

1 **SENATE FLOOR VERSION**

2 February 27, 2023

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 593

By: Thompson (Roger) of the
Senate

6 and

7 Dobrinski of the House

8
9 An Act relating to motor vehicle dealers; defining
10 terms; authorizing dealer management system providers
11 perform certain actions; prohibiting dealer
12 management system providers from certain actions;
13 making conflicting term or condition of contracts
14 void and unenforceable; requiring certain actions of
15 authorized integrators; allowing dealers to withdraw,
16 revoke, or amend certain express written
17 authorization under certain circumstances; requiring
18 certain obligations to secure and prevent
19 unauthorized access to certain information; stating
20 certain parties not liable for certain actions;
21 requiring indemnification for certain claims;
22 confining certain judgments to operations of this act
23 directly involved in the controversy in which
24 judgment is rendered; requiring manufacturers to
allow new motor vehicle dealers to make certain
offers to consumers; making certain exceptions;
amending 47 O.S. 2021, Section 562, which relates to
definitions; modifying and adding definitions;
amending 47 O.S. 2021, Section 564, which relates to
licenses; disallowing certain authorization; making
certain exception; amending 47 O.S. 2021, Section
565, as amended by Section 3, Chapter 192, O.S.L.
2022 (47 O.S. Supp. 2022, 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

1 offered at same price; requiring certain
2 reimbursement for rental cars; making certain
3 exception; requiring new vehicles be distributed in
4 certain manner; limiting dealers to one part or labor
5 rate request per year; providing for certain
6 calculation; providing for exclusions for certain
7 rate calculation; modifying reasons for certain
8 rebuttal; allowing certain written request; allowing
9 certain adjustments; requiring certain written
10 notice; prohibiting certain recovery of costs;
11 prohibiting factory denial of certain claims and
12 implementation of certain charge-backs; requiring
13 certain documentation and written attestation;
14 providing for certain compensation calculation;
15 requiring certain method for used vehicle
16 calculations; allowing factory to direct dealer in
17 certain manner and method; requiring certain
18 reimbursement claims be subject to certain
19 limitations and requirements; placing certain limit
20 on total compensation; disallowing certain remedy
21 combinations; disallowing the use of certain
22 agreements; making certain exception; providing for
23 certain violation; allowing for certain construction
24 or renovation; providing certain rebuttable
presumption; prohibiting factories from changing
certain plans or systems; limiting license for
distribution; amending 47 O.S. 2021, Section 565.1,
which relates to succession dealerships; defining
term; clarifying language; requiring adherence to
certain agreement; amending 47 O.S. 2021, Section
565.2, which relates to termination, cancellation, or
nonrenewal of franchise; requiring certain
compensation; amending 47 O.S. 2021, Section 565.3,
which relates to notice of proposed sale; requiring
use of certain standards; requiring certain changes
be in compliance with existing law; limiting certain
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 codification; and
providing an effective date.

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

3 SECTION 1. 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. As used in this section:

7 1. "Access fee" means a requirement to pay money for access to
8 protected dealer data;

9 2. "Authorized integrator" means a person who a dealer has a
10 contractual relationship with or the dealer otherwise gives express
11 written authorization to have access to protected dealer data stored
12 on a dealer data system or to write protected dealer data to the
13 dealer data system for the purpose of performing a specific function
14 for the dealer;

15 3. "Dealer data system" means software, hardware, or firmware
16 that a dealer leases or rents from a dealer management system
17 provider for the purpose of storing protected dealer data;

18 4. "Dealer management system provider" means a person who, for
19 compensation, maintains and provides access to a dealer data system
20 in which a dealer stores protected dealer data;

21 5. "Protected dealer data" means:

22 a. consumer data that a dealer generated or that the
23 consumer provided to the dealer that is not otherwise
24 publicly available and the consumer has not otherwise

1 provided consent or acknowledgment to share the
2 information, and

- 3 b. any other dealer data in connection with the dealer's
4 daily business operations in which a dealer has rights
5 in a dealer data system; and

6 6. Authorized integrator and dealer management system provider
7 do not include:

- 8 a. a manufacturer, distributor, importer, or any entity
9 that is a subsidiary or affiliate of, or acts on
10 behalf of, a manufacturer, distributor, or importer,
11 or

- 12 b. a governmental body or other person that is acting in
13 accordance with federal, state, or local law, or a
14 valid court order.

15 B. A dealer management system provider may:

16 1. Condition access and ability of a dealer or authorized
17 integrator to receive, share, copy, use, write, or transmit
18 protected dealer data from or to a dealer data system on the
19 dealer's or authorized integrator's compliance with security
20 standards;

21 2. Require an authorized integrator to have express written
22 authorization from a dealer before allowing the authorized
23 integrator to gain access to, receive, share, copy, use, or transmit
24 protected dealer data; and

1 3. Deny access to a dealer data system to a dealer if the
2 dealer fails to pay an amount due to the dealer management system
3 provider under a lease, contract, or other agreement concerning the
4 dealer's access to or use of the dealer data system.

5 C. Except as provided in subsection B of this section, a dealer
6 management system provider shall not take any action that would
7 limit or prohibit the ability of a dealer or an authorized
8 integrator to receive, protect, store, copy, share, or use protected
9 dealer data using means that include, but are not limited to:

10 1. Imposing an access fee on a dealer or authorized integrator;
11 and

12 2. Restricting a dealer or an authorized integrator from
13 sharing protected dealer data or writing data or having access to a
14 dealer data system. Prohibited restrictions pursuant to this
15 paragraph include, but are not limited to:

16 a. limits on the scope or nature of protected dealer data
17 to which a dealer or authorized integrator has access
18 or may share or write to a dealer data system, and

19 b. a requirement for a dealer or authorized integrator to
20 provide sensitive or confidential business information
21 or information that a dealer or authorized integrator
22 uses for competitive purposes in return for access to
23 protected dealer data or an authorization to share or
24 write protected dealer data to a dealer data system.

1 D. Except as otherwise provided in this section, any term or
2 condition of a contract with a dealer management system provider
3 that conflicts with the requirements set forth in subsection C of
4 this section is void and unenforceable to the extent of the
5 conflict.

6 E. An authorized integrator shall:

7 1. Obtain express written authorization from a dealer before
8 gaining access to, receiving, sharing, copying, using, writing, or
9 transmitting protected dealer data;

10 2. Comply with security standards in gaining access to,
11 receiving, sharing, copying, using, writing, or transmitting
12 protected dealer data; and

13 3. Allow a dealer to withdraw, revoke, or amend any express
14 written authorization the dealer provides under paragraph 1 of this
15 subsection:

16 a. at the sole discretion of the dealer, if the dealer
17 gives a thirty-day prior notice to an authorized
18 integrator, or

19 b. immediately, for good cause.

20 F. 1. This section does not prevent a dealer, a dealer
21 management system provider, or an authorized integrator from
22 discharging the obligations of a dealer, dealer management system
23 provider, or of an authorized integrator under federal, state, or
24 local law to secure and prevent unauthorized access to protected

1 dealer data, or from limiting the scope of the obligations, in
2 accordance with federal, state, or local law.

3 2. A dealer management system provider is not liable for any
4 action that a dealer takes directly with respect to securing or
5 preventing unauthorized access to protected dealer data, or for
6 actions that an authorized integrator takes in appropriately
7 following the written instructions of the dealer for securing or
8 preventing unauthorized access to protected dealer data, to the
9 extent that the actions prevent the dealer management system
10 provider from meeting a legal obligation to secure or prevent
11 unauthorized access to protected dealer data.

12 3. A dealer is not liable for any action that an authorized
13 integrator takes directly with respect to securing or preventing
14 unauthorized access to protected dealer data, or for actions that
15 the authorized integrator takes in appropriately following the
16 written instructions of the dealer for securing or preventing
17 unauthorized access to protected dealer data, to the extent that the
18 actions prevent the dealer from meeting a legal obligation to secure
19 or prevent unauthorized access to protected dealer data.

20 4. An authorized integrator is not liable for any action that a
21 dealer takes directly with respect to securing or preventing
22 unauthorized access to protected dealer data, or for actions that
23 the dealer takes in appropriately following the authorized written
24 instructions of the authorized integrator for securing or preventing

1 unauthorized access to protected dealer data, to the extent that the
2 actions prevent the authorized integrator from meeting a legal
3 obligation to secure or prevent unauthorized access to protected
4 dealer data.

5 5. A manufacturer, distributor, importer, or any entity that is
6 a subsidiary or affiliate of, or acts on behalf of, a manufacturer,
7 distributor, or importer is not liable for any action that a dealer,
8 dealer management system provider, authorized integrator, or other
9 third party, except for a third party who the manufacturer has
10 provided the data to as provided for in paragraph 7 of this
11 subsection, takes directly with respect to securing or preventing
12 unauthorized access to protected dealer data or for actions that an
13 authorized integrator, dealer management system provider, or other
14 third party takes in appropriately following the written
15 instructions of the dealer for securing or preventing unauthorized
16 access to protected dealer data.

17 6. Notwithstanding any other agreement, an authorized
18 integrator shall indemnify and hold the new motor vehicle dealer
19 harmless from any third-party claims asserted against or damages
20 incurred by the new motor vehicle dealer to the extent caused by
21 access to, use of, or disclosure of consumer data in violation of
22 this section.

23 7. Notwithstanding any other agreement, a manufacturer,
24 distributor, importer, or any entity that is a subsidiary or

1 affiliate of, or acts on behalf of, a manufacturer, distributor, or
2 importer shall indemnify the dealer for any third-party claims
3 asserted against or damages incurred by the dealer to the extent the
4 claims or damages are caused by the access to and unlawful
5 disclosure of protected dealer data resulting from a breach caused
6 by the manufacturer or distributor or a third party to which the
7 manufacturer or distributor has provided the protected dealer data
8 in violation of this section, the written consent granted by the
9 dealer, or other applicable state or federal law.

10 SECTION 2. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 565.4 of Title 47, unless there
12 is created a duplication in numbering, reads as follows:

13 Any manufacturer or distributor who has new motor vehicle sales
14 and service contracts with new motor vehicles dealers shall allow
15 its new motor vehicle dealers to offer consumers any remote software
16 upgrade or change to vehicle functions and features to a new motor
17 vehicle which is of a line-make the new motor vehicle dealer holds
18 an active sales and service contract for, as any offered to
19 consumers by the manufacturer or distributor, and such upgrade or
20 change shall be available for an authorized new motor vehicle dealer
21 to offer to consumers at any time during the life cycle of the
22 vehicle, provided the same continues to be made available and
23 offered to consumers by the manufacturer or distributor. This
24 section does not apply to remote software upgrades or changes

1 related solely to the safety, cybersecurity, or recall of the new
2 motor vehicle.

3 SECTION 3. AMENDATORY 47 O.S. 2021, Section 562, is
4 amended to read as follows:

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

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

- 13 a. recreational vehicles, as defined in the Recreational
14 Vehicle Franchise Act, or
15 b. all-terrain vehicles, utility vehicles, and
16 motorcycles used exclusively for off-road use which
17 are sold by a retail implement dealer;

18 2. "New motor vehicle dealer" means any person, firm,
19 association, corporation, or trust not excluded by this paragraph
20 who sells, offers for sale, advertises to sell, leases, or displays
21 new motor vehicles and holds a bona fide contract or franchise in
22 effect with a manufacturer or distributor authorized by the
23 manufacturer to make predelivery preparation of such vehicles sold
24 to purchasers and to perform post-sale work pursuant to the

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

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

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

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

18 5. "Manufacturer" means any person, firm, association,
19 corporation, or trust, resident or nonresident, ~~who~~ that
20 manufactures or assembles new and unused motor vehicles or ~~who~~ that
21 engages in the fabrication or assembly of motorized vehicles of a
22 type required to be registered in ~~the State of Oklahoma~~ this state;

23 6. "Distributor" means any person, firm, association,
24 corporation, or trust, resident or nonresident, ~~who~~ that, being

1 authorized by the original manufacturer, in whole or in part sells
2 or distributes new and unused motor vehicles to new motor vehicle
3 dealers, or ~~who~~ that maintains distributor representatives;

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

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

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

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

24

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

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

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

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

23 15. "Sponsoring entity" means any person, firm, association,
24 corporation, or trust which has control, either permanently or

1 temporarily, over the real property upon which the ~~off-premise~~ off-
2 premises sale or display is conducted;

3 16. "Product" means new motor vehicles and new motor vehicle
4 parts;

5 17. "Service" means motor vehicle warranty repairs including
6 both parts and labor;

7 18. "Lead" means a consumer contact in response to a factory
8 program designed to generate interest in purchasing or leasing a new
9 motor vehicle;

10 19. ~~"Sell or sale"~~ "Sell" or "sale" means to sell or lease;

11 20. "Factory" means a manufacturer, distributor, factory
12 branch, distributor branch, factory representative, or distributor
13 representative, which manufactures or distributes vehicle products;

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

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

19 23. "Retail implement dealer" means a business engaged
20 primarily in the sale of farm tractors as defined in Section 1-118
21 of this title or implements of husbandry as defined in Section 1-125
22 of this title or a combination thereof;

23

24

1 24. "Consumer data" means nonpublic personal information as
2 defined in 15 U.S.C., Section 6809(4) as it existed on January 1,
3 2023, that is:

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

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

11 25. "Fleet vehicle" means a new motor vehicle sold and titled
12 or registered to a business and used for business purposes only.

13 SECTION 4. AMENDATORY 47 O.S. 2021, Section 564, is
14 amended to read as follows:

15 Section 564. A. It shall be unlawful for any person, firm,
16 association, corporation, or trust to engage in business as, or
17 serve in the capacity of, or act as a new motor vehicle dealer or
18 manufacturer or distributor of new motor vehicles, or factory
19 branch, distributor branch or factory representative or distributor
20 representative, as ~~such~~ defined in Section 562 of this title, in
21 this state without first obtaining a license therefor as provided
22 for by law. Any person, firm, association, corporation, or trust
23 engaging in more than one of such capacities or having more than one
24 place where such business is carried on or conducted shall be

1 required to obtain and hold a current license for each thereof.
2 Provided that, a new motor vehicle dealer's license shall authorize
3 one person to sell in the event such person shall be the owner of a
4 proprietorship, or the person designated as principal in the
5 dealer's franchise or the managing officer or one partner if no
6 principal person is named in the franchise. It is further provided
7 that a factory or an entity affiliated by any ownership or control
8 by the factory shall not be permitted to be licensed as a new motor
9 vehicle dealer in this state, except as provided by subparagraph b
10 of paragraph 12 of Section 565 of this title.

11 B. Applications for licenses required to be obtained under the
12 provisions of Section 561 et seq. of this title shall be verified by
13 the oath or affirmation of the applicant and shall be on forms
14 prescribed by the Oklahoma Motor Vehicle Commission and furnished to
15 ~~such~~ the applicants, and shall contain ~~such~~ information as the
16 Commission deems necessary to enable it to fully determine the
17 qualifications and eligibility of the several applicants to receive
18 the license or licenses applied for. The Commission shall require
19 in such application, or otherwise, information relating to the
20 applicant's financial standing, the applicant's business integrity,
21 whether the applicant has an established place of business and is
22 primarily engaged in the pursuit, avocation, or business for which a
23 license, or licenses, are applied for, and whether the applicant is
24 able to properly conduct the business for which a license, or

1 licenses, are applied for, and such other pertinent information
2 consistent with the safeguarding of the public interest and the
3 public welfare. All ~~such~~ applications for license or licenses shall
4 be accompanied by the appropriate fee or fees therefor in accordance
5 with the schedule thereof hereinafter set out. In the event any
6 ~~such~~ application is denied and the license applied for is not
7 issued, the entire license fee shall be returned to the applicant.
8 All licenses issued under the provisions of Section 561 et seq. of
9 this title shall expire on June 30, following the date of issue and
10 shall be nontransferable. All applications for renewal of a license
11 for a new motor vehicle dealer, manufacturer, distributor, or
12 manufacturer's or distributor's representative shall be submitted by
13 June 1 of each year, and such license or licenses will be issued by
14 July 1. If applications have not been made for renewal of licenses
15 at the times described in this subsection, it shall be illegal for
16 any person to represent himself or herself and act as a dealer,
17 manufacturer, distributor, or manufacturer's or distributor's
18 representative. Motor license agents will be notified not to accept
19 such dealers' titles until such time as licenses have been issued by
20 the Commission.

21 C. The schedule of license fees to be charged and received by
22 the Commission for the licenses issued hereunder shall be as
23 follows:
24

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

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

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

9 4. For each new motor vehicle dealer, except powersports
10 vehicle dealers, initial fee of Three Hundred Dollars (\$300.00) per
11 franchise sold at each location licensed, with an annual renewal fee
12 of One Hundred Dollars (\$100.00) per franchise sold at each location
13 per year; and

14 5. For each powersports vehicle dealer, initial fee of Three
15 Hundred Dollars (\$300.00) per manufacturer represented by the dealer
16 at each location licensed, with an annual renewal fee of One Hundred
17 Dollars (\$100.00) per manufacturer represented by the dealer at each
18 location licensed per year.

19 D. The licenses issued to each new motor vehicle dealer,
20 manufacturer, distributor, factory branch, distributor branch or
21 representative, if a corporation, shall specify the location of the
22 factory, office, or branch thereof. In case such location is
23 changed, the Commission may endorse the change of location on the
24 license without charge unless the change of address triggers a

1 relocation of a new motor vehicle dealer pursuant to the provisions
2 of Section 578.1 of this title. The license of each new motor
3 vehicle dealer shall be posted in a conspicuous place in the new
4 motor vehicle dealer's place or places of business.

5 Every motor vehicle factory representative or distributor
6 representative if an individual shall physically possess the license
7 when engaged in business, and shall display ~~same~~ such upon request.
8 The name of the employer of such factory representative or
9 distributor representative shall be stated on the license and, in
10 case of a change of employer, the holder of such license shall
11 immediately mail ~~same~~ such to the Commission for its endorsement of
12 such change ~~thereon~~. The Commission shall endorse each such change
13 of employer on licenses for a fee of Ten Dollars (\$10.00).

14 E. The powersports dealer license shall only allow the sale of
15 the specific types of powersports vehicles authorized by the
16 manufacturer and agreed to by the powersports dealer.

17 SECTION 5. AMENDATORY 47 O.S. 2021, Section 565, as
18 amended by Section 3, Chapter 192, O.S.L. 2022 (47 O.S. Supp. 2022,
19 Section 565), is amended to read as follows:

20 Section 565. A. The Oklahoma Motor Vehicle Commission may deny
21 an application for a license, ~~or~~ revoke or suspend a license, or
22 impose a fine against any person or entity, not to exceed Ten
23 Thousand Dollars (\$10,000.00) ~~against a manufacturer or distributor~~
24 ~~or a fine not to exceed One Thousand Dollars (\$1,000.00) against a~~

1 ~~dealer~~ per occurrence, that violates any provision of Sections 561
2 through 567, 572, 578.1, 579, and 579.1 of this title ~~is violated~~ or
3 for any of the following reasons:

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

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

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

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

15 5. Being a new motor vehicle dealer who:

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

21 b. uses any false or misleading advertising in connection
22 with business as a new motor vehicle dealer,

23 c. has committed any unlawful act which resulted in the
24 revocation of any similar license in another state,

- 1 d. has failed or refused to perform any written agreement
2 with any retail buyer involving the sale of a motor
3 vehicle,
4 e. has been convicted of a felony crime that
5 substantially relates to the occupation of a new motor
6 vehicle dealer and poses a reasonable threat to public
7 safety,
8 f. has committed a fraudulent act in selling, purchasing,
9 or otherwise dealing in new motor vehicles or has
10 misrepresented the terms and conditions of a sale,
11 purchase or contract for sale or purchase of a new
12 motor vehicle or any interest therein including an
13 option to purchase such vehicle,
14 g. has failed to meet or maintain the conditions and
15 requirements necessary to qualify for the issuance of
16 a license, or
17 h. completes any sale or transaction of an extended
18 service contract, extended maintenance plan, or
19 similar product using contract forms that do not
20 conspicuously disclose the identity of the service
21 contract provider;

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

24 7. Being a new motor vehicle dealer who:

- 1 a. does not have an established place of business,
- 2 b. does not provide for a suitable repair shop separate
- 3 from the display room with ample space to repair or
- 4 recondition one or more vehicles at the same time, and
- 5 which is staffed with properly trained and qualified
- 6 repair technicians and is equipped with such parts,
- 7 tools, and equipment as may be requisite for the
- 8 servicing of motor vehicles in such a manner as to
- 9 make them comply with the safety laws of this state
- 10 and to properly fulfill the dealer's or manufacturer's
- 11 warranty obligation,
- 12 c. does not hold a franchise in effect with a
- 13 manufacturer or distributor of new or unused motor
- 14 vehicles for the sale of the same and is not
- 15 authorized by the manufacturer or distributor to
- 16 render predelivery preparation of such vehicles sold
- 17 to purchasers and to perform any authorized post-sale
- 18 work pursuant to the manufacturer's or distributor's
- 19 warranty,
- 20 d. employs a person without obtaining a certificate of
- 21 registration for the person, or utilizes the services
- 22 of used motor vehicle lots or dealers or other
- 23 unlicensed persons in connection with the sale of new
- 24 motor vehicles,

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

10 8. Being a factory that has:

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

14 (1) to accept delivery of any motor vehicle or
15 vehicles, parts, or accessories therefor, or any
16 other commodities including advertising material
17 which shall not have been ordered by the new
18 motor vehicle dealer,

19 (2) to order or accept delivery of any motor vehicle
20 with special features, appliances, accessories,
21 or equipment not included in the list price of
22 the motor vehicles as publicly advertised by the
23 manufacturer thereof, or
24

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

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

- 1 c. used a performance standard, sales objective, or
2 program for measuring dealer performance that may have
3 a material effect on a right of the dealer to vehicle
4 allocation; or payment under any incentive or
5 reimbursement program that is unfair, unreasonable,
6 inequitable, and not based on accurate information,
- 7 d. used a performance standard for measuring sales or
8 service performance of any new motor vehicle dealer
9 under the terms of the franchise agreement which:
- 10 (1) is unfair, unreasonable, arbitrary, or
11 inequitable, and
- 12 (2) does not consider the relevant and material local
13 and state or regional criteria, including
14 prevailing economic conditions affecting the
15 sales or service performance of a vehicle dealer
16 or any relevant and material data and facts
17 presented by the dealer in writing within thirty
18 (30) days of the written notice of the
19 manufacturer to the dealer of its intention to
20 cancel, terminate, or not renew the dealer's
21 franchise agreement,
- 22 e. failed or refused to sell, or offer for sale, new
23 motor vehicles to all of its authorized same line-make
24 franchised new motor vehicle dealers at the same price

1 for a comparably equipped motor vehicle, on the same
2 terms, with no differential in functionally available
3 discount, allowance, credit, or bonus, except as
4 provided in subparagraph e of paragraph 9 of this
5 subsection,

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

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

23 9. Being a factory that:
24

- 1 a. has attempted to coerce or has coerced any new motor
2 vehicle dealer to enter into any agreement or to
3 cancel any agreement, ~~or fails~~; has failed to act in
4 good faith and in a fair, equitable, and
5 nondiscriminatory manner; ~~or~~ has directly or
6 indirectly coerced, intimidated, threatened, or
7 restrained any new motor vehicle dealer; ~~or~~ has acted
8 dishonestly; or has failed to act in accordance with
9 the reasonable standards of fair dealing,
- 10 b. has failed to compensate its dealers for the work and
11 services they are required to perform in connection
12 with the dealer's delivery and preparation obligations
13 according to the agreements on file with the
14 Commission which must be found by the Commission to be
15 reasonable, or ~~fail~~ has failed to adequately and
16 fairly compensate its dealers for labor, parts, and
17 other expenses incurred by ~~such~~ the dealer to perform
18 under and comply with manufacturer's warranty
19 agreements and recall repairs which shall include
20 diagnostic work as applicable and assistance requested
21 by a consumer whose vehicle was subjected to an over-
22 the-air or remote change, repair, or update to any
23 part, system, accessory, or function by the
24 manufacturer and performed by the dealer in order to

1 satisfy the consumer. Time allowances for the
2 diagnosis and performance of repair work shall be
3 reasonable and adequate for the work to be performed.
4 Adequate and fair compensation, which under this
5 provision shall be no less than the rates customarily
6 charged for retail consumer repairs as calculated
7 herein, for parts and labor for warranty and recall
8 repairs shall, at the option of the new motor vehicle
9 dealer, be established by the new motor vehicle dealer
10 submitting to the manufacturer or distributor one
11 hundred sequential nonwarranty ~~customer-paid~~ consumer-
12 paid service repair orders which contain warranty-like
13 ~~parts repairs~~, or ninety (90) consecutive days of
14 nonwarranty ~~customer-paid~~ consumer-paid service repair
15 orders which contain warranty-like ~~parts repairs~~,
16 whichever is less, covering repairs made no more than
17 one hundred eighty (180) days before the submission
18 and declaring the average percentage labor rate and/or
19 markup rate. ~~Adequate and fair compensation for labor~~
20 ~~shall be established by the dealer submitting to the~~
21 ~~manufacturer or distributor one hundred sequential~~
22 ~~customer-paid service repair orders which contain~~
23 ~~labor charges, or ninety (90) consecutive days of~~
24 ~~customer-paid service repair orders which contain~~

1 ~~labor charges, whichever is less.~~ A new motor vehicle
2 dealer may not submit a request to establish its
3 retail rates more than once in a twelve-month period.
4 That request may establish a parts markup rate, labor
5 rate, or both. The new motor vehicle dealer shall
6 calculate its retail parts rate by determining the
7 total charges for parts from the qualified repair
8 orders submitted, dividing that amount by the new
9 motor vehicle dealer's total cost of the purchase of
10 those parts, subtracting one (1), and multiplying by
11 one hundred (100) to produce a percentage. The new
12 motor vehicle dealer shall calculate its retail labor
13 rate by dividing the amount of the new motor vehicle
14 dealer's total labor sales from the qualified repair
15 orders by the total labor hours charged for those
16 sales. When submitting repair orders to ~~calculate~~
17 establish a retail parts and labor rate, a new motor
18 vehicle dealer need not include ~~repair orders~~ repairs
19 for:

20 (1) routine maintenance including but not limited to
21 the replacement of bulbs, fluids, filters,
22 batteries, and belts that are not provided in the
23 course of and related to a repair,
24

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

19 A manufacturer or distributor may, not later than
20 thirty (30) days after submission, rebut that declared
21 retail parts and labor rate in writing by reasonably
22 substantiating that the rate is ~~inaccurate or~~
23 ~~unreasonable in light of the practices of all other~~
24 ~~franchised motor vehicle dealers in an economically~~

1 ~~similar part of the state offering the same line make~~
2 ~~vehicles~~ not accurate or is incomplete pursuant to the
3 provisions of this section. If the manufacturer or
4 distributor determines the set of repair orders
5 submitted by the new motor vehicle dealer pursuant to
6 this section for a retail labor rate or retail parts
7 markup rate is substantially higher than the new motor
8 vehicle dealer's current warranty rates, the
9 manufacturer or distributor may request, in writing,
10 within thirty (30) days after the manufacturer's or
11 distributor's receipt of the new motor vehicle
12 dealer's initial submission, all repair orders closed
13 within the period of thirty (30) days immediately
14 preceding, or thirty (30) days immediately following,
15 the set of repair orders initially submitted by the
16 new motor vehicle dealer. All time periods under this
17 section shall be suspended until the supplemental
18 repair orders are provided. If the manufacturer or
19 distributor requests supplemental repair orders, the
20 manufacturer or distributor may, within thirty (30)
21 days after receiving the supplemental repair orders
22 and in accordance with the formula described in this
23 subsection, calculate a proposed adjusted retail labor
24 rate or retail parts markup rate, as applicable, based

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

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

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

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

21 The factory shall provide written notice to a dealer
22 of a proposed charge-back that is the result of an
23 audit along with the specific audit results and
24 proposed charge-back amount. A dealer that receives

1 notice of a proposed charge-back pursuant to a
2 factory's audit has the right to file a protest with
3 the Commission within thirty (30) days after receipt
4 of the notice of the charge-back or audit results,
5 whichever is later. The factory is prohibited from
6 implementing the charge-back or debiting the dealer's
7 account until either the time frame for filing a
8 protest has passed or a final adjudication is rendered
9 by the Commission, whichever is later, unless the
10 dealer has agreed to the charge-back or charge-backs,
11 c. fails to compensate the new motor vehicle dealer for a
12 used motor vehicle:

13 (1) that is of the same make and model manufactured,
14 imported, or distributed by the factory and is a
15 line-make that the new motor vehicle dealer is
16 franchised to sell or on which the new motor
17 vehicle dealer is authorized to perform recall
18 repairs,

19 (2) that is subject to a stop-sale or do-not-drive
20 order issued by the factory or an authorized
21 governmental agency,

22 (3) that is held by the new motor vehicle dealer in
23 the dealer's inventory at the time the stop-sale
24 or do-not-drive order is issued or that is taken

1 by the new motor vehicle dealer into the dealer's
2 inventory after the recall notice as a result of
3 a retail consumer trade-in or a lease return to
4 the dealer inventory in accordance with an
5 applicable lease contract,

6 (4) that cannot be repaired due to the
7 unavailability, within thirty (30) days after
8 issuance of the stop-sale or do-not-drive order,
9 of a remedy or parts necessary for the new motor
10 vehicle dealer to make the recall repair, and

11 (5) that is not at least in the prorated amount of
12 one percent (1.00%) of the value of the vehicle
13 per month beginning on the date that is thirty
14 (30) days after the date on which the stop-sale
15 order was provided to the new motor vehicle
16 dealer until the earlier of either of the
17 following:

18 (a) the date the recall remedy or parts are made
19 available, or

20 (b) the date the new motor vehicle dealer sells,
21 trades, or otherwise disposes of the
22 affected used motor vehicle.

23 For the purposes of division (5) of this subparagraph,
24 the value of a used vehicle shall be the average Black

1 Book value for the year, make, and model of the
2 recalled vehicle. A factory may direct the manner and
3 method in which a new motor vehicle dealer must
4 demonstrate the inventory status of an affected used
5 motor vehicle to determine eligibility under this
6 subparagraph; provided, that the manner and method may
7 not be unduly burdensome and may not require
8 information that is unduly burdensome to provide. All
9 reimbursement claims made by new motor vehicle dealers
10 pursuant to this section for recall remedies or
11 repairs, or for compensation where no part or repair
12 is reasonably available and the vehicle is subject to
13 a stop-sale or do-not-drive order, shall be subject to
14 the same limitations and requirements as a warranty
15 reimbursement claim made under subparagraph b of this
16 paragraph. In the alternative, a manufacturer may
17 compensate its franchised new motor vehicle dealers
18 under a national recall compensation program;
19 provided, the compensation under the program is equal
20 to or greater than that provided under division (5) of
21 this subparagraph, or as the manufacturer and new
22 motor vehicle dealer otherwise agree. Nothing in this
23 section shall require a factory to provide total
24 compensation to a new motor vehicle dealer which would

1 exceed the total average Black Book value of the
2 affected used motor vehicle as originally determined
3 under division (5) of this subparagraph. Any remedy
4 provided to a new motor vehicle dealer under this
5 subparagraph is exclusive and may not be combined with
6 any other state or federal compensation remedy,

7 d. unreasonably fails or refuses to offer to its same
8 line-make franchised dealers a reasonable supply and
9 mix of all models manufactured for that line-make, or
10 unreasonably requires a dealer to pay any extra fee,
11 purchase unreasonable advertising displays or other
12 materials, or enter into a separate agreement which
13 adversely alters the rights or obligations contained
14 within the new motor vehicle dealer's existing
15 franchise agreement or which waives any right of the
16 new motor vehicle dealer as protected by Section 561
17 et seq. of this title, or remodel, renovate, or
18 recondition the new motor vehicle dealer's existing
19 facilities as a prerequisite to receiving a model or
20 series of vehicles, except as may be necessary to sell
21 or service the model or series of vehicles as provided
22 by subparagraph e of this paragraph. It shall be a
23 violation of this section for new vehicle allocation
24 to be withheld subject to any requirement to purchase

1 or sell any number of used or off-lease vehicles. The
2 failure to deliver any such new motor vehicle shall
3 not be considered a violation of the section if the
4 failure is not arbitrary or is due to lack of
5 manufacturing capacity or to a strike or labor
6 difficulty, a shortage of materials, a freight
7 embargo, or other cause over which the manufacturer
8 has no control. However, this subparagraph shall not
9 apply to recreational vehicles, ~~or~~ limited production
10 model vehicles, or a vehicle not advertised by the
11 factory for sale in this state,

12 ~~d.~~ e. except as necessary to comply with a health or safety
13 law, or to comply with a technology requirement which
14 is necessary to sell or service a motor vehicle that
15 the franchised new motor vehicle dealer is authorized
16 or licensed by the franchisor to sell or service,
17 requires a new motor vehicle dealer to construct a new
18 facility or substantially renovate the new motor
19 vehicle dealer's existing facility unless the facility
20 construction or renovation is justified by the
21 economic conditions existing at the time, as well as
22 the reasonably foreseeable projections, in the new
23 motor vehicle dealer's market and in the automotive
24 industry. However, this subparagraph shall not apply

1 if the ~~factory provides~~ new motor vehicle dealer
2 voluntarily agrees to facility construction or
3 renovation in exchange for money, credit, allowance,
4 reimbursement, or additional vehicle allocation to a
5 new motor vehicle dealer from the factory to
6 compensate the new motor vehicle dealer for the cost
7 of, or a portion of the cost of, the facility
8 construction or renovation. Except as necessary to
9 comply with a health or safety law, or to comply with
10 a technology or safety requirement which is necessary
11 to sell or service a motor vehicle that the franchised
12 new motor vehicle dealer is authorized or licensed by
13 the franchisor to sell or service, a new motor vehicle
14 dealer which completes a facility construction or
15 renovation pursuant to factory requirements shall not
16 be required to construct a new facility or renovate
17 the existing facility if the same area of the facility
18 or premises has been constructed or substantially
19 altered within the last ten (10) years and the
20 construction or alteration was approved by the
21 manufacturer as a part of a facility upgrade program,
22 standard, or policy. For purposes of this
23 subparagraph, "substantially altered" means to perform
24 an alteration that substantially impacts the

1 architectural features, characteristics, or integrity
2 of a structure or lot. The term shall not include
3 routine maintenance reasonably necessary to maintain a
4 dealership in attractive condition. If a facility
5 upgrade program, standard, or policy under which the
6 dealer completed a facility construction or
7 substantial alteration does not contain a specific
8 time period during which the manufacturer or
9 distributor shall provide payments or benefits to a
10 participating dealer, or the time frame specified
11 under the program is reduced or canceled prematurely
12 in the unilateral discretion of the manufacturer or
13 distributor, the manufacturer or distributor shall not
14 deny the participating dealer any payment or benefit
15 under the terms of the program, standard, or policy as
16 it existed when the dealer began to perform under the
17 program, standard, or policy for the balance of the
18 ten-year period, regardless of whether the
19 manufacturer's or distributor's program, standard, or
20 policy has been changed or canceled, unless the
21 manufacturer and dealer agree, in writing, to the
22 change in payment or benefit,

23 e. f. requires a new motor vehicle dealer to establish an
24 exclusive facility, unless supported by reasonable

1 business, market, and economic considerations;
2 provided, that this ~~provision~~ section shall not
3 restrict the terms of any agreement for such exclusive
4 facility voluntarily entered into and supported by
5 valuable consideration separate from the new motor
6 vehicle dealer's right to sell and service motor
7 vehicles for the franchisor,

8 ~~f.~~ g. requires a new motor vehicle dealer to enter into a
9 site-control agreement covering any or all of the new
10 motor vehicle dealer's facilities or premises;
11 provided, that this ~~provision~~ section shall not
12 restrict the terms of any site-control agreement
13 voluntarily entered into and supported by valuable
14 consideration separate from the new motor vehicle
15 dealer's right to sell and service motor vehicles for
16 the franchisor. Notwithstanding the foregoing or the
17 terms of any site-control agreement, a site-control
18 agreement automatically extinguishes if all of the
19 factory's franchises that operated from the location
20 that are the subject of the site-control agreement are
21 terminated by the factory as part of the
22 discontinuance of a product line, ~~or~~

23 ~~g.~~ h. refuses to pay, or claims reimbursement from, a new
24 motor vehicle dealer for sales, incentives, or other

1 payments related to a motor vehicle sold by the new
2 motor vehicle dealer because the purchaser of the
3 motor vehicle exported or resold the motor vehicle in
4 violation of the policy of the factory unless the
5 factory can show that, at the time of the sale, the
6 new motor vehicle dealer knew or reasonably should
7 have known of the purchaser's intention to export or
8 resell the motor vehicle. There is a rebuttable
9 presumption that the new motor vehicle dealer did not
10 know or could not have known that the vehicle would be
11 exported if the vehicle is titled and registered in
12 any state of the United States, or

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

1 motor vehicle dealer to impair or eliminate a
2 factory's intellectual property, trademark rights, or
3 trade dress usage guidelines. Nothing in this section
4 prohibits the enforcement of a voluntary agreement
5 between the factory and the new motor vehicle dealer
6 where separate and valuable consideration has been
7 offered and accepted;

8 10. Being a factory that:

- 9 a. establishes a system of motor vehicle allocation or
10 distribution which is unfair, inequitable, or
11 unreasonably discriminatory. Upon the request of any
12 new motor vehicle dealer franchised by it, a factory
13 shall disclose in writing to the new motor vehicle
14 dealer the basis upon which new motor vehicles are
15 allocated, scheduled, and delivered among the new
16 motor vehicle dealers of the same line-make for that
17 factory, or
- 18 b. changes an established plan or system of motor vehicle
19 distribution. A new motor vehicle dealer franchise
20 agreement shall continue in full force and operation
21 notwithstanding a change, in whole or in part, of an
22 established plan or system of distribution of the
23 motor vehicles offered or previously offered for sale
24 under the franchise agreement. The appointment of a

1 new importer or distributor for motor vehicles offered
2 for sale under the franchise agreement shall be deemed
3 to be a change of an established plan or system of
4 distribution. The discontinuation of a line-make
5 shall not be deemed to be a change of an established
6 plan or system of motor vehicle distribution. The
7 creation of a line-make shall not be deemed to be a
8 change of an established plan or system of motor
9 vehicle distribution as long as the new line-make is
10 not selling the same, or substantially the same
11 vehicle or vehicles previously sold through another
12 line-make by new motor vehicle dealers with an active
13 franchise agreement for the other line-make in the
14 state if such new motor vehicle dealers are no longer
15 authorized to sell the comparable vehicle previously
16 sold through their line-make. Changing a vehicle's
17 powertrain is not sufficient to show it is
18 substantially different. Upon the occurrence of such
19 change, the manufacturer or distributor shall be
20 prohibited from obtaining a license to distribute
21 vehicles under the new plan or system of distribution
22 unless the manufacturer or distributor offers to each
23 new motor vehicle dealer who is a party to the
24 franchise agreement a new franchise agreement

1 containing substantially the same provisions which
2 were contained in the previous franchise agreement;

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

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

17 (1) owns any ownership interest or has any financial
18 interest in a new motor vehicle dealer or any
19 person who sells products or services pursuant to
20 the ~~public~~ terms of the franchise agreement,

21 (2) operates or controls a new motor vehicle dealer,
22 or

23 (3) acts in the capacity of a new motor vehicle
24 dealer.

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

13 (2) This paragraph does not prohibit a factory from
14 owning, operating, controlling, or acting in the
15 capacity of a new motor vehicle dealer for a
16 period not to exceed twelve (12) months during
17 the transition from one independent dealer to
18 another independent dealer if the dealership is
19 for sale at a reasonable price and on reasonable
20 terms and conditions to an independent qualified
21 buyer. On showing by a factory of good cause,
22 the Oklahoma Motor Vehicle Commission may extend
23 the time limit set forth above; extensions may be
24

1 granted for periods not to exceed twelve (12)
2 months.

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

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

14 (a) all of the new motor vehicle dealerships
15 selling the motor vehicles of that
16 manufacturer in this state trade exclusively
17 in the line-make of that manufacturer,

18 (b) all of the franchise agreements of the
19 manufacturer confer rights on the dealer of
20 the line-make to develop and operate, within
21 a defined geographic territory or area, as
22 many dealership facilities as the dealer and
23 manufacturer shall agree are appropriate,
24

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

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

15 (e) prior to January 1, 2000, the factory shall
16 have furnished or made available to
17 prospective new motor vehicle dealers an
18 ~~offering circular~~ offering circular in
19 accordance with the Trade Regulation Rule on
20 Franchising of the Federal Trade Commission,
21 and any guidelines and exemptions issued
22 thereunder, which disclose the possibility
23 that the factory may from time to time seek
24

1 to own or acquire, directly or indirectly,
2 ownership interests in retail dealerships;

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

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

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

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

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

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 f 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 f 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 new motor vehicle dealer's
2 receipt of the written official price increase notification. A
3 sales contract signed by a retail consumer accompanied with proof of
4 order submission to the factory shall constitute evidence of each
5 such 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 new motor vehicle dealer, which
22 consent shall not be 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, or

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
14 plans, or similar products offered, endorsed, or
15 sponsored by 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 motor vehicle dealership, if such sale or transfer
21 is conditioned upon the manufacturer or dealer entering into a
22 dealer agreement with the proposed new owner or transferee, only if
23 all the following requirements are met:

24

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

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

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

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

1 receipt of the written request of the factory for such an
2 accounting. The accounting may be requested by a factory before
3 exercising its right of first refusal.

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

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

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

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

22 c. motor vehicle financing provided by that person to
23 retail consumers for motor vehicles is limited to used
24

1 vehicles sold by that person in the conduct of
2 business; or

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

5 D. As used in this section:

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

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

14 SECTION 6. AMENDATORY 47 O.S. 2021, Section 565.1, is
15 amended to read as follows:

16 Section 565.1. A. For the purposes of this section,
17 "designated successor" means a person who the new motor vehicle
18 dealer has designated to take over operation of the dealership or a
19 legal heir or devisee under the will of a new motor vehicle dealer
20 or under the laws of descent and distribution of this state.

21 B. Notwithstanding the terms of any franchise agreement, and
22 subject to the following conditions contained in paragraphs 1
23 through 5 of this ~~section~~ subsection, any manufacturer or
24 distributor who prevents or refuses to honor the succession to the

1 ~~operation of a dealership by any legal heir or devisee under the~~
2 ~~will of a new motor vehicle dealer or under the laws of descent and~~
3 ~~distribution of this state~~ a designated successor without good cause
4 or good faith, as defined in this section, shall be subject to the
5 following procedure:

6 1. Within one hundred twenty (120) days after the death or
7 departure of the new motor vehicle dealer, the manufacturer shall
8 receive a written notice from ~~any legal heir or devisee~~ the
9 dealership of the designated successor who intends to ~~establish a~~
10 become the successor dealership operator. If timely notice is not
11 ~~so~~ received, ~~then~~ this paragraph shall not apply, and any succession
12 shall be governed solely by the terms of the franchise;

13 2. Within thirty (30) days of receipt of the ~~legal heir's or~~
14 ~~devisee's~~ dealership's timely written notice, the manufacturer may
15 request, and the ~~legal heir or devisee~~ designated successor shall,
16 within a reasonable time, provide any information which is
17 reasonably necessary for the manufacturer to evaluate the ~~proposed~~
18 designated successor dealer and dealership, including, ~~but not~~
19 ~~limited to,~~ applications, ~~proposals for facilities and financing;~~

20 3. Within sixty (60) days of receipt of such information, the
21 manufacturer shall approve or disapprove the ~~proposed~~ designated
22 successor ~~dealership~~ dealer, and in case of disapproval shall
23 communicate in writing such disapproval and grounds for disapproval
24 to the ~~legal heir or devisee~~ dealership;

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

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

1 controlling executive management that is of good moral character and
2 meets the factory's qualifications for general business experience
3 ~~and other requirements relating to prospective franchises.~~ Any
4 denial of the designated successor based upon a failure to agree to
5 terms other than those contained in the existing franchise
6 agreement, related addendums and agreements, and any written notice
7 provided to the existing dealer prior to the manufacturer's or
8 distributor's receipt of any written notice from the existing dealer
9 of the proposed transfer shall not be considered good cause for such
10 denial. However, any proposed change to the franchise pursuant to
11 written notice from the manufacturer or distributor, to be valid,
12 must be in compliance with existing law. The disapproval by the
13 manufacturer shall be final if the ~~legal heir or devisee~~ dealership
14 fails to file a timely protest of ~~such~~ the disapproval. In the
15 event that the Commission finds that the manufacturer's disapproval
16 was not made for good cause, then it shall issue a final order
17 requiring the manufacturer to honor the successor designated in the
18 notice sent by the ~~legal heir or devisee~~ dealership.
19 Notwithstanding anything to the contrary in this section, a new
20 motor vehicle dealer may designate any person as successor by filing
21 a written instrument pursuant to the franchise with the manufacturer
22 during the new motor vehicle dealer's lifetime. In such a case, the
23 written instrument and franchise shall govern the dealership
24 succession.

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

7 SECTION 7. AMENDATORY 47 O.S. 2021, Section 565.2, is
8 amended to read as follows:

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

23 B. Irrespective of the terms, provisions, or conditions of any
24 franchise, or the terms or provisions of any waiver, good cause

1 shall exist for the purpose of a termination, cancellation, or
2 nonrenewal when:

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

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

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

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

4 2. Not less than fifteen (15) days prior to the effective date
5 of ~~such~~ the termination, cancellation, or nonrenewal with respect to
6 any 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 ~~such~~ 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. Such
12 hearing shall be held in accordance with the provisions of the
13 Administrative Procedures Act, Sections ~~301~~ 250 through ~~326~~ 323 of
14 Title 75 of the Oklahoma Statutes, to determine if the threatened
15 cancellation, termination, or nonrenewal of the franchise has been
16 for good cause and if the factory has complied with its obligations
17 pursuant to subsections A, B, and C of this section and the factory
18 shall have the burden of proof. If the Commission finds that the
19 threatened cancellation, termination, or nonrenewal of the franchise
20 has not been for good cause or violates subsection A, B, or C of
21 this section, then it shall issue a final order stating that the
22 threatened termination is wrongful. A factory shall have the right
23 to appeal such order. During the pendency of the hearing and after
24 the decision, the franchise shall remain in full force and effect,

1 including the right to transfer the franchise. If the Commission
2 finds that the threatened cancellation, termination, or nonrenewal
3 is for good cause and does not violate subsection A, B, or C of this
4 section, the new motor vehicle dealer shall have the right to an
5 appeal. During the pendency of the action, including the final
6 decision or appeal, the franchise shall remain in full force and
7 effect, including the right to transfer the franchise. If the new
8 motor vehicle dealer prevails in the threatened termination action,
9 the Commission shall award to the new motor vehicle dealer the
10 attorney fees and costs incurred to defend the action.

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

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

18 2. Supplies and parts which have been acquired from the
19 manufacturer, for the purpose of this section, limited to any and
20 all supplies and parts that are listed on the current parts price
21 sheet available to the new motor vehicle dealer;

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

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

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

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

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

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

4 a. used solely for performance in accordance with the
5 franchise. If the facility is used for the operation
6 of more than one franchise, the reasonable rent shall
7 be paid based upon the portion of the facility
8 utilized by the franchise being terminated, canceled,
9 or nonrenewed, and

10 b. not substantially in excess of facilities recommended
11 by the manufacturer.

12 2. If the facilities are owned by the new motor vehicle dealer,
13 within ninety (90) days following the effective date of the
14 termination, cancellation, or nonrenewal, the manufacturer will
15 either:

16 a. locate a qualified purchaser who will offer to
17 purchase the dealership facilities at a reasonable
18 price,

19 b. locate a qualified lessee who will offer to lease the
20 premises for the remaining lease term at the rent set
21 forth in the lease, or

22 c. failing the foregoing, lease the dealership facilities
23 at a reasonable rental value for the portion of the
24

1 facility that is recognized in the franchise agreement
2 for one (1) year.

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

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

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

- 18 a. fails to accept a bona fide offer from a prospective
19 purchaser, ~~subleases~~ sublessee, or assignee,
- 20 b. refuses to execute a settlement agreement with the
21 lessor if such agreement with the lessor would be
22 without cost to the 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. In addition to the repurchase requirements set forth in
6 subsections E and G of this section, in the event the termination or
7 cancellation is the result of a discontinuance of a product line,
8 the manufacturer or distributor shall compensate the new motor
9 vehicle dealer in an amount equivalent to the fair market value of
10 the terminated franchise as of the date ~~of~~ immediately preceding the
11 manufacturer's or distributor's announcement or provide the new
12 motor vehicle dealer with a replacement franchise on substantially
13 similar terms and conditions as those offered to other same line-
14 make dealers. The new motor vehicle dealer may immediately request
15 payment under this ~~provision~~ section following the announcement in
16 exchange for ~~cancelling~~ canceling any further franchise rights,
17 except payments owed to the new motor vehicle dealer in the ordinary
18 course of business, or may request payment under this ~~provision~~
19 section upon the final termination, cancellation, or nonrenewal of
20 the franchise. In either case, payment under this ~~provision~~ section
21 shall be made not later than ninety (90) days after the fair market
22 value is determined. If the factory and new motor vehicle dealer
23 cannot agree on the fair market value of the terminated franchise or
24 agree to a process to determine the fair market value, then the

1 factory and new motor vehicle dealer shall utilize a neutral ~~third~~
2 ~~party~~ third-party mediator to resolve the disagreement.

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

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

16 B. The approval by the manufacturer or distributor of the sale,
17 transfer, or assignment shall not be unreasonably withheld unless
18 the proposed transferee is not of good moral character or fails to
19 meet the written, reasonable, and uniformly applied requirements of
20 the manufacturer or distributor relating to prospective franchisees.
21 Approval of the transfer shall not be made contingent upon the
22 transferee meeting unreasonable facility requirements or performance
23 standards, ~~but may be made contingent upon the transferee meeting~~
24 ~~reasonable written requirements~~ different than those contained in

1 the transferor's franchise agreement and related addendum and
2 agreements, and any written notices provided to the existing dealer
3 prior to the manufacturer's or distributor's receipt of any written
4 notice from the existing dealer of the proposed transfer. However,
5 to be valid, any proposed change to the franchise pursuant to
6 written notice from the manufacturer or distributor shall be in
7 compliance with existing law. The burden of proof shall be upon the
8 manufacturer or distributor to show good cause existed to withhold
9 approval. The manufacturer or distributor that has made such a
10 determination shall send a letter by certified mail to the dealer
11 and the applicant of its refusal to approve the proposal, which
12 shall include a statement of the specific grounds for refusal,
13 within sixty (60) days after the later of:

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

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

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

1 D. If the proposed sale, transfer, or assignment is to an
2 existing owner's family member or other existing owner, the
3 manufacturer or distributor's evaluation of the proposal is limited
4 to the written, reasonable, and uniformly applied requirements of
5 the manufacturer or distributor relating to good moral character and
6 financial qualifications. Notwithstanding the foregoing, a change
7 in dealer operator shall be addressed pursuant to the provisions of
8 section 565.1 of this title.

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

24

1 paragraph 9 of Section 565 of this title different than those
2 contained in the transferor's franchise agreement.

3 SECTION 9. AMENDATORY 47 O.S. 2021, Section 578.1, is
4 amended to read as follows:

5 Section 578.1. A. Notwithstanding the terms of a franchise and
6 notwithstanding the terms of a waiver, if a factory intends or
7 proposes to enter into a franchise to establish an additional new
8 motor vehicle dealer or to relocate an existing new motor vehicle
9 dealer within or into a relevant market area in which the same line-
10 make of motor vehicle is currently represented, the factory shall
11 provide at least sixty (60) days advance written notice to the
12 Commission and to each new motor vehicle dealer of the same line-
13 make in the relevant market area, of the intention of the factory to
14 establish an additional new motor vehicle dealer or to relocate an
15 existing new motor vehicle dealer within or into the relevant market
16 area. For purposes of this section, the "relevant market area"
17 means the area within a radius of fifteen (15) miles ~~of~~ around the
18 site of the proposed new motor vehicle dealership measured from the
19 property boundary of primary dealership property. The notice shall
20 be sent by certified mail to each party and shall include the
21 following information:

22 1. The specific location at which the additional or relocated
23 new motor vehicle dealer will be established;

24

1 2. The date on or after which the additional or relocated new
2 motor vehicle dealer intends to commence business at the proposed
3 location;

4 3. The identity of all new motor vehicle dealers who are
5 franchised to sell the same line-make vehicles as the proposed new
6 motor vehicle dealer and who have licensed locations within the
7 relevant market area;

8 4. The names and addresses of the person intended to be
9 franchised as the proposed additional or relocated new motor vehicle
10 dealership, the principal investors in the proposed additional or
11 relocated new motor vehicle dealership, and the proposed dealer
12 operator of the proposed additional or relocated new motor vehicle
13 dealership; and

14 5. The specific grounds or reasons for the proposed
15 establishment of an additional new motor vehicle dealer or
16 relocation of an existing new motor vehicle dealer.

17 B. This section does not apply:

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

22 2. To a proposed additional new motor vehicle dealer which is
23 to be established at or within two (2) miles of a location at which
24 a former licensed new motor vehicle dealer for the same line-make of

1 new motor vehicle had ceased operating within the previous two (2)
2 years;

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

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

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

1 against the establishment or relocation of the same dealer, the
2 Commission shall consolidate the hearings to expedite disposition of
3 the matter.

4 D. The burden of proof to establish that good cause exists for
5 permitting the proposed establishment of a new motor vehicle dealer
6 or relocating an existing new motor vehicle dealership shall be on
7 the applicant who seeks to establish a new motor vehicle dealership
8 or the relocation of an existing new motor vehicle dealership.

9 SECTION 10. AMENDATORY 47 O.S. 2021, Section 580.2, is
10 amended to read as follows:

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

1 motor vehicle insurance policy of the new motor vehicle dealer
2 having secondary coverage for any death or injury of any human being
3 or for any real or personal property damage, including damage to the
4 loaned vehicle. The change in financial responsibility shall be
5 evidenced by a release signed by the person operating the vehicle
6 with the express or implied permission of the new motor vehicle
7 dealer with the release to be returned to the person upon the return
8 of the motor vehicle to the new motor vehicle dealer. The motor
9 vehicle liability policy of such person shall meet the minimum
10 financial responsibility requirements found in Section 7-324 of this
11 title.

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

15 SECTION 11. This act shall become effective November 1, 2023.

16 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE
17 February 27, 2023 - DO PASS AS AMENDED BY CS
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