligations or
19 other legal notice obligations on the part of the
20 manufacturer,
 - 21 b. validate and pay to a new motor vehicle dealer a
22 consumer or new motor vehicle dealer incentive,
- 23
24

- c. submit claims to the factory for any services supplied by the new motor vehicle dealer for any claim for warranty parts or repair,
- d. complete the sale and delivery of a new motor vehicle to a consumer,
- e. conduct market analysis which is used by the factory for internal purposes only and the consumer data is not distributed to third parties for use or sale other than acting in the course of performance of services on behalf of or for the benefit of the factory related to the market analysis,
- f. evaluate sales and customer service satisfaction with the new motor vehicle dealer, including surveys, or
- g. use for tier one marketing of the factory's products.

Notwithstanding the foregoing, the indemnification requirements contained in this paragraph shall continue to apply to all consumer data used for the purposes enumerated according to the exceptions listed in this paragraph; and

B. In any cause of action against the factory for a violation of this section, the party bringing the action shall have the burden of proof.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 564.4 of Title 47, unless there is created a duplication in numbering, reads as follows:

1 If any part or provision of this act or the application thereof
2 to any person or circumstance be adjudged invalid by any court of
3 competent jurisdiction, such judgment shall be confined in its
4 operation to the part, provision, or application directly involved
5 in the controversy in which such judgment shall have been rendered
6 and shall not affect or impair the validity of the remainder of this
7 act or the application thereof to other persons or circumstances.

8 SECTION 4. AMENDATORY 47 O.S. 2021, Section 562, is
9 amended to read as follows:

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

15 1. "Motor vehicle" means any motor-driven vehicle required to
16 be registered under the Oklahoma Vehicle License and Registration
17 Act. The term "motor vehicle" does not include:

- 18 a. recreational vehicles, as defined in the Recreational
19 Vehicle Franchise Act, or
- 20 b. all-terrain vehicles, utility vehicles, and
21 motorcycles used exclusively for off-road use which
22 are sold by a retail implement dealer;

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

1 sells, offers for sale, advertises to sell, leases or displays new
2 motor vehicles and holds a bona fide contract or franchise in effect
3 with a manufacturer or distributor authorized by the manufacturer to
4 make predelivery preparation of such vehicles sold to purchasers and
5 to perform post-sale work pursuant to the manufacturer's or
6 distributor's warranty. As used herein, "authorized predelivery
7 preparation" means the rendition by the dealer of services and
8 safety adjustments on each new motor vehicle in accordance with the
9 procedure and safety standards required by the manufacturer of the
10 vehicle to be made before its delivery to the purchaser.

11 "Performance of authorized post-sale work pursuant to the warranty",
12 as used herein, means the rendition of services which are required
13 by the terms of the warranty that stands extended to the vehicle at
14 the time of its sale and are to be made in accordance with the
15 safety standards prescribed by the manufacturer. The term includes
16 premises or facilities at which a person engages only in the repair
17 of motor vehicles if repairs are performed pursuant to the terms of
18 a franchise ~~and~~ or motor vehicle manufacturer's warranty. However,
19 the term shall not include premises or facilities at which a new
20 motor vehicle dealer or dealers within the area of responsibility of
21 such dealer or dealers as defined in the manufacturer's franchise
22 agreement of such dealer or dealers performs motor vehicle repairs
23 pursuant to the terms of a franchise and motor vehicle
24 manufacturer's warranty. For the purpose of Sections 561 through

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

- 4 a. receivers, trustees, administrators, executors,
5 guardians or other persons appointed by or acting
6 under judgment or order of any court,
- 7 b. public officers while performing or in operation of
8 their duties, ~~or~~
- 9 c. employees of persons, corporations or associations
10 enumerated in subparagraph a of this paragraph when
11 engaged in the specific performance of their duties as
12 such ~~employee~~ employees, or
- 13 d. a powersports vehicle dealer;

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

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

21 5. "Manufacturer" means any person, firm, association,
22 corporation or trust, resident or nonresident, ~~who~~ that manufactures
23 or assembles new and unused motor vehicles or ~~who~~ that engages in
24

1 the fabrication or assembly of motorized vehicles of a type required
2 to be registered in the State of Oklahoma;

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

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

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

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

22 10. "Distributor representative" means any person, firm,
23 association, corporation or trust and each officer and employee
24 thereof engaged as a representative of a distributor or distributor

1 branch of motor vehicles, for the purpose of making or promoting the
2 sale of its motor vehicles, or for supervising or contacting its
3 dealers or prospective dealers;

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

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

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

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

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

7 16. "Product" means new motor vehicles and new motor vehicle
8 parts;

9 17. "Service" means motor vehicle warranty repairs including
10 both parts and labor;

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

14 19. "Sell or sale" means to sell or lease;

15 20. "Factory" means a manufacturer, distributor, factory
16 branch, distributor branch, factory representative or distributor
17 representative, which manufactures or distributes vehicle products;

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

20 22. "Powersports vehicle dealer" means any person, firm, or
21 corporation ~~who~~ that is in the business of selling any new
22 powersports vehicles except for retail implement dealers; ~~and~~

23 23. "Retail implement dealer" means a business engaged
24 primarily in the sale of farm tractors as defined in Section 1-118

1 of this title or implements of husbandry as defined in Section 1-125
2 of this title or a combination thereof;

3 24. "Consumer data" means nonpublic personal information as
4 such term is defined in 15 U.S.C., Section 6809(4) as it existed on
5 January 1, 2022, that is:

- 6 a. collected by a new motor vehicle dealer, and
- 7 b. provided by the new motor vehicle dealer directly to a
8 manufacturer or third party acting on behalf of a
9 manufacturer.

10 Such term shall not include the same or similar data obtained by
11 a manufacturer from any source other than the new motor vehicle
12 dealer or new motor vehicle dealer's data management system;

13 25. "Data management system" means a computer hardware or
14 software system that:

- 15 a. is owned, leased, or licensed by a new motor vehicle
16 dealer including a system or web-based applications,
17 computer software or computer hardware,
- 18 b. is located at the dealership or hosted remotely, and
- 19 c. stores and provides access to consumer data collected
20 or stored by a new motor vehicle dealer.

21 Such term shall include, but shall not be limited to, dealership
22 management systems and customer relations management systems; and

23 26. "Fleet vehicle" means a new motor vehicle sold and titled
24 or registered to a business and used for business purposes only.

1 SECTION 5. AMENDATORY 47 O.S. 2021, Section 564, is

2 amended to read as follows:

3 Section 564. A. It shall be unlawful for any person, firm,
4 association, corporation or trust to engage in business as, or serve
5 in the capacity of, or act as a new motor vehicle dealer or
6 manufacturer or distributor of new motor vehicles, or factory
7 branch, distributor branch or factory representative or distributor
8 representative, as ~~such~~ defined in Section 562 of this title, in
9 this state without first obtaining a license therefor as provided
10 for by law. Any person, firm, association, corporation or trust
11 engaging in more than one of such capacities or having more than one
12 place where such business is carried on or conducted shall be
13 required to obtain and hold a current license for each thereof.
14 Provided that, a new motor vehicle dealer's license shall authorize
15 one person to sell in the event such person shall be the owner of a
16 proprietorship, or the person designated as principal in the
17 dealer's franchise or the managing officer or one partner if no
18 principal person is named in the franchise. It is further provided
19 that a factory or an entity affiliated by any ownership or control
20 by the factory shall not be permitted to be licensed as a new motor
21 vehicle dealer in this state, except as provided by subparagraph b
22 of paragraph 12 of Section 565 of this title.

23 B. Applications for licenses required to be obtained under
24 provisions of Section 561 et seq. of this title shall be verified by

1 the oath or affirmation of the applicant and shall be on forms
2 prescribed by the Oklahoma Motor Vehicle Commission and furnished to
3 such applicants, and shall contain such information as the
4 Commission deems necessary to enable it to fully determine the
5 qualifications and eligibility of the several applicants to receive
6 the license or licenses applied for. The Commission shall require
7 in such application, or otherwise, information relating to the
8 applicant's financial standing, the applicant's business integrity,
9 whether the applicant has an established place of business and is
10 primarily engaged in the pursuit, avocation or business for which a
11 license, or licenses, are applied for, and whether the applicant is
12 able to properly conduct the business for which a license, or
13 licenses, are applied for, and such other pertinent information
14 consistent with the safeguarding of the public interest and the
15 public welfare. All such applications for license or licenses shall
16 be accompanied by the appropriate fee or fees therefor in accordance
17 with the schedule thereof hereinafter set out. In the event any
18 such application is denied and the license applied for is not
19 issued, the entire license fee shall be returned to the applicant.
20 All licenses issued under the provisions of Section 561 et seq. of
21 this title shall expire on June 30, following the date of issue and
22 shall be nontransferable. All applications for renewal of a license
23 for a new motor vehicle dealer, manufacturer, distributor or
24 manufacturer's or distributor's representative shall be submitted by

1 June 1 of each year, and such license or licenses will be issued by
2 July 1. If applications have not been made for renewal of licenses
3 at the times described in this subsection, it shall be illegal for
4 any person to represent himself or herself and act as a dealer,
5 manufacturer, distributor or manufacturer's or distributor's
6 representative. Motor license agents will be notified not to accept
7 such dealers' titles until such time as licenses have been issued by
8 the Commission.

9 C. The schedule of license fees to be charged and received by
10 the Commission for the licenses issued hereunder shall be as
11 follows:

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

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

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

20 4. For each new motor vehicle dealer, except powersports
21 vehicle dealers, initial fee of Three Hundred Dollars (\$300.00) per
22 franchise sold at each location licensed, with an annual renewal fee
23 of One Hundred Dollars (\$100.00) per franchise sold at each location
24 per year; and

1 5. For each powersports vehicle dealer, initial fee of Three
2 Hundred Dollars (\$300.00) per manufacturer represented by the dealer
3 at each location licensed, with an annual renewal fee of One Hundred
4 Dollars (\$100.00) per manufacturer represented by the dealer at each
5 location licensed per year.

6 D. The licenses issued to each new motor vehicle dealer,
7 manufacturer, distributor, factory branch, distributor branch or
8 representative, if a corporation, shall specify the location of the
9 factory, office or branch thereof. In case such location is
10 changed, the Commission may endorse the change of location on the
11 license without charge unless the change of address triggers a
12 relocation of a new motor vehicle dealer pursuant to the provisions
13 of Section 578.1 of this title. The license of each new motor
14 vehicle dealer shall be posted in a conspicuous place in the new
15 motor vehicle dealer's place or places of business.

16 Every motor vehicle factory representative or distributor
17 representative if an individual shall physically possess the license
18 when engaged in business, and shall display same upon request. The
19 name of the employer of such factory representative or distributor
20 representative shall be stated on the license and, in case of a
21 change of employer, the holder of such license shall immediately
22 mail same to the Commission for its endorsement of such change
23 thereon. The Commission shall endorse each such change of employer
24 on licenses for a fee of Ten Dollars (\$10.00).

1 E. The powersports dealer license shall only allow the sale of
2 the specific types of powersports vehicles authorized by the
3 manufacturer and agreed to by the powersports dealer.

4 SECTION 6. AMENDATORY 47 O.S. 2021, Section 565, is
5 amended to read as follows:

6 Section 565. A. The Oklahoma Motor Vehicle Commission may deny
7 an application for a license, ~~or~~ revoke or suspend a license, or
8 impose a fine against any person or entity, not to exceed Ten
9 Thousand Dollars (\$10,000.00) ~~against a manufacturer or distributor~~
10 ~~or a fine not to exceed One Thousand Dollars (\$1,000.00) against a~~
11 ~~dealer~~ per occurrence, that violates any provision of Sections 561
12 through 567, 572, 578.1, 579 and 579.1 of this title ~~is violated~~ or
13 for any of the following reasons:

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

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

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

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

1 5. Being a new motor vehicle dealer who:

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

1 h. completes any sale or transaction of an extended
2 service contract, extended maintenance plan, or
3 similar product using contract forms that do not
4 conspicuously disclose the identity of the service
5 contract provider;

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

8 7. Being a new motor vehicle dealer who:

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

10 b. does not provide for a suitable repair shop separate
11 from the display room with ample space to repair or
12 recondition one or more vehicles at the same time, and
13 which is staffed with properly trained and qualified
14 repair technicians and is equipped with such parts,
15 tools and equipment as may be requisite for the
16 servicing of motor vehicles in such a manner as to
17 make them comply with the safety laws of this state
18 and to properly fulfill the new motor vehicle dealer's
19 or manufacturer's warranty obligation,

20 c. does not hold a franchise in effect with a
21 manufacturer or distributor of new or unused motor
22 vehicles for the sale of the same and is not
23 authorized by the manufacturer or distributor to
24 render predelivery preparation of such vehicles sold

1 to purchasers and to perform any authorized post-sale
2 work pursuant to the manufacturer's or distributor's
3 warranty,

4 d. employs a person without obtaining a certificate of
5 registration for the person, or utilizes the services
6 of used motor vehicle lots or dealers or other
7 unlicensed persons in connection with the sale of new
8 motor vehicles,

9 e. does not properly service a new motor vehicle before
10 delivery of same to the original purchaser thereof, or

11 f. fails to order and stock a reasonable number of new
12 motor vehicles necessary to meet ~~customer~~ consumer
13 demand for each of the new motor vehicles included in
14 the new motor vehicle dealer's franchise agreement,
15 unless the new motor vehicles are not readily
16 available from the manufacturer or distributor due to
17 limited production;

18 8. Being a factory that has:

19 a. either induced or attempted to induce by means of
20 coercion or intimidation, any new motor vehicle
21 dealer:

22 (1) to accept delivery of any motor vehicle or
23 vehicles, parts or accessories therefor, or any
24 other commodities including advertising material

1 which shall not have been ordered by the new
2 motor vehicle dealer,

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

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

11 b. induced under threat or discrimination by the
12 withholding from delivery to a new motor vehicle
13 dealer certain models of motor vehicles, changing or
14 amending unilaterally the new motor vehicle dealer's
15 allotment of motor vehicles and/or withholding and
16 delaying delivery of such vehicles out of the ordinary
17 course of business, in order to induce by such
18 coercion any such new motor vehicle dealer to
19 participate or contribute to any local or national
20 advertising fund controlled directly or indirectly by
21 the factory or for any other purposes such as contest,
22 ~~"give-aways"~~ "giveaways" or other so-called sales
23 promotional devices and/or change of quotas in any
24 sales contest; or has required new motor vehicle

1 dealers, as a condition to receiving their vehicle
2 allotment, to order a certain percentage of the
3 vehicles with optional equipment not specified by the
4 new motor vehicle dealer; however, nothing in this
5 section shall prohibit a factory from supporting an
6 advertising association which is open to all new motor
7 vehicle dealers on the same basis,

8 c. used an unreasonable, arbitrary, or unfair sales or
9 other standard to measure a new motor vehicle dealer's
10 performance under any factory program, policy, or the
11 franchise agreement. It shall be considered
12 unreasonable, arbitrary, and unfair for the factory to
13 fail to take into account the new motor vehicle
14 dealer's specific and market circumstances in
15 establishing the sales or other standard,

16 d. failed or refused to sell, or offer for sale, new
17 motor vehicles to all of its same line-make franchised
18 new motor vehicle dealers at the same price for a
19 comparably equipped motor vehicle, on the same terms,
20 with no differential in functionally available
21 discount, allowance, credit or bonus. For a factory
22 program or policy which goes into effect after
23 November 1, 2022, any differential in discount,
24 allowance, credit, or bonus paid to new motor vehicle

1 dealers on a per vehicle basis in exchange for
2 compliance with a facility requirement of the factory
3 shall be a violation of this section. However, a
4 factory is not prohibited from making payment to a new
5 motor vehicle dealer on a lump sum or periodic basis
6 for compliance with a facility requirement as long as
7 said payment is not made on a per vehicle basis,
8 e. failed to reimburse a new motor vehicle dealer in full
9 for the actual cost of providing a loaner or rental
10 vehicle to any consumer who is having a vehicle
11 serviced at the dealership if the provision of such a
12 loaner or rental vehicle is required by the factory.
13 For purposes of this paragraph, actual cost shall not
14 exceed the average cost in the new motor vehicle
15 dealer's region for the rental of a substantially
16 similar make and model as the vehicle being serviced,
17 or
18 f. failed to make available to its new motor vehicle
19 dealers the technology to offer to consumers any
20 software or hardware upgrade or change to vehicle
21 functions and features, whether provided remotely or
22 otherwise, following the initial retail sale of a
23 motor vehicle. The factory shall not have exclusive
24 rights to make any such offering to a consumer but

1 shall offer any software or hardware upgrade or change
2 to vehicle functions and features to new motor vehicle
3 dealers at the same price and structure as any offered
4 to consumers by the factory and such upgrade or change
5 shall be available at any time during the life cycle
6 of the vehicle. This subparagraph does not apply to
7 software or hardware upgrades or changes related
8 solely to the safety of the new motor vehicle;

9 9. Being a factory that:

- 10 a. has attempted to coerce or has coerced any new motor
11 vehicle dealer to enter into any agreement or to
12 cancel any agreement, or fails to act in good faith
13 and in a fair, equitable and nondiscriminatory manner;
14 or has directly or indirectly coerced, intimidated,
15 threatened or restrained any new motor vehicle dealer;
16 or has acted dishonestly, or has failed to act in
17 accordance with the reasonable standards of fair
18 dealing,
- 19 b. has failed to compensate its dealers for the work and
20 services they are required to perform in connection
21 with the dealer's delivery and preparation obligations
22 according to the agreements on file with the
23 Commission which must be found by the Commission to be
24 reasonable, or ~~fail~~ has failed to adequately and

1 fairly compensate its dealers for labor, parts and
2 other expenses incurred by such dealer to perform
3 under and comply with manufacturer's warranty
4 agreements, and recall repairs which shall include
5 diagnostic work as applicable and factory-authorized
6 goodwill repairs. Time allowances for the diagnosis
7 and performance of repair work shall be reasonable and
8 adequate for the work to be performed. Adequate and
9 fair compensation for parts and/or labor for warranty
10 and recall repairs shall, at the option of the new
11 motor vehicle dealer, be established by the new motor
12 vehicle dealer submitting to the manufacturer or
13 distributor one hundred sequential nonwarranty
14 ~~customer-paid~~ consumer-paid service repair orders
15 which contain warranty-like ~~parts~~ repairs, or ninety
16 (90) consecutive days of nonwarranty ~~customer-paid~~
17 consumer-paid service repair orders which contain
18 warranty-like ~~parts~~ repairs, whichever is less,
19 covering repairs made no more than one hundred eighty
20 (180) days before the submission and declaring the
21 average percentage markup rate. ~~Adequate and fair~~
22 ~~compensation for labor shall be established by the~~
23 ~~dealer submitting to the manufacturer or distributor~~
24 ~~one hundred sequential customer-paid service repair~~

~~orders which contain labor charges, or ninety (90) consecutive days of customer paid service repair orders which contain labor charges, whichever is less.~~

A new motor vehicle dealer may not submit a request to establish a parts and/or labor rate more than once in a twelve-month period. The new motor vehicle dealer shall calculate its retail parts rate by determining the total charges for parts from the qualified repair orders submitted, dividing that amount by the new motor vehicle dealer's total cost of the purchase of those parts, subtracting one (1), and multiplying by one hundred (100) to produce a percentage. The new motor vehicle dealer shall calculate its retail labor rate by dividing the amount of the new motor vehicle dealer's total labor sales from the qualified repair orders by the total labor hours charged for those sales. When submitting repair orders to calculate establish a retail parts and/or labor rate, a new motor vehicle dealer need not include repair orders repairs for:

(1) routine maintenance including, but not limited to, the replacement of bulbs, fluids, filters, batteries, and belts that are not provided in the course of and related to a repair,

- (2) factory special events, specials, or promotional discounts for retail consumer repairs,
- (3) parts sold or repairs performed at wholesale,
- (4) factory-approved goodwill or policy repairs or replacements,
- (5) repairs with aftermarket parts, when calculating the retail parts rate but not the retail labor rate,
- (6) repairs on aftermarket parts,
- (7) replacement of or work on tires including front-end alignments and wheel or tire rotations,
- (8) repairs of motor vehicles owned by the new motor vehicle dealer or employee thereof at the time of the repair,
- (9) engine and/or transmission assemblies,
- (10) vehicle reconditioning, or
- (11) items that do not have individual part numbers including, but not limited to, nuts, bolts and fasteners.

A manufacturer or distributor may, not later than thirty (30) days after submission, rebut that declared retail parts and/or labor rate in writing by reasonably substantiating that the rate is ~~inaccurate~~ not accurate and complete pursuant to the provisions of this section or

1 unreasonable in ~~light of the practices of all other~~
2 ~~franchised motor vehicle dealers in an economically similar~~
3 ~~part of the state offering the same line make vehicles~~
4 consideration of the rates charged to the new motor vehicle
5 dealer's nonwarranty, retail consumers. The retail ~~rate~~
6 labor and parts rates shall go into effect thirty (30) days
7 following the approval by the manufacturer or distributor,
8 subject to audit of the submitted repair orders by the
9 franchisor and a rebuttal of the declared rate as described
10 ~~above~~ in this subparagraph. If the declared rate is
11 rebutted, the manufacturer or distributor shall provide
12 written notice stating the reasons for the rebuttal, an
13 explanation of the reasons for the rebuttal, and a copy of
14 all calculations used by the franchisor in determining the
15 manufacturer or distributor's position and propose an
16 adjustment in writing of the average percentage markup or
17 labor rate based on that rebuttal not later than thirty
18 (30) days after submission. If the new motor vehicle
19 dealer does not agree with the proposed average percentage
20 markup or labor rate, the new motor vehicle dealer may file
21 a protest with the Commission not later than thirty (30)
22 days after receipt of that proposal by the manufacturer or
23 distributor. In the event a protest is filed, the
24 manufacturer or distributor shall have the burden of proof

1 to establish the new motor vehicle dealer's submitted parts
2 markup rate or labor rate was inaccurate or unreasonable in
3 ~~light of the practices of all other franchised motor~~
4 ~~vehicle dealers in an economically similar part of the~~
5 ~~state~~ consideration of the rates charged to the new motor
6 vehicle dealer's nonwarranty, retail consumers. A
7 manufacturer or distributor may not retaliate against any
8 new motor vehicle dealer seeking to exercise its rights
9 under this ~~provision~~ section. ~~A manufacturer or~~
10 ~~distributor may require a dealer to submit repair orders in~~
11 ~~accordance with this section in order to validate a~~
12 ~~dealer's retail rate for parts or labor not more often than~~
13 ~~once every twelve (12) months.~~ A manufacturer or
14 distributor may not otherwise recover its costs from new
15 motor vehicle dealers within this state including an
16 increase in the wholesale price of a vehicle or surcharge
17 imposed on a new motor vehicle dealer solely intended to
18 recover the cost of reimbursing a new motor vehicle dealer
19 for parts and labor pursuant to this section; provided, a
20 manufacturer or distributor shall not be prohibited from
21 increasing prices for vehicles or parts in the normal
22 course of business. All claims made by dealers for
23 compensation for delivery, preparation ~~and,~~ warranty, or
24 recall repair work shall be paid within thirty (30) days

1 after approval and shall be approved or disapproved within
2 thirty (30) days after receipt. When any claim is
3 disapproved, the dealer shall be notified in writing of the
4 grounds for disapproval. The dealer's delivery,
5 preparation and warranty obligations as filed with the
6 Commission shall constitute the dealer's sole
7 responsibility for product liability as between the dealer
8 and manufacturer. A factory may reasonably and
9 periodically audit a new motor vehicle dealer to determine
10 the validity of paid claims for new motor vehicle dealer
11 compensation or any charge-backs for warranty parts or
12 service compensation. Except in cases of suspected fraud,
13 audits of warranty payments shall only be for the one-year
14 period immediately following the date of the payment. A
15 manufacturer shall reserve the right to reasonable,
16 periodic audits to determine the validity of paid claims
17 for dealer compensation or any charge-backs for consumer or
18 dealer incentives. Except in cases of suspected fraud,
19 audits of incentive payments shall only be for a one-year
20 period immediately following the date of the payment. A
21 factory shall not deny a claim or charge a new motor
22 vehicle dealer back subsequent to the payment of the claim
23 unless the factory can show that the claim was false or
24 fraudulent or that the new motor vehicle dealer failed to

1 reasonably substantiate the claim by the written reasonable
2 procedures of the factory. A factory shall not deny a
3 claim or implement a charge-back against a new motor
4 vehicle dealer after payment of a claim in the event a
5 purchaser of a new vehicle that is the subject of a claim
6 fails to comply with titling or registration laws of this
7 state and is not prevented from compliance by any action of
8 the new motor vehicle dealer; provided, that the factory
9 may require the new motor vehicle dealer to establish the
10 sale. The factory shall provide written notice to a dealer
11 of a proposed charge-back that is the result of an audit
12 along with the specific audit results and proposed charge-
13 back amount. A dealer that receives notice of a proposed
14 charge-back pursuant to a factory's audit has the right to
15 file a protest with the Commission within thirty (30) days
16 after receipt of the notice of the charge-back or audit
17 results, whichever is later. The factory is prohibited
18 from implementing the charge-back or debiting the dealer's
19 account until either the time frame for filing a protest
20 has passed or a final adjudication is rendered by the
21 Commission, whichever is later, unless the dealer has
22 agreed to the charge-back or charge-backs,
23 c. fails to compensate the new motor vehicle dealer for a
24 used motor vehicle:

- 1 (1) that is of the same make and model manufactured,
2 imported or distributed by the factory and is a
3 line-make that the new motor vehicle dealer is
4 franchised to sell or on which the new motor
5 vehicle dealer is authorized to perform recall
6 repairs,
- 7 (2) that is subject to a stop-sale or do-not-drive
8 notice issued by the factory or an authorized
9 governmental agency,
- 10 (3) that is held by the new motor vehicle dealer in
11 the dealer's inventory at the time the stop-sale
12 or do-not-drive notice is issued or that is taken
13 by the new motor vehicle dealer into the dealer's
14 inventory after the recall notice as a result of
15 a retail consumer trade-in or a lease return to
16 the dealer inventory in accordance with an
17 applicable lease contract,
- 18 (4) that cannot be repaired due to the
19 unavailability, within thirty (30) days after
20 issuance of the stop-sale or do-not-drive notice,
21 of a remedy or parts necessary for the new motor
22 vehicle dealer to make the recall repair, and
- 23 (5) that is not at least in the prorated amount of
24 one and one-quarter percent (1.25%) of the value

1 of the vehicle per month beginning on the date
2 that is thirty (30) days after the date on which
3 the stop-sale order was provided to the new motor
4 vehicle dealer until the earlier of either of the
5 following:

6 (a) the date the recall remedy or parts are made
7 available, or

8 (b) the date the new motor vehicle dealer sells,
9 trades, or otherwise disposes of the
10 affected used motor vehicle.

11 For the purposes of division (5) of this subparagraph, the value
12 of a used vehicle shall be the average Black Book value for the
13 year, make, and model of the recalled vehicle.

14 A factory may direct the manner and method in which a new motor
15 vehicle dealer must demonstrate the inventory status of an affected
16 used motor vehicle to determine eligibility under this subparagraph;
17 provided, that the manner and method may not be unduly burdensome
18 and may not require information that is unduly burdensome to
19 provide.

20 All reimbursement claims made by new motor vehicle dealers
21 pursuant to this section for recall remedies or repairs, or for
22 compensation where no part or repair is reasonably available and the
23 vehicle is subject to a stop-sale or do-not-drive order, shall be
24 subject to the same limitations and requirements as a warranty

1 reimbursement claim made under subparagraph b of this paragraph. In
2 the alternative, a manufacturer may compensate its franchised new
3 motor vehicle dealers under a national recall compensation program;
4 provided, the compensation under the program is equal to or greater
5 than that provided under division (5) of this subparagraph, or as
6 the manufacturer and new motor vehicle dealer otherwise agree.

7 Nothing in this section shall require a factory to provide total
8 compensation to a new motor vehicle dealer which would exceed the
9 total average Black Book value of the affected used motor vehicle as
10 originally determined under division (5) of this subparagraph.

11 Any remedy provided to a new motor vehicle dealer under this
12 subparagraph is exclusive and may not be combined with any other
13 state or federal compensation remedy.

14 d. unreasonably fails or refuses to offer to its same
15 line-make franchised dealers a reasonable supply and
16 mix of all models manufactured for that line-make, or
17 unreasonably requires a dealer to pay any extra fee,
18 purchase unreasonable advertising displays or other
19 materials, or enter into a separate agreement which
20 alters the rights or obligations contained within the
21 new motor vehicle dealer's existing franchise
22 agreement or which waives any right the new motor
23 vehicle dealer has within the existing franchise
24 agreement, or remodel, renovate, or recondition the

1 new motor vehicle dealer's existing facilities as a
2 prerequisite to receiving a model or series of
3 vehicles, except as may be necessary to sell or
4 service the model or series of vehicles as provided by
5 subparagraph e of this paragraph. It shall be a
6 violation of this section for new vehicle allocation
7 to be withheld subject to any requirement to purchase
8 or sell any number of used or off-lease vehicles. The
9 failure to deliver any such new motor vehicle shall
10 not be considered a violation of the section if the
11 failure is not arbitrary or is due to lack of
12 manufacturing capacity or to a strike or labor
13 difficulty, a shortage of materials, a freight embargo
14 or other cause over which the manufacturer has no
15 control. However, this subparagraph shall not apply
16 to recreational vehicles ~~or~~, limited production model
17 vehicles, or a vehicle not advertised by the factory
18 for sale in this state,

19 ~~d.~~ e. except as necessary to comply with a health or safety
20 law, or to comply with a technology requirement which
21 is necessary to sell or service a motor vehicle that
22 the franchised motor vehicle dealer is authorized or
23 licensed by the franchisor to sell or service,
24 requires a new motor vehicle dealer to construct a new

1 facility or substantially renovate the new motor
2 vehicle dealer's existing facility unless the facility
3 construction or renovation is justified by the
4 economic conditions existing at the time, as well as
5 the reasonably foreseeable projections, in the new
6 motor vehicle dealer's market and in the automotive
7 industry. However, this subparagraph shall not apply
8 if the ~~factory provides~~ new motor vehicle dealer
9 voluntarily agrees to facility construction or
10 renovation in exchange for money, credit, allowance,
11 reimbursement, except for payments on a per vehicle
12 basis, or additional vehicle allocation to a new motor
13 vehicle dealer from the factory to compensate the new
14 motor vehicle dealer for the cost of, or a portion of
15 the cost of, the facility construction or renovation.
16 Except as necessary to comply with a health or safety
17 law, or to comply with a technology or safety
18 requirement which is necessary to sell or service a
19 motor vehicle that the franchised new motor vehicle
20 dealer is authorized or licensed by the franchisor to
21 sell or service, a new motor vehicle dealer which
22 completes a facility construction or renovation
23 pursuant to factory requirements shall not be required
24 to construct a new facility or renovate the existing

1 facility for ten (10) years, during which time the
2 new motor vehicle dealer will be considered in
3 compliance with any new facility program involving any
4 part of the facility which was previously renovated
5 for purposes of being entitled to all incentive or
6 bonus payments offered to same line-make new motor
7 vehicle dealers,

8 e. f. requires a new motor vehicle dealer to establish an
9 exclusive facility, unless supported by reasonable
10 business, market and economic considerations;
11 provided, that this ~~provision~~ section shall not
12 restrict the terms of any agreement for such exclusive
13 facility voluntarily entered into and supported by
14 valuable consideration separate from the new motor
15 vehicle dealer's right to sell and service motor
16 vehicles for the franchisor,

17 ~~f.~~ g. requires a new motor vehicle dealer to enter into a
18 site-control agreement covering any or all of the new
19 motor vehicle dealer's facilities or premises;
20 provided, that this ~~provision~~ section shall not
21 restrict the terms of any site-control agreement
22 voluntarily entered into and supported by valuable
23 consideration separate from the new motor vehicle
24 dealer's right to sell and service motor vehicles for

1 the franchisor. Notwithstanding the foregoing or the
2 terms of any site-control agreement, a site-control
3 agreement automatically extinguishes if all of the
4 factory's franchises that operated from the location
5 that are the subject of the site-control agreement are
6 terminated by the factory as part of the
7 discontinuance of a product line, ~~or~~

8 ~~g.~~ h. refuses to pay, or claims reimbursement from, a new
9 motor vehicle dealer for sales, incentives or other
10 payments related to a motor vehicle sold by the new
11 motor vehicle dealer because the purchaser of the
12 motor vehicle exported or resold the motor vehicle in
13 violation of the policy of the factory unless the
14 factory can show that, at the time of the sale, the
15 new motor vehicle dealer knew or reasonably should
16 have known of the purchaser's intention to export or
17 resell the motor vehicle. There is a rebuttable
18 presumption that the new motor vehicle dealer did not
19 know or could not have known that the vehicle would be
20 exported if the vehicle is titled and registered in
21 any state of the United States, or

22 i. requires a new motor vehicle dealer to purchase goods
23 or services for the construction, renovation, or
24 improvement of the dealer's facility from a vendor

1 chosen by the factory if goods or services available
2 from other sources are of substantially similar
3 quality and design and comply with all applicable
4 laws; provided, however, that such goods are not
5 subject to the factory's intellectual property or
6 trademark rights and the new motor vehicle dealer has
7 received the factory's approval, which approval may
8 not be unreasonably withheld. Nothing in this
9 subparagraph may be construed to allow a new motor
10 vehicle dealer to impair or eliminate a factory's
11 intellectual property, trademark rights or trade dress
12 usage guidelines. Nothing in this section prohibits
13 the enforcement of a voluntary agreement between the
14 factory and the new motor vehicle dealer where
15 separate and valuable consideration has been offered
16 and accepted;

17 10. Being a factory that:

- 18 a. establishes a system of motor vehicle allocation or
19 distribution which is unfair, inequitable or
20 unreasonably discriminatory. Upon the request of any
21 new motor vehicle dealer franchised by it, a factory
22 shall disclose in writing to the new motor vehicle
23 dealer the basis upon which new motor vehicles are
24 allocated, scheduled and delivered among the new motor

1 vehicle dealers of the same line-make for that
2 factory, or

3 b. changes an established plan or system of motor vehicle
4 distribution. A new motor vehicle dealer franchise
5 agreement shall continue in full force and operation
6 notwithstanding a change, in whole or in part, of an
7 established plan or system of distribution of the
8 motor vehicles offered or previously offered for sale
9 under such franchise agreement. The appointment of a
10 new importer or distributor for motor vehicles offered
11 for sale under such franchise agreement shall be
12 deemed to be a change of an established plan or system
13 of distribution. The discontinuation of a line-make
14 shall not be deemed to be a change of an established
15 plan or system of motor vehicle distribution. The
16 creation of a line-make shall not be deemed to be a
17 change of an established plan or system of motor
18 vehicle distribution as long as the new line-make is
19 not selling vehicles or substantial parts of vehicles
20 sold or previously sold through another line-make.
21 Upon the occurrence of such change, the manufacturer
22 or distributor shall be prohibited from obtaining a
23 license to distribute vehicles under the new plan or
24 system of distribution unless the manufacturer or

1 distributor offers to each new motor vehicle dealer
2 who is a party to the franchise agreement a new
3 franchise agreement containing substantially the same
4 provisions which were contained in the previous
5 franchise agreement;

6 11. Being a factory that sells directly or indirectly new motor
7 vehicles to any retail consumer in the state except through a new
8 motor vehicle dealer holding a franchise for the line-make that
9 includes the new motor vehicle. This paragraph does not apply to
10 factory sales of new motor vehicles to its employees, family members
11 of employees, retirees and family members of retirees, not-for-
12 profit organizations or the federal, state or local governments.
13 The provisions of this paragraph shall not preclude a factory from
14 providing information to a consumer for the purpose of marketing or
15 facilitating a sale of a new motor vehicle through its franchised
16 new motor vehicle dealers or from establishing a program to sell or
17 offer to sell new motor vehicles through participating dealers
18 subject to the limitations contained in paragraph 2 of Section 562
19 of this title;

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

21 (1) owns any ownership interest or has any financial
22 interest in a new motor vehicle dealer or any
23 person who sells products or services pursuant to
24 the ~~public~~ terms of the franchise agreement,

- 1 (2) operates or controls a new motor vehicle dealer,
2 or
3 (3) acts in the capacity of a new motor vehicle
4 dealer.

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

- 17 (2) This paragraph does not prohibit a factory from
18 owning, operating, controlling or acting in the
19 capacity of a new motor vehicle dealer for a
20 period not to exceed twelve (12) months during
21 the transition from one independent dealer to
22 another independent dealer if the dealership is
23 for sale at a reasonable price and on reasonable
24 terms and conditions to an independent qualified

1 buyer. On showing by a factory of good cause,
2 the Oklahoma Motor Vehicle Commission may extend
3 the time limit set forth above; extensions may be
4 granted for periods not to exceed twelve (12)
5 months.

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

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

17 (a) all of the motor vehicle dealerships selling
18 the motor vehicles of that manufacturer in
19 this state trade exclusively in the line-
20 make of that manufacturer,

21 (b) all of the franchise agreements of the
22 manufacturer confer rights on the dealer of
23 the line-make to develop and operate, within
24 a defined geographic territory or area, as

many dealership facilities as the dealer and manufacturer shall agree are appropriate,

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

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

(e) prior to January 1, 2000, the factory shall have furnished or made available to prospective motor vehicle dealers an offering-circular in accordance with the Trade Regulation Rule on Franchising of the Federal Trade Commission, and any guidelines and exemptions issued thereunder, which disclose the possibility that the factory

1 may from time to time seek to own or
2 acquire, directly or indirectly, ownership
3 interests in retail dealerships;

4 13. Being a factory which directly or indirectly makes
5 available for public disclosure any proprietary information provided
6 to the factory by a new motor vehicle dealer, other than in
7 composite form to new motor vehicle dealers in the same line-make or
8 in response to a subpoena or order of the Commission or a court.

9 Proprietary information includes, but is not limited to,
10 information:

- 11 a. derived from monthly financial statements provided to
- 12 the factory, and
- 13 b. regarding any aspect of the profitability of a
- 14 particular new motor vehicle dealer;

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

19 15. Being a factory which used the ~~customer~~ consumer list of a
20 new motor vehicle dealer for the purpose of unfairly competing with
21 dealers;

22 16. Being a factory which prohibits a new motor vehicle dealer
23 from relocating after a written request by such new motor vehicle
24 dealer if:

1 a. the facility and the proposed new location satisfies
2 or meets the written reasonable guidelines of the
3 factory. Reasonable guidelines do not include
4 exclusivity or site control unless agreed to as set
5 forth in subparagraphs e f and g of paragraph 9 of
6 this subsection,

7 b. the proposed new location is within the area of
8 responsibility of the new motor vehicle dealer
9 pursuant to Section 578.1 of this title, and

10 c. the factory has sixty (60) days from receipt of the
11 new motor vehicle dealer's relocation request to
12 approve or deny the request. The failure to approve
13 or deny the request within the sixty-day time frame
14 shall constitute approval of the request;

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

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

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

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

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

23 20. Being a factory that denies any new motor vehicle dealer
24 the right of free association with any other new motor vehicle

1 dealer for any lawful purpose, unless otherwise permitted by this
2 chapter; or

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

8 a. by an act or statement from the factory that will in
9 any manner adversely impact the new motor vehicle
10 dealer,

11 b. by measuring the new motor vehicle dealer's
12 performance under the franchise based on the sale of
13 extended service contracts, extended maintenance plans
14 or similar products offered, endorsed or sponsored by
15 the manufacturer or distributor.

16 B. Notwithstanding the terms of any franchise agreement, in the
17 event of a proposed sale or transfer of a dealership, the
18 manufacturer or distributor shall be permitted to exercise a right
19 of first refusal to acquire the assets or ownership interest of the
20 dealer of the new vehicle dealership, if such sale or transfer is
21 conditioned upon the manufacturer or dealer entering into a dealer
22 agreement with the proposed new owner or transferee, only if all the
23 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 7. AMENDATORY 47 O.S. 2021, Section 565.1, is
4 amended to read as follows:

5 Section 565.1 A. For purposes of this section, "designated
6 successor" means a person who the new motor vehicle dealer has
7 designated to take over operation of the dealership or a family
8 member of the new motor vehicle dealer who the new motor vehicle
9 dealer has designated to take over operation or ownership of the
10 dealership.

11 B. Notwithstanding the terms of any franchise agreement, and
12 subject to the following conditions contained in paragraphs 1
13 through 5 of this ~~section~~ subsection, any manufacturer or
14 distributor who prevents or refuses to honor the succession to the
15 operation of a dealership by any legal heir or devisee under the
16 will of a new motor vehicle dealer or under the laws of descent and
17 distribution of this state, or designated successor to a departing
18 dealership operator, without good cause or good faith, as defined in
19 this section, shall be subject to the following procedure:

20 1. Within one hundred twenty (120) days after the death or
21 departure of the new motor vehicle dealer, the manufacturer shall
22 receive a written notice from any legal heir or devisee or designee
23 successor who intends to ~~establish a~~ become the successor dealership
24 operator. If timely notice is not so received, then this paragraph

1 shall not apply, and any succession shall be governed solely by the
2 terms of the franchise;

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

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

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

18 5. Within ten (10) days of ~~its~~ the proposed successor's receipt
19 of the manufacturer's notice of disapproval, the ~~legal heir or~~
20 ~~devisee~~ proposed successor may file a protest of the manufacturer's
21 decision with the Oklahoma Motor Vehicle Commission and request a
22 hearing. Such hearing shall be heard in a substantially similar
23 manner as provided by Section 566 of this title, except that the
24 Commission shall render a final decision within sixty (60) days of

1 the filing of the protest. The manufacturer shall have the burden
2 of proof to show that its disapproval was for a good cause and in
3 good faith. A denial shall not be for good cause and in good faith
4 unless the factory establishes that the ~~legal heir or devisee~~
5 proposed successor, or the ~~legal heir or devisee's~~ proposed
6 successor's controlling executive management, is not of good moral
7 character or fails to meet the written, reasonable and uniformly
8 applied requirements of the manufacturer or distributor relating to
9 financial qualifications, general business experience, and other
10 requirements relating to prospective franchisees. However, a legal
11 heir ~~that~~ who is of good moral character in accordance with ~~the~~
12 ~~factory's~~ reasonable factory qualifications and meets the factory's
13 financial qualifications may rely on controlling executive
14 management that is of good moral character and meets the factory's
15 qualifications for general business experience ~~and other~~
16 ~~requirements relating to prospective franchises.~~ Any denial of the
17 proposed successor based upon a failure to agree to terms other than
18 those contained in the existing franchise agreement shall not be
19 considered good cause for such denial. The disapproval by the
20 manufacturer shall be final if the ~~legal heir or devisee~~ proposed
21 successor or dealership fails to file a timely protest of such
22 disapproval. In the event that the Commission finds that the
23 manufacturer's disapproval was not made for good cause, then it
24 shall issue a final order requiring the manufacturer to honor the

1 successor designated in the notice sent by the legal heir or
2 devisee. Notwithstanding anything to the contrary in this section,
3 a new motor vehicle dealer may designate any person as successor by
4 filing a written instrument pursuant to the franchise with the
5 manufacturer during the new motor vehicle dealer's lifetime. In
6 such a case, the written instrument and franchise shall govern the
7 dealership succession.

8 The suspension, revocation or refusal to issue or renew a
9 license or the imposition of any other penalty by the Commission
10 shall be in addition to any penalty which might be imposed upon any
11 licensee upon judgment or conviction in a court of competent
12 jurisdiction for any violation of the provisions of Sections 561
13 through 567, 572, 578.1, 579 and 579.1 of this title.

14 SECTION 8. AMENDATORY 47 O.S. 2021, Section 565.2, is
15 amended to read as follows:

16 Section 565.2 A. Irrespective of the terms, provisions or
17 conditions of any franchise, or the terms or provisions of any
18 waiver, no manufacturer shall terminate, cancel or fail to renew any
19 franchise with a licensed new motor vehicle dealer unless the
20 manufacturer has satisfied the notice requirements as provided in
21 this section and has good cause for cancellation, termination or
22 nonrenewal. The manufacturer shall not attempt to cancel or fail to
23 renew the franchise agreement of a new motor vehicle dealer in this
24 state unfairly and without just provocation or without due regard to

1 the equities of the dealer or without good faith as defined herein.
2 As used herein, "good faith" means the duty of each party to any
3 franchise agreement to act in a fair and equitable manner toward
4 each other, with freedom from coercion or intimidation or threats
5 thereof from each other.

6 B. Irrespective of the terms, provisions or conditions of any
7 franchise, or the terms or provisions of any waiver, good cause
8 shall exist for the purpose of a termination, cancellation, or
9 nonrenewal when:

10 1. The new motor vehicle dealer has failed to comply with a
11 provision of the franchise, which provision is both reasonable and
12 of material significance to the franchise relationship, or the new
13 motor vehicle dealer has failed to comply with reasonable
14 performance criteria for sales or service established by the
15 manufacturer, and the dealer has been notified by written notice
16 from the manufacturer; and

17 2. The new motor vehicle dealer has received written
18 notification of failure to comply with the manufacturer's reasonable
19 sales performance standards, capitalization requirements, facility
20 commitments, business related equipment acquisitions or other such
21 remediable failings exclusive of those reasons enumerated in
22 paragraph 1 of subsection C of this section, and the new motor
23 vehicle dealer has been afforded a reasonable opportunity of not
24

1 less than six (6) months to comply with such a provision or
2 criteria.

3 C. Irrespective of the terms, provisions or conditions of any
4 franchise agreement prior to the termination, cancellation or
5 nonrenewal of any franchise, the manufacturer shall furnish
6 notification of such termination, cancellation or nonrenewal to the
7 new motor vehicle dealer and the Oklahoma Motor Vehicle Commission
8 as follows:

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

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

- 15 a. insolvency of the new motor vehicle dealer, or the
16 filing of any petition by or against the motor vehicle
17 dealer under any bankruptcy or receivership law,
18 b. failure of the new motor vehicle dealer to conduct its
19 customary sales and service operations during its
20 customary business hours for seven (7) consecutive
21 business days, provided that such failure to conduct
22 business shall not be due to an act of God or
23 circumstances beyond the direct control of the new
24 motor vehicle dealer, or

1 c. conviction of the new motor vehicle dealer of any
2 felony which is punishable by imprisonment or a
3 violation of the Federal Odometer Act; and

4 3. Not less than one hundred eighty (180) days prior to the
5 effective date of such termination or cancellation where the
6 manufacturer or distributor is discontinuing the sale of the product
7 line.

8 The notification required by this subsection shall be by
9 certified mail, return receipt requested, and shall contain a
10 statement of intent to terminate, to cancel or to not renew the
11 franchise, a statement of the reasons for the termination,
12 cancellation or nonrenewal and the date the termination shall take
13 effect.

14 D. Upon the affected new motor vehicle dealer's receipt of the
15 aforementioned notice of termination, cancellation or nonrenewal,
16 the new motor vehicle dealer shall have the right to file a protest
17 of such threatened termination, cancellation or nonrenewal with the
18 Commission within thirty (30) days and request a hearing. Such
19 hearing shall be held in accordance with the provisions of the
20 Administrative Procedures Act, Sections ~~301~~ 250 through ~~326~~ 323 of
21 Title 75 of the Oklahoma Statutes, to determine if the threatened
22 cancellation, termination or nonrenewal of the franchise has been
23 for good cause and if the factory has complied with its obligations
24 pursuant to subsections A, B and C of this section and the factory

1 shall have the burden of proof. If the Commission finds that the
2 threatened cancellation, termination or nonrenewal of the franchise
3 has not been for good cause or violates subsection A, B or C of this
4 section, then it shall issue a final order stating that the
5 threatened termination is wrongful. A factory shall have the right
6 to appeal such order. During the pendency of the hearing and after
7 the decision, the franchise shall remain in full force and effect,
8 including the right to transfer the franchise. If the Commission
9 finds that the threatened cancellation, termination or nonrenewal is
10 for good cause and does not violate subsection A, B or C of this
11 section, the new motor vehicle dealer shall have the right to an
12 appeal. During the pendency of the action, including the final
13 decision or appeal, the franchise shall remain in full force and
14 effect, including the right to transfer the franchise. If the new
15 motor vehicle dealer prevails in the threatened termination action,
16 the Commission shall award to the new motor vehicle dealer the
17 attorney fees and costs incurred to defend the action.

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

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

24

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

5 3. Equipment and furnishings, provided the new motor vehicle
6 dealer purchased them from the manufacturer or its approved sources;
7 and

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

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

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

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

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

10 a. used solely for performance in accordance with the
11 franchise. If the facility is used for the operation
12 of more than one franchise, the reasonable rent shall
13 be paid based upon the portion of the facility
14 utilized by the franchise being terminated, canceled
15 or nonrenewed, and

16 b. not substantially in excess of facilities recommended
17 by the manufacturer.

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

22 a. locate a qualified purchaser who will offer to
23 purchase the dealership facilities at a reasonable
24 price,

- 1 b. locate a qualified lessee who will offer to lease the
2 premises for the remaining lease term at the rent set
3 forth in the lease, or
4 c. failing the foregoing, lease the dealership facilities
5 at a reasonable rental value for the portion of the
6 facility that is recognized in the franchise agreement
7 for one (1) year.

8 3. If the facilities are leased by the new motor vehicle
9 dealer, within ninety (90) days following the effective date of the
10 termination, cancellation or nonrenewal the manufacturer will
11 either:

- 12 a. locate a tenant or tenants satisfactory to the lessor,
13 who will sublet or assume the balance of the lease,
14 b. arrange with the lessor for the cancellation of the
15 lease without penalty to the dealer, or
16 c. failing the foregoing, lease the dealership facilities
17 at a reasonable rent for the portion of the facility
18 that is recognized in the franchise agreement for one
19 (1) year.

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

- 22 a. fails to accept a bona fide offer from a prospective
23 purchaser, subleases or assignee,
24

1 b. refuses to execute a settlement agreement with the
2 lessor if such agreement with the lessor would be
3 without cost to the dealer, or

4 c. fails to make written request for assistance under
5 this section within ninety (90) days after the
6 effective date of the termination, cancellation or
7 nonrenewal.

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

10 H. In addition to the repurchase requirements set forth in
11 subsections E and G of this section, in the event the termination or
12 cancellation is the result of a discontinuance of a product line,
13 the manufacturer or distributor shall compensate the new motor
14 vehicle dealer in an amount equivalent to the fair market value of
15 the terminated franchise as of the date ~~of~~ immediately preceding the
16 manufacturer's or distributor's announcement or provide the new
17 motor vehicle dealer with a replacement franchise on substantially
18 similar terms and conditions as those offered to other same line-
19 make dealers. The dealer may immediately request payment under this
20 ~~provision~~ section following the announcement in exchange for
21 cancelling any further franchise rights, except payments owed to the
22 dealer in the ordinary course of business, or may request payment
23 under this ~~provision~~ section upon the final termination,
24 cancellation or nonrenewal of the franchise. In either case,

1 payment under this ~~provision~~ section shall be made not later than
2 ninety (90) days after the fair market value is determined. If the
3 factory and dealer cannot agree on the fair market value of the
4 terminated franchise or agree to a process to determine the fair
5 market value, then the factory and dealer shall utilize a neutral
6 third party mediator to resolve the disagreement.

7 SECTION 9. AMENDATORY 47 O.S. 2021, Section 565.3, is
8 amended to read as follows:

9 Section 565.3 A. A franchised vehicle dealer proposing a sale,
10 transfer, or assignment of a franchise agreement or the business and
11 assets of a dealership or an interest in a dealership to another
12 person, hereinafter transferee, shall notify the manufacturer or
13 distributor whose vehicles the dealer is franchised to sell of the
14 proposed action of the dealer. The manufacturer or distributor may
15 make written request to the proposed transferee to submit completed
16 application forms and related information generally utilized by a
17 manufacturer to evaluate such a proposal and a copy of all
18 agreements related to the proposed sale, transfer, or assignment.

19 B. The approval by the manufacturer or distributor of the sale,
20 transfer, or assignment shall not be unreasonably withheld unless
21 the proposed transferee is not of good moral character or fails to
22 meet the written, reasonable, and uniformly applied requirements of
23 the manufacturer or distributor relating to prospective franchisees.
24 Approval of the transfer shall not be made contingent upon the

1 transferee meeting unreasonable facility requirements or performance
2 standards different than those contained in the transferor's
3 franchise agreement, but may be made contingent upon the proposed
4 transferee meeting reasonable written requirements. The burden of
5 proof shall be upon the manufacturer or distributor to show good
6 cause existed to withhold approval. The manufacturer or distributor
7 that has made such a determination shall send a letter by certified
8 mail to the dealer and the applicant of its refusal to approve the
9 proposal, which shall include a statement of the specific grounds
10 for refusal, within sixty (60) days after the later of:

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

13 2. Receipt by the manufacturer or distributor of the
14 information requested from the proposed transferee pursuant to
15 subsection A of this section if the manufacturer or distributor has
16 requested such information within fifteen (15) days of receipt of
17 written notice of the proposed sale, transfer, or assignment.

18 C. Failure of the manufacturer or distributor to send its
19 notice of refusal pursuant to subsection B of this section shall
20 mean that the application for the proposed sale, transfer, or
21 assignment is approved.

22 D. If the proposed sale, transfer, or assignment is to an
23 existing owner's family member or other existing owner, then the
24 manufacturer or distributor's evaluation of such proposal is limited

1 to the written, reasonable, and uniformly applied requirements of
2 the manufacturer or distributor relating to good moral character and
3 financial qualifications.

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

21 SECTION 10. AMENDATORY 47 O.S. 2021, Section 578.1, is
22 amended to read as follows:

23 Section 578.1 A. Notwithstanding the terms of a franchise and
24 notwithstanding the terms of a waiver, if a factory intends or

1 proposes to enter into a franchise to establish an additional new
2 motor vehicle dealer or to relocate an existing new motor vehicle
3 dealer within or into a relevant market area in which the same line-
4 make of motor vehicle is currently represented, the factory shall
5 provide at least sixty (60) days advance written notice to the
6 Commission and to each new motor vehicle dealer of the same line-
7 make in the relevant market area, of the intention of the factory to
8 establish an additional new motor vehicle dealer or to relocate an
9 existing new motor vehicle dealer within or into the relevant market
10 area. For purposes of this section, the "relevant market area"
11 means the area within a radius of fifteen (15) miles ~~of~~ around the
12 site of the proposed new motor vehicle dealership measured from the
13 property boundary. The notice shall be sent by certified mail to
14 each party and shall include the following information:

- 15 1. The specific location at which the additional or relocated
16 motor vehicle dealer will be established;
- 17 2. The date on or after which the additional or relocated motor
18 vehicle intends to commence business at the proposed location;
- 19 3. The identity of all motor vehicle dealers who are franchised
20 to sell the same line-make vehicles as the proposed dealer and who
21 have licensed locations within the relevant market area;
- 22 4. The names and addresses of the person intended to be
23 franchised as the proposed additional or relocated motor vehicle
24 dealership, the principal investors in the proposed additional or

1 relocated motor vehicle dealership, and the proposed dealer operator
2 of the proposed additional or relocated motor vehicle dealership;
3 and

4 5. The specific grounds or reasons for the proposed
5 establishment of an additional motor vehicle dealer or relocation of
6 an existing dealer.

7 B. This section does not apply:

8 1. To the relocation of an existing new motor vehicle dealer
9 within the relevant market area of that dealer; provided, that the
10 relocation not be at a site within ten (10) miles of a licensed new
11 motor vehicle dealer for the same line-make of motor vehicle;

12 2. To a proposed additional new motor vehicle dealer which is
13 to be established at or within two (2) miles of a location at which
14 a former licensed new motor vehicle dealer for the same line-make of
15 new motor vehicle had ceased operating within the previous two (2)
16 years;

17 3. To the relocation of an existing new motor vehicle dealer
18 within two (2) miles of the existing site of the new motor vehicle
19 dealership; or

20 4. To the relocation of an existing new motor vehicle dealer if
21 the proposed site of the relocated new motor vehicle dealership is
22 farther away from all other new motor vehicle dealers of the same
23 line-make in that relevant market area.

1 C. Within thirty (30) days after receipt of the notice, or
2 within thirty (30) days after the end of an appeal procedure
3 provided by the factory, whichever is greater, a new motor vehicle
4 dealer so notified or entitled to notice may file a petition with
5 the Commission protesting the proposed establishment or relocation.
6 The petition shall contain a short statement setting forth the
7 reasons for the objection of the dealer to the proposed
8 establishment or relocation. Upon filing of a protest, the
9 Commission shall promptly notify the factory that a timely protest
10 has been filed and shall schedule a hearing, which shall be held
11 within one hundred twenty (120) days of the filing of a timely
12 protest. The factory shall not establish or relocate the new motor
13 vehicle dealer until the Commission has held a hearing and has
14 determined that there is good cause for permitting the proposed
15 establishment or relocation. When more than one protest is filed
16 against the establishment or relocation of the same dealer, the
17 Commission shall consolidate the hearings to expedite disposition of
18 the matter.

19 D. The burden of proof to establish that good cause exists for
20 permitting the proposed establishment of a new motor vehicle dealer
21 or relocating an existing new motor vehicle dealership shall be on
22 the applicant who seeks to establish a new motor vehicle dealership
23 or the relocation of an existing new motor vehicle dealership.
24

1 SECTION 11. AMENDATORY 47 O.S. 2021, Section 580.2, is
2 amended to read as follows:

3 Section 580.2 During the time a person is operating a motor
4 vehicle with the express or implied permission of ~~an authorized~~ a
5 new motor vehicle dealer, as defined in Section 562 of this title,
6 such person's motor vehicle liability policy shall have primary
7 coverage with the motor vehicle liability policy of the new motor
8 vehicle dealer having secondary coverage until the vehicle is
9 returned. As used herein, "motor vehicle liability policy" means
10 motor vehicle insurance against legal liability for the death,
11 injury, or disability of any human being, or for damage to real or
12 personal property. The motor vehicle liability policy of any person
13 who has been loaned a vehicle by a new motor vehicle dealer pursuant
14 to the terms of this section shall provide primary coverage for any
15 death or injury of any human being or for any real or personal
16 property damage, including damage to the loaned vehicle, with the
17 motor vehicle insurance policy of the new motor vehicle dealer
18 having secondary coverage for any death or injury of any human being
19 or for any real or personal property damage, including damage to the
20 loaned vehicle. The change in financial responsibility shall be
21 evidenced by a release signed by the person operating the vehicle
22 with the express or implied permission of the new motor vehicle
23 dealer with the release to be returned to the person upon the return
24 of the motor vehicle to the new motor vehicle dealer. The motor

1 vehicle liability policy of such person shall meet the minimum
2 financial responsibility requirements found in Section 7-324 of this
3 title.

4 This section shall apply only to the loan of a motor vehicle by
5 ~~an authorized~~ a new motor vehicle dealer which loan occurs without
6 financial remuneration in the form of a fee or lease charge.

7 SECTION 12. This act shall become effective November 1, 2022.

8

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