

1 **SENATE FLOOR VERSION**

2 March 25, 2024

3 ENGROSSED HOUSE
4 BILL NO. 3104

By: Dobrinski of the House

and

5 Thompson (Roger) of the
6 Senate

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9 An Act relating to franchise auto dealers; 47 O.S.
10 2021, Section 562, as amended by Section 3, Chapter
11 29, O.S.L. 2023 (47 O.S. Supp. 2023, Section 562),
12 which relates to definitions; modifying definition;
13 amending 47 O.S. 2021, Section 565, as last amended
14 by Section 8, Chapter 29, O.S.L. 2023 (47 O.S. Supp.
15 2023, Section 565), which relates to denial,
16 revocation, or suspension of license; modifying
17 entity subject to license denial, revocation,
18 suspension, or fine; modifying reasons for license
19 denial, revocation, suspension, or fine; prohibiting
20 certain withholding of proportionate share of
21 vehicles; requiring certain considerations for
22 location of dealership change; requiring purchase of
23 dealership if certain conditions are met; setting
24 value for purchase; setting process if parties cannot
agree; requiring certain maintenance of records
period of time; requiring certain written requests be
received within certain time frame; requiring written
requests contain certain information; amending 47
O.S. 2021, Section 565.2, as amended by Section 10,
Chapter 29, O.S.L. 2023 (47 O.S. Supp. 2023, Section
565.2), which relates to termination, cancellation,
or nonrenewal of new motor vehicle dealer franchise;
allowing franchise to remain in full force and effect
through any appeal; modifying actions required to be
taken when a factory terminates, cancels, or does not
renew a franchise; modifying actions required to be
taken when a factory terminates, cancels, or non-
renews due to a discontinuance of product line;
requiring certain purchase at fair market value;

1 setting certain valuation; setting process if parties
2 cannot agree; allowing for certain sole ownership,
3 possession, usage, and control of certain property;
4 requiring payment of reasonable rent if certain
5 conditions are met; requiring compensation for
6 certain pecuniary loss; requiring certain documents
7 be provided for payment to be made; providing for
8 appraisal process; requiring certain oath be taken;
9 requiring certain average be taken to determine
10 value; allowing for appointment of third appraiser to
11 determine value if certain conditions are met;
12 requiring appraisers make certain valuation;
13 requiring payment within certain time frame; and
14 providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 2021, Section 565, as last
amended by Section 8, Chapter 29, O.S.L. 2023 (47 O.S. Supp. 2023,
Section 565), is amended to read as follows:

Section 565. A. The Oklahoma New Motor Vehicle Commission may
deny an application for a license, revoke or suspend a license, or
impose a fine against any person or entity, not to exceed Ten
Thousand Dollars (\$10,000.00) per occurrence, that violates any
provision of Sections 561 through 567, 572, 578.1, 579, and 579.1 of
this title or for any of the following reasons:

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

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

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

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

9 5. Being a new motor vehicle dealer who:

- 10 a. has required a purchaser of a new motor vehicle, as a
11 condition of sale and delivery thereof, to also
12 purchase special features, appliances, accessories, or
13 equipment not desired or requested by the purchaser
14 and installed by the new motor vehicle dealer,
- 15 b. uses any false or misleading advertising in connection
16 with business as a new motor vehicle dealer,
- 17 c. has committed any unlawful act which resulted in the
18 revocation of any similar license in another state,
- 19 d. has failed or refused to perform any written agreement
20 with any retail buyer involving the sale of a motor
21 vehicle,
- 22 e. has been convicted of a felony crime that
23 substantially relates to the occupation of a new motor
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1 vehicle dealer and poses a reasonable threat to public
2 safety,

3 f. has committed a fraudulent act in selling, purchasing,
4 or otherwise dealing in new motor vehicles or has
5 misrepresented the terms and conditions of a sale,
6 purchase or contract for sale or purchase of a new
7 motor vehicle or any interest therein including an
8 option to purchase such vehicle,

9 g. has failed to meet or maintain the conditions and
10 requirements necessary to qualify for the issuance of
11 a license, or

12 h. completes any sale or transaction of an extended
13 service contract, extended maintenance plan, or
14 similar product using contract forms that do not
15 conspicuously disclose the identity of the service
16 contract provider;

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

19 7. Being a new motor vehicle dealer who:

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

21 b. does not provide for a suitable repair shop separate
22 from the display room with ample space to repair or
23 recondition one or more vehicles at the same time, and
24 which is staffed with properly trained and qualified

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

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

15 d. employs a person without obtaining a certificate of
16 registration for the person, or utilizes the services
17 of used motor vehicle lots or dealers or other
18 unlicensed persons in connection with the sale of new
19 motor vehicles,

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

22 f. fails to order and stock a reasonable number of new
23 motor vehicles necessary to meet consumer demand for
24 each of the new motor vehicles included in the new

1 motor vehicle dealer's franchise agreement, unless the
2 new motor vehicles are not readily available from the
3 manufacturer or distributor due to limited production;

4 8. Being a factory that has:

5 a. either induced or attempted to induce by means of
6 coercion or intimidation, any new motor vehicle
7 dealer:

8 (1) to accept delivery of any motor vehicle or
9 vehicles, parts, or accessories therefor, or any
10 other commodities including advertising material
11 which shall not have been ordered by the new
12 motor vehicle dealer,

13 (2) to order or accept delivery of any motor vehicle
14 with special features, appliances, accessories,
15 or equipment not included in the list price of
16 the motor vehicles as publicly advertised by the
17 manufacturer thereof, or

18 (3) to order or accept delivery of any parts,
19 accessories, equipment, machinery, tools,
20 appliances, or any commodity whatsoever,

21 b. induced under threat or discrimination by the
22 withholding from delivery to a new motor vehicle
23 dealer certain models of motor vehicles, changing or
24 amending unilaterally the new motor vehicle dealer's

1 allotment of motor vehicles, and/or withholding and
2 delaying delivery of the vehicles out of the ordinary
3 course of business, in order to induce by such
4 coercion any new motor vehicle dealer to participate
5 or contribute to any local or national advertising
6 fund controlled directly or indirectly by the factory
7 or for any other purposes such as contest,
8 "giveaways", or other so-called sales promotional
9 devices, and/or change of quotas in any sales contest;
10 or has required new motor vehicle dealers, as a
11 condition to receiving their vehicle allotment, to
12 order a certain percentage of the vehicles with
13 optional equipment not specified by the new motor
14 vehicle dealer; however, nothing in this section shall
15 prohibit a factory from supporting an advertising
16 association which is open to all new motor vehicle
17 dealers on the same basis,

- 18 c. used a performance standard, sales objective, or
19 program for measuring dealer performance that may have
20 a material effect on a right of the dealer to vehicle
21 allocation; or payment under any incentive or
22 reimbursement program that is unfair, unreasonable,
23 inequitable, and not based on accurate information,
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- 1 d. used a performance standard for measuring sales or
2 service performance of any new motor vehicle dealer
3 under the terms of the franchise agreement which:
4 (1) is unfair, unreasonable, arbitrary, or
5 inequitable, and
6 (2) does not consider the relevant and material local
7 and state or regional criteria, ~~including~~
8 prevailing economic conditions affecting the
9 sales or service performance of a vehicle dealer,
10 vehicle allocation from the manufacturer, ~~or~~ and
11 any relevant and material data and facts
12 presented by the dealer in writing within thirty
13 (30) days of the written notice of the
14 manufacturer to the dealer of its intention to
15 cancel, terminate, or not renew the dealer's
16 franchise agreement,
- 17 e. failed or refused to sell, or offer for sale, new
18 motor vehicles to all of its authorized same line-make
19 franchised new motor vehicle dealers at the same price
20 for a comparably equipped motor vehicle, on the same
21 terms, with no differential in functionally available
22 discount, allowance, credit, or bonus, except as
23 provided in subparagraph e of paragraph 9 of this
24 subsection,

1 f. failed to provide reasonable compensation to a new
2 motor vehicle dealer substantially equivalent to the
3 actual cost of providing a manufacturer required
4 loaner or rental vehicle to any consumer who is having
5 a vehicle serviced at the dealership. For purposes of
6 this paragraph, actual cost is the average cost in the
7 new motor vehicle dealer's region for the rental of a
8 substantially similar make and model as the vehicle
9 being serviced, or

10 g. failed to make available to its new motor vehicle
11 dealers a fair and proportional share of all new
12 vehicles distributed to same line-make dealers in this
13 state, subject to the same reasonable terms, including
14 any vehicles distributed from a common new vehicle
15 inventory pool outside of the factory's ordinary
16 allocation process such as any vehicles the factory
17 reserves to distribute on a discretionary basis;

18 9. Being a factory that:

19 a. has attempted to coerce or has coerced any new motor
20 vehicle dealer to enter into any agreement or to
21 cancel any agreement; has failed to act in good faith
22 and in a fair, equitable, and nondiscriminatory
23 manner; has directly or indirectly coerced,
24 intimidated, threatened, or restrained any new motor

1 vehicle dealer; has acted dishonestly; or has failed
2 to act in accordance with the reasonable standards of
3 fair dealing,

- 4 b. has failed to compensate its dealers for the work and
5 services they are required to perform in connection
6 with the dealer's delivery and preparation obligations
7 according to the agreements on file with the
8 Commission which must be found by the Commission to be
9 reasonable, or has failed to adequately and fairly
10 compensate its dealers for labor, parts, and other
11 expenses incurred by the dealer to perform under and
12 comply with manufacturer's warranty agreements and
13 recall repairs which shall include diagnostic work as
14 applicable and assistance requested by a consumer
15 whose vehicle was subjected to an over-the-air or
16 remote change, repair, or update to any part, system,
17 accessory, or function by the manufacturer and
18 performed by the dealer in order to satisfy the
19 consumer. Time allowances for the diagnosis and
20 performance of repair work shall be reasonable and
21 adequate for the work to be performed. Adequate and
22 fair compensation, which under this provision shall be
23 no less than the rates customarily charged for retail
24 consumer repairs as calculated herein, for parts and

1 labor for warranty and recall repairs shall, at the
2 option of the new motor vehicle dealer, be established
3 by the new motor vehicle dealer submitting to the
4 manufacturer or distributor one hundred sequential
5 nonwarranty consumer-paid service repair orders which
6 contain warranty-like repairs, or ninety (90)
7 consecutive days of nonwarranty consumer-paid service
8 repair orders which contain warranty-like repairs,
9 whichever is less, covering repairs made no more than
10 one hundred eighty (180) days before the submission
11 and declaring the average percentage labor rate and/or
12 markup rate. A new motor vehicle dealer may not
13 submit a request to establish its retail rates more
14 than once in a twelve-month period. That request may
15 establish a parts markup rate, labor rate, or both.
16 The new motor vehicle dealer shall calculate its
17 retail parts rate by determining the total charges for
18 parts from the qualified repair orders submitted,
19 dividing that amount by the new motor vehicle dealer's
20 total cost of the purchase of those parts, subtracting
21 one (1), and multiplying by one hundred (100) to
22 produce a percentage. The new motor vehicle dealer
23 shall calculate its retail labor rate by dividing the
24 amount of the new motor vehicle dealer's total labor

1 sales from the qualified repair orders by the total
2 labor hours charged for those sales. When submitting
3 repair orders to establish a retail parts and labor
4 rate, a new motor vehicle dealer need not include
5 repairs for:

- 6 (1) routine maintenance including but not limited to
7 the replacement of bulbs, fluids, filters,
8 batteries, and belts that are not provided in the
9 course of and related to a repair,
- 10 (2) factory special events, specials, or promotional
11 discounts for retail consumer repairs,
- 12 (3) parts sold or repairs performed at wholesale,
- 13 (4) factory-approved goodwill or policy repairs or
14 replacements,
- 15 (5) repairs with aftermarket parts, when calculating
16 the retail parts rate but not the retail labor
17 rate,
- 18 (6) repairs on aftermarket parts,
- 19 (7) replacement of or work on tires including front-
20 end alignments and wheel or tire rotations,
- 21 (8) repairs of motor vehicles owned by the new motor
22 vehicle dealer or employee thereof at the time of
23 the repair,
- 24 (9) vehicle reconditioning, or

1 (10) items that do not have individual part numbers
2 including, but not limited to, nuts, bolts, and
3 fasteners.

4 A manufacturer or distributor may, not later than
5 forty-five (45) days after submission, rebut that
6 declared retail parts and labor rate in writing by
7 reasonably substantiating that the rate is not
8 accurate or is incomplete pursuant to the provisions
9 of this section. If the manufacturer or distributor
10 determines the set of repair orders submitted by the
11 new motor vehicle dealer pursuant to this section for
12 a retail labor rate or retail parts markup rate is
13 substantially higher than the new motor vehicle
14 dealer's current warranty rates, the manufacturer or
15 distributor may request, in writing, within forty-five
16 (45) days after the manufacturer's or distributor's
17 receipt of the new motor vehicle dealer's initial
18 submission, all repair orders closed within the period
19 of thirty (30) days immediately preceding, or thirty
20 (30) days immediately following, the set of repair
21 orders initially submitted by the new motor vehicle
22 dealer. All time periods under this section shall be
23 suspended until the supplemental repair orders are
24 provided. If the manufacturer or distributor requests

1 supplemental repair orders, the manufacturer or
2 distributor may, within thirty (30) days after
3 receiving the supplemental repair orders and in
4 accordance with the formula described in this
5 subsection, calculate a proposed adjusted retail labor
6 rate or retail parts markup rate, as applicable, based
7 upon any set of the qualified repair orders submitted
8 by the franchisee and following the formula set forth
9 herein to establish the rate. The retail labor and
10 parts rates shall go into effect thirty (30) days
11 following the approval by the manufacturer or
12 distributor. If the declared rate is rebutted, the
13 manufacturer or distributor shall provide written
14 notice stating the reasons for the rebuttal, an
15 explanation of the reasons for the rebuttal, and a
16 copy of all calculations used by the franchisor in
17 determining the manufacturer or distributor's position
18 and propose an adjustment in writing of the average
19 percentage markup or labor rate based on that rebuttal
20 not later than forty-five (45) days after submission.
21 If the new motor vehicle dealer does not agree with
22 the proposed average percentage markup or labor rate,
23 the new motor vehicle dealer may file a protest with
24 the Commission not later than thirty (30) days after

1 receipt of that proposal by the manufacturer or
2 distributor. In the event a protest is filed, the
3 manufacturer or distributor shall have the burden of
4 proof to establish the new motor vehicle dealer's
5 submitted parts markup rate or labor rate was
6 inaccurate or not complete pursuant to the provisions
7 of this section. A manufacturer or distributor may
8 not retaliate against any new motor vehicle dealer
9 seeking to exercise its rights under this section. A
10 manufacturer or distributor may require a dealer to
11 submit repair orders in accordance with this section
12 in order to validate the reasonableness of a dealer's
13 retail rate for parts or labor not more often than
14 once every twelve (12) months. A manufacturer or
15 distributor may not otherwise recover its costs from
16 new motor vehicle dealers within this state including
17 a surcharge imposed on a new motor vehicle dealer
18 solely intended to recover the cost of reimbursing a
19 new motor vehicle dealer for parts and labor pursuant
20 to this section; provided, a manufacturer or
21 distributor shall not be prohibited from increasing
22 prices for vehicles or parts in the normal course of
23 business or from auditing and charging back claims in
24 accordance with this section. All claims made by

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

1 the payment. A factory shall not deny a claim or
2 charge a new motor vehicle dealer back subsequent to
3 the payment of the claim unless the factory can show
4 that the claim was false or fraudulent or that the new
5 motor vehicle dealer failed to reasonably substantiate
6 the claim by the written reasonable procedures of the
7 factory. A factory shall not deny a claim or
8 implement a charge-back against a new motor vehicle
9 dealer after payment of a claim in the event a
10 purchaser of a new vehicle that is the subject of a
11 claim fails to comply with titling or registration
12 laws of this state and is not prevented from
13 compliance by any action of the new motor vehicle
14 dealer; provided, that the factory may require the new
15 motor vehicle dealer to provide, within thirty (30)
16 days of notice of charge-back, withholding of payment,
17 or denial of claim, the documentation to demonstrate
18 the vehicle sale, delivery, and customer qualification
19 for an incentive as reported, including consumer name
20 and address and written attestation signed by the
21 dealer operator or general manager stating the
22 consumer was not on the export control list and the
23 dealer did not know or have reason to know the vehicle
24 was being exported or resold.

1 The factory shall provide written notice to a dealer
2 of a proposed charge-back that is the result of an
3 audit along with the specific audit results and
4 proposed charge-back amount. A dealer that receives
5 notice of a proposed charge-back pursuant to a
6 factory's audit has the right to file a protest with
7 the Commission within thirty (30) days after receipt
8 of the notice of the charge-back or audit results,
9 whichever is later. The factory is prohibited from
10 implementing the charge-back or debiting the dealer's
11 account until either the time frame for filing a
12 protest has passed or a final adjudication is rendered
13 by the Commission, whichever is later, unless the
14 dealer has agreed to the charge-back or charge-backs,
15 c. fails to compensate the new motor vehicle dealer for a
16 used motor vehicle:
17 (1) that is of the same make and model manufactured,
18 imported, or distributed by the factory and is a
19 line-make that the new motor vehicle dealer is
20 franchised to sell or on which the new motor
21 vehicle dealer is authorized to perform recall
22 repairs,

- 1 (2) that is subject to a stop-sale or do-not-drive
2 order issued by the factory or an authorized
3 governmental agency,
- 4 (3) that is held by the new motor vehicle dealer in
5 the dealer's inventory at the time the stop-sale
6 or do-not-drive order is issued or that is taken
7 by the new motor vehicle dealer into the dealer's
8 inventory after the recall notice as a result of
9 a retail consumer trade-in or a lease return to
10 the dealer inventory in accordance with an
11 applicable lease contract,
- 12 (4) that cannot be repaired due to the
13 unavailability, within thirty (30) days after
14 issuance of the stop-sale or do-not-drive order,
15 of a remedy or parts necessary for the new motor
16 vehicle dealer to make the recall repair, and
- 17 (5) that is not at least in the prorated amount of
18 one percent (1.00%) of the value of the vehicle
19 per month beginning on the date that is thirty
20 (30) days after the date on which the stop-sale
21 order was provided to the new motor vehicle
22 dealer until the earlier of either of the
23 following:
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- 1 (a) the date the recall remedy or parts are made
2 available, or
3 (b) the date the new motor vehicle dealer sells,
4 trades, or otherwise disposes of the
5 affected used motor vehicle.

6 For the purposes of division (5) of this subparagraph,
7 the value of a used vehicle shall be the average Black
8 Book value for the year, make, and model of the
9 recalled vehicle. A factory may direct the manner and
10 method in which a new motor vehicle dealer must
11 demonstrate the inventory status of an affected used
12 motor vehicle to determine eligibility under this
13 subparagraph; provided, that the manner and method may
14 not be unduly burdensome and may not require
15 information that is unduly burdensome to provide. All
16 reimbursement claims made by new motor vehicle dealers
17 pursuant to this section for recall remedies or
18 repairs, or for compensation where no part or repair
19 is reasonably available and the vehicle is subject to
20 a stop-sale or do-not-drive order, shall be subject to
21 the same limitations and requirements as a warranty
22 reimbursement claim made under subparagraph b of this
23 paragraph. In the alternative, a manufacturer may
24 compensate its franchised new motor vehicle dealers

1 under a national recall compensation program;
2 provided, the compensation under the program is equal
3 to or greater than that provided under division (5) of
4 this subparagraph, or as the manufacturer and new
5 motor vehicle dealer otherwise agree. Nothing in this
6 section shall require a factory to provide total
7 compensation to a new motor vehicle dealer which would
8 exceed the total average Black Book value of the
9 affected used motor vehicle as originally determined
10 under division (5) of this subparagraph. Any remedy
11 provided to a new motor vehicle dealer under this
12 subparagraph is exclusive and may not be combined with
13 any other 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 adversely alters the rights or obligations contained
21 within the new motor vehicle dealer's existing
22 franchise agreement or which waives any right of the
23 new motor vehicle dealer as protected by Section 561
24 et seq. of this title, or remodel, renovate, or

1 recondition the new motor vehicle dealer's existing
2 facilities as a prerequisite to receiving a model or
3 series of vehicles, except as may be necessary to sell
4 or service the model or series of vehicles as provided
5 by 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
14 embargo, or other cause over which the manufacturer
15 has no control. However, this subparagraph shall not
16 apply to recreational vehicles, limited production
17 model vehicles, a vehicle not advertised by the
18 factory for sale in this state, vehicles that are
19 subject to allocation affected by federal
20 environmental laws or environmental laws of this
21 state, or vehicles allocated in response to an
22 unforeseen event or circumstance,
23 e. except as necessary to comply with a health or safety
24 law, or to comply with a technology requirement which

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

1 construction or renovation pursuant to factory
2 requirements shall not be required to construct a new
3 facility or renovate the existing facility if the same
4 area of the facility or premises has been constructed
5 or substantially altered within the last ten (10)
6 years and the construction or alteration was approved
7 by the manufacturer as a part of a facility upgrade
8 program, standard, or policy. For purposes of this
9 subparagraph, "substantially altered" means to perform
10 an alteration that substantially impacts the
11 architectural features, characteristics, or integrity
12 of a structure or lot. The term shall not include
13 routine maintenance reasonably necessary to maintain a
14 dealership in attractive condition. If a facility
15 upgrade program, standard, or policy under which the
16 dealer completed a facility construction or
17 substantial alteration does not contain a specific
18 time period during which the manufacturer or
19 distributor shall provide payments or benefits to a
20 participating dealer, or the time frame specified
21 under the program is reduced or canceled prematurely
22 in the unilateral discretion of the manufacturer or
23 distributor, the manufacturer or distributor shall not
24 deny the participating dealer any payment or benefit

1 under the terms of the program, standard, or policy as
2 it existed when the dealer began to perform under the
3 program, standard, or policy for the balance of the
4 ten-year period, regardless of whether the
5 manufacturer's or distributor's program, standard, or
6 policy has been changed or canceled, unless the
7 manufacturer and dealer agree, in writing, to the
8 change in payment or benefit. During the ten-year
9 period following facility construction or substantial
10 alteration, the manufacturer shall not fail to make
11 available to the dealer a fair and proportionate share
12 of all new vehicles distributed to dealers of the same
13 line-make in this state, subject to the same
14 reasonable terms, including vehicles distributed from
15 a common new vehicle inventory pool outside of the
16 factory's ordinary allocation process, such as any
17 vehicles the factory reserves to distribute on a
18 discretionary basis,

- 19 f. requires a new motor vehicle dealer to establish an
20 exclusive facility or to change the location of the
21 dealership, unless supported by reasonable business,
22 market, and economic considerations; provided, that
23 this section shall not restrict the terms of any
24 agreement for such exclusive facility voluntarily

1 entered into and supported by valuable consideration
2 separate from the new motor vehicle dealer's right to
3 sell and service motor vehicles for the franchisor.
4 If a dealer is required by the manufacturer or
5 distributor to change an existing, previously approved
6 location of the dealership and has not sold its
7 existing dealership facility and real estate within
8 the later of one hundred eighty (180) days of listing
9 the property for sale or ninety (90) days after the
10 facility relocation, then, upon the written request of
11 the dealer, the manufacturer or distributor shall
12 purchase the dealer's existing dealership facility and
13 real estate as if the new motor vehicle dealership
14 continues to operate on the property. If the factory
15 and dealer cannot agree on the value of the dealership
16 facilities and real estate, then the factory and
17 dealer shall utilize the process described in
18 paragraph 6 of subsection G of Section 565.2 of this
19 title. If a manufacturer or distributor purchases a
20 dealership facility and real estate, then it shall be
21 entitled to sole ownership, possession, use, and
22 control of any items, buildings, or property that were
23 included in the contract to purchase,
24

- 1 g. requires a new motor vehicle dealer to enter into a
2 site-control agreement covering any or all of the new
3 motor vehicle dealer's facilities or premises;
4 provided, that this section shall not restrict the
5 terms of any site-control agreement voluntarily
6 entered into and supported by valuable consideration
7 separate from the new motor vehicle dealer's right to
8 sell and service motor vehicles for the franchisor.
9 Notwithstanding the foregoing or the terms of any
10 site-control agreement, a site-control agreement
11 automatically extinguishes if all of the factory's
12 franchises that operated from the location that are
13 the subject of the site-control agreement are
14 terminated by the factory as part of the
15 discontinuance of a product line,
- 16 h. refuses to pay, or claims reimbursement from, a new
17 motor vehicle dealer for sales, incentives, or other
18 payments related to a motor vehicle sold by the new
19 motor vehicle dealer because the purchaser of the
20 motor vehicle exported or resold the motor vehicle in
21 violation of the policy of the factory unless the
22 factory can show that, at the time of the sale, the
23 new motor vehicle dealer knew or reasonably should
24 have known of the purchaser's intention to export or

1 resell the motor vehicle. There is a rebuttable
2 presumption that the new motor vehicle dealer did not
3 know or could not have known that the vehicle would be
4 exported if the vehicle is titled and registered in
5 any state of the United States, or

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

1 10. Being a factory that:

2 a. establishes a system of motor vehicle allocation or
3 distribution which is unfair, inequitable, or
4 unreasonably discriminatory. A manufacturer and
5 distributor shall maintain for three (3) years records
6 that describe its methods or formula of allocation and
7 distribution of its motor vehicles and records of its
8 actual allocation and distribution of motor vehicles
9 to its motor vehicle dealers. Upon the written
10 request of any new motor vehicle dealer franchised by
11 ~~it~~ the manufacturer or distributor, received by the
12 manufacturer or distributor within thirty (30) days of
13 the manufacturer's or distributor's written notice to
14 the dealer of its intention to cancel or terminate, or
15 written notice from the manufacturer or distributor of
16 a sales performance deficiency requiring the dealer to
17 take action to cure the alleged performance
18 deficiency, a ~~factory~~ manufacturer or distributor
19 shall disclose in writing to the new motor vehicle
20 dealer the basis upon which new motor vehicles are
21 allocated, scheduled, and delivered ~~among the,~~ by
22 vehicle model, to new motor vehicle dealers of the
23 same line-make for that ~~factory~~ manufacturer or
24 distributor for the prior three (3) years, and the

1 basis upon which the current allocation or
2 distribution is being made or will be made based on
3 existing information to such dealer, or

4 b. changes an established plan or system of motor vehicle
5 distribution. A new motor vehicle dealer franchise
6 agreement shall continue in full force and operation
7 notwithstanding a change, in whole or in part, of an
8 established plan or system of distribution of the
9 motor vehicles offered or previously offered for sale
10 under the franchise agreement. The appointment of a
11 new importer or distributor for motor vehicles offered
12 for sale under the franchise agreement shall be deemed
13 to be a change of an established plan or system of
14 distribution. The discontinuation of a line-make
15 shall not be deemed to be a change of an established
16 plan or system of motor vehicle distribution. The
17 creation of a line-make shall not be deemed to be a
18 change of an established plan or system of motor
19 vehicle distribution as long as the new line-make is
20 not selling the same, or substantially the same
21 vehicle or vehicles previously sold through another
22 line-make by new motor vehicle dealers with an active
23 franchise agreement for the other line-make in the
24 state if such new motor vehicle dealers are no longer

1 authorized to sell the comparable vehicle previously
2 sold through their line-make. Changing a vehicle's
3 powertrain is not sufficient to show it is
4 substantially different. Upon the occurrence of such
5 change, the manufacturer or distributor shall be
6 prohibited from obtaining a license to distribute
7 vehicles under the new plan or system of distribution
8 unless the manufacturer or distributor offers to each
9 new motor vehicle dealer who is a party to the
10 franchise agreement a new franchise agreement
11 containing substantially the same provisions which
12 were contained in the previous franchise agreement;

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

1 participating dealers subject to the limitations provided in
2 paragraph 2 of Section 562 of this title;

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

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

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

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

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

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

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

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

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

- 19 a. derived from monthly financial statements provided to
20 the factory, and
21 b. regarding any aspect of the profitability of a
22 particular new motor vehicle dealer;

23 14. Being a factory which does not provide or direct leads in a
24 fair, equitable, and timely manner. Nothing in this paragraph shall

1 be construed to require a factory to disregard the preference of a
2 consumer in providing or directing a lead;

3 15. Being a factory which used the consumer list of a new motor
4 vehicle dealer for the purpose of unfairly competing with dealers;

5 16. Being a factory which prohibits a new motor vehicle dealer
6 from relocating after a written request by such new motor vehicle
7 dealer if:

8 a. the facility and the proposed new location satisfies
9 or meets the written reasonable guidelines of the
10 factory. Reasonable guidelines do not include
11 exclusivity or site control unless agreed to as set
12 forth in subparagraphs f and g of paragraph 9 of this
13 subsection,

14 b. the proposed new location is within the area of
15 responsibility of the new motor vehicle dealer
16 pursuant to Section 578.1 of this title, and

17 c. the factory has sixty (60) days from receipt of the
18 new motor vehicle dealer's relocation request to
19 approve or deny the request. The failure to approve
20 or deny the request within the sixty-day time frame
21 shall constitute approval of the request;

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

1 written reasonable capitalization standards and facility guidelines
2 of each factory. Reasonable facility guidelines do not include a
3 requirement to maintain exclusivity or site control unless agreed to
4 by the dealer as set forth in subparagraphs f and g of paragraph 9
5 of this subsection;

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

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

1 19. Being a factory that requires a new motor vehicle dealer to
2 participate monetarily in an advertising campaign or contest, or
3 purchase any promotional materials, showroom, or other display
4 decoration or materials at the expense of the new motor vehicle
5 dealer without consent of the new motor vehicle dealer, which
6 consent shall not be unreasonably withheld;

7 20. Being a factory that denies any new motor vehicle dealer
8 the right of free association with any other new motor vehicle
9 dealer for any lawful purpose, unless otherwise permitted by this
10 chapter; or

11 21. Being a factory that requires a new motor vehicle dealer to
12 sell, offer to sell, or sell exclusively an extended service
13 contract, extended maintenance plan, or similar product, such as gap
14 products offered, endorsed, or sponsored by the factory by the
15 following means:

- 16 a. by an act or statement from the factory that will in
17 any manner adversely impact the new motor vehicle
18 dealer, or
- 19 b. by measuring the new motor vehicle dealer's
20 performance under the franchise based on the sale of
21 extended service contracts, extended maintenance
22 plans, or similar products offered, endorsed, or
23 sponsored by the manufacturer or distributor.

1 B. Notwithstanding the terms of any franchise agreement, in the
2 event of a proposed sale or transfer of a dealership, the
3 manufacturer or distributor shall be permitted to exercise a right
4 of first refusal to acquire the assets or ownership interest of the
5 dealer of the new motor vehicle dealership, if such sale or transfer
6 is conditioned upon the manufacturer or dealer entering into a
7 dealer agreement with the proposed new owner or transferee, only if
8 all the following requirements are met:

9 1. To exercise its right of first refusal, the factory must
10 notify the new motor vehicle dealer in writing within sixty (60)
11 days of receipt of the completed proposal for the proposed sale
12 transfer;

13 2. The exercise of the right of first refusal will result in
14 the new motor vehicle dealer and the owner of the dealership
15 receiving the same or greater consideration as they have contracted
16 to receive in connection with the proposed change of ownership or
17 transfer;

18 3. The proposed sale or transfer of the dealership does not
19 involve the transfer or sale to a member or members of the family of
20 one or more dealer owners, or to a qualified manager or a
21 partnership or corporation controlled by such persons; and

22 4. The factory agrees to pay the reasonable expenses, including
23 attorney fees which do not exceed the usual, customary, and
24 reasonable fees charged for similar work done for other clients

1 incurred by the proposed new owner and transferee prior to the
2 exercise by the factory of its right of first refusal in negotiating
3 and implementing the contract for the proposed sale or transfer of
4 the dealership or dealership assets. Notwithstanding the foregoing,
5 no payment of expenses and attorney fees shall be required if the
6 proposed new dealer or transferee has not submitted or caused to be
7 submitted an accounting of those expenses within thirty (30) days of
8 receipt of the written request of the factory for such an
9 accounting. The accounting may be requested by a factory before
10 exercising its right of first refusal.

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

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

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

1 b. warranty repairs performed by that person on motor

2 vehicles are limited to those motor vehicles that the
3 person owns, previously owned, or takes in trade, and

4 c. motor vehicle financing provided by that person to

5 retail consumers for motor vehicles is limited to used
6 vehicles sold by that person in the conduct of

7 business; or

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

10 D. As used in this section:

11 1. "Substantially relates" means the nature of criminal conduct
12 for which the person was convicted has a direct bearing on the
13 fitness or ability to perform one or more of the duties or
14 responsibilities necessarily related to the occupation; and

15 2. "Poses a reasonable threat" means the nature of criminal
16 conduct for which the person was convicted involved an act or threat
17 of harm against another and has a bearing on the fitness or ability
18 to serve the public or work with others in the occupation.

19 E. Nothing in this section shall prohibit a manufacturer or
20 distributor from requiring a dealer to be in compliance with the
21 franchise agreement and authorized to sell a make and model based on
22 applicable reasonable standards and requirements that include but
23 are not limited to any facility, technology, or training
24 requirements necessary to sell or service a vehicle, in order to be

1 eligible for delivery or allotment of a make or model of a new motor
2 vehicle or an incentive.

3 SECTION 2. AMENDATORY 47 O.S. 2021, Section 565.2, as
4 amended by Section 10, Chapter 29, O.S.L. 2023 (47 O.S. Supp. 2023,
5 Section 565.2), is amended to read as follows:

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

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

24

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

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

17 C. Irrespective of the terms, provisions, or conditions of any
18 franchise agreement prior to the termination, cancellation, or
19 nonrenewal of any franchise, the manufacturer shall furnish
20 notification of such termination, cancellation, or nonrenewal to the
21 new motor vehicle dealer and the Oklahoma New Motor Vehicle
22 Commission as follows:
23
24

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

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

7 a. insolvency of the new motor vehicle dealer, or the
8 filing of any petition by or against the new motor
9 vehicle dealer under any bankruptcy or receivership
10 law,

11 b. failure of the new motor vehicle dealer to conduct its
12 customary sales and service operations during its
13 customary business hours for seven (7) consecutive
14 business days, provided that such failure to conduct
15 business shall not be due to an act of God or
16 circumstances beyond the direct control of the new
17 motor vehicle dealer, or

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

21 3. Not less than one hundred eighty (180) days prior to the
22 effective date of the termination or cancellation where the
23 manufacturer or distributor is discontinuing the sale of the product
24 line.

1 The notification required by this subsection shall be by
2 certified mail, return receipt requested, and shall contain a
3 statement of intent to terminate, to cancel, or to not renew the
4 franchise, a statement of the reasons for the termination,
5 cancellation, or nonrenewal and the date the termination shall take
6 effect.

7 D. Upon the affected new motor vehicle dealer's receipt of the
8 aforementioned notice of termination, cancellation, or nonrenewal,
9 the new motor vehicle dealer shall have the right to file a protest
10 of such threatened termination, cancellation, or nonrenewal with the
11 Commission within thirty (30) days and request a hearing. The
12 hearing shall be held within one hundred eighty (180) days of the
13 date of the timely protest by the dealer and in accordance with the
14 provisions of the Administrative Procedures Act, Sections 250
15 through 323 of Title 75 of the Oklahoma Statutes, to determine if
16 the threatened cancellation, termination, or nonrenewal of the
17 franchise has been for good cause and if the factory has complied
18 with its obligations pursuant to subsections A, B, and C of this
19 section and the factory shall have the burden of proof. Either
20 party may request an additional one-hundred-eighty-day extension of
21 the hearing date from the Commission. Approval of the requested
22 extension may not be unreasonably withheld or delayed. If the
23 Commission finds that the threatened cancellation, termination, or
24 nonrenewal of the franchise has not been for good cause or violates

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

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

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

23 2. Supplies and parts which have been acquired from the
24 manufacturer, for the purpose of this section, limited to any and

1 all supplies and parts that are listed on the current parts price
2 sheet available to the new motor vehicle dealer;

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

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

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

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

22 F. 1. If a factory prevails in an action to terminate, cancel,
23 or not renew any franchise and the new motor vehicle dealer is
24 leasing the dealership facilities, the manufacturer shall pay a

1 reasonable rent to the lessor in accordance with and subject to the
2 provisions of this subsection ~~G of this section~~. Nothing in this
3 section shall be construed to relieve a new motor vehicle dealer of
4 its duty to mitigate damages.

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

- 8 a. used solely for performance in accordance with the
9 franchise. If the facility is used for the operation
10 of more than one franchise, the reasonable rent shall
11 be paid based upon the portion of the facility
12 utilized by the franchise being terminated, canceled,
13 or nonrenewed, and
- 14 b. not substantially in excess of facilities recommended
15 by the manufacturer.

16 2. If the facilities are owned by the new motor vehicle dealer,
17 a related entity as defined in 26 U.S.C.A., Section 267(b), or a
18 member, partner or shareholder of the dealership, within ninety (90)
19 days following the effective date of the termination, cancellation,
20 or nonrenewal, except a termination, cancellation, or nonrenewal for
21 a cause listed in paragraph 2 of subsection C of this section, at
22 the dealer or related entity's written request, the manufacturer
23 ~~will~~ shall either:
24

- 1 a. locate a qualified purchaser who will offer to
2 purchase the dealership facilities at a reasonable
3 price,
4 b. locate a qualified lessee who will offer to lease the
5 premises for the remaining lease term at the rent set
6 forth in the lease, or
7 c. ~~failing the foregoing,~~ lease the dealership facilities
8 at a reasonable rental value for the portion of the
9 facility that is recognized in the franchise agreement
10 ~~for one (1) year~~ one and one-half (1.5) years, or
11 d. purchase the dealer's existing dealership facility and
12 real estate at its fair market value. If the factory
13 and dealer cannot agree on the fair market value of
14 the terminated franchise or agree to a process to
15 determine the fair market value, then the factory and
16 dealer shall utilize the process described in
17 paragraph 6 of subsection G of this section. If a
18 manufacturer or distributor purchases a dealership
19 facility and real estate, then it shall be entitled to
20 sole ownership, possession, use, and control of any
21 items, buildings, or property that were included in
22 the contract to purchase.

23 3. If the facilities are leased by the new motor vehicle dealer
24 from an entity other than a related entity as defined in 26

1 U.S.C.A., Section 267(b), or a member, partner, or shareholder of
2 the dealership, within ninety (90) days following the effective date
3 of the termination, cancellation, or nonrenewal the manufacturer
4 will either:

- 5 a. locate a tenant or tenants satisfactory to the lessor,
6 who will sublet or assume the balance of the lease,
- 7 b. arrange with the lessor for the cancellation of the
8 lease without penalty to the new motor vehicle dealer,
9 or
- 10 c. failing the foregoing, lease the dealership facilities
11 at a reasonable rent for the portion of the facility
12 that is recognized in the franchise agreement for one
13 (1) year or the remainder of the lease, whichever is
14 less.

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

- 17 a. fails to accept a bona fide offer from a prospective
18 purchaser, sublessee, or assignee,
- 19 b. refuses to execute a settlement agreement with the
20 manufacturer or lessor if such agreement with the
21 manufacturer or lessor would be without cost to the
22 new motor vehicle dealer, or
- 23 c. fails to make written request for assistance under
24 this section within ninety (90) days after the

1 effective date of the termination, cancellation, or
2 nonrenewal.

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

5 ~~H.~~ G. In addition to the repurchase requirements set forth in
6 subsections E and ~~G~~ F of this section, in the event the termination
7 ~~or, cancellation, or nonrenewal~~ is the result of a discontinuance of
8 a product line, the manufacturer or distributor shall compensate the
9 new motor vehicle dealer ~~in~~ as follows:

10 1. In an amount equivalent to the fair market value of the
11 terminated franchise as of the date immediately preceding the
12 manufacturer's or distributor's announcement or provide the new
13 motor vehicle dealer with a replacement franchise on substantially
14 similar terms and conditions as those offered to other same line-
15 make dealers;

16 2. If the facilities are owned by the new motor vehicle dealer
17 or a related entity as defined in 26 U.S.C.A., Section 267(b), or a
18 member, partner, or shareholder of the dealership, and the owner has
19 not sold the existing dealership facility and real estate within the
20 later of one hundred eighty (180) days of listing the property for
21 sale or ninety (90) days after the effective date of the
22 termination, then, upon the written request of the dealer, the
23 manufacturer or distributor shall purchase the dealer's existing
24 dealership facility and real estate. The facility and real estate

1 shall be valued as if a new motor vehicle dealership continues to
2 operate on the property. If the factory and dealer cannot agree on
3 the value of the terminated franchise or agree to a process to
4 determine the value, then the factory and dealer shall utilize the
5 process described in paragraph 6 of this subsection. If a
6 manufacturer or distributor purchases a dealership facility and real
7 estate, then it shall be entitled to sole ownership, possession,
8 use, and control of any items, buildings, or property that were
9 included in the contract to purchase;

10 3. If the facilities are leased by the new motor vehicle dealer
11 from an entity other than a related entity as defined in 26
12 U.S.C.A., Section 267(b), or a member, partner or shareholder of the
13 dealership, lease the dealership facilities at a reasonable rent for
14 the remainder of the lease;

15 4. Any amount of pecuniary loss to the new motor vehicle
16 dealership proximately caused by the discontinuation of a product
17 line, including, but not limited to, the cost of terminating
18 services such as the dealership management system contract;

19 5. The new motor vehicle dealer may immediately request payment
20 under this section following the announcement in exchange for
21 canceling any further franchise rights, except payments owed to the
22 new motor vehicle dealer in the ordinary course of business, or may
23 request payment under this section upon the final termination,
24 cancellation, or nonrenewal of the franchise. In either case,

1 payment under this section shall be made not later than ninety (90)
2 days after the fair market value is determined~~-, or the lease~~
3 agreement is provided and other reasonable documentation is provided
4 to the manufacturer or distributor sufficient to establish other
5 pecuniary losses, whichever is later; and

6 6. If the factory and new motor vehicle dealer cannot agree on
7 the ~~fair market~~ value of the terminated franchise or real estate, or
8 agree to a process to determine the ~~fair market~~ value, then, within
9 thirty (30) days of a written request by dealer, the factory and new
10 motor vehicle dealer shall utilize a neutral third-party mediator to
11 resolve the disagreement shall select one appraiser, and the dealer
12 shall select one appraiser who shall make an independent appraisal.
13 The appraisers will be state-certified general real estate
14 appraisers and be in good standing with the Oklahoma Real Estate
15 Appraisal Board. Before entering upon their duties, such appraisers
16 shall take and subscribe an oath, before a notary public or some
17 other person authorized to administer oaths, that they will perform
18 their duties faithfully and impartially to the best of their
19 ability. If the appraisals are within ten percent (10%) of each
20 other, the average of the two appraisals shall constitute the value.
21 If the two appraisals differ by more than ten percent (10%), the two
22 appraisers may appoint a third appraiser who shall review the two
23 appraisals. The third appraisal, when taken with the first two
24 appraisals and averaged among the three, shall establish the value.

1 The cost of the third appraiser shall be shared equally by the
2 factory and dealer. The appraisers shall make a valuation and
3 determine the amount of compensation to be paid by the factory to
4 the dealer. The factory will then have ninety (90) days to complete
5 the transaction, unless otherwise agreed to by the parties. The
6 factory and the dealer shall each be responsible for the appraiser
7 it retains.

8 SECTION 3. This act shall become effective November 1, 2024.

9 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
10 March 25, 2024 - DO PASS
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