

An Act

ENROLLED HOUSE
BILL NO. 2160

By: Dobrinski of the House

and

Coleman and Burns of the
Senate

An Act relating to motor vehicles; 47 O.S. 2021, Section 561, as amended by Section 1, Chapter 240, O.S.L. 2024 (47 O.S. Supp. 2024, Section 561), which relates to necessity for regulation; modifying legislative intent and findings; amending 47 O.S. 2021, Section 562, as last amended by Section 2, Chapter 240, O.S.L. 2024 (47 O.S. Supp. 2024, Section 562), which relates to definitions; modifying definitions; amending 47 O.S. 2021, Section 563, as last amended by Section 3, Chapter 240, O.S.L. 2024 (47 O.S. Supp. 2024, Section 563), which relates to the Oklahoma New Motor Vehicle Commission; requiring Commission to approve certain form; amending 47 O.S. 2021, Section 564, as last amended by Section 4, Chapter 240, O.S.L. 2024 (47 O.S. Supp. 2024, Section 564), which relates to licenses; requiring certain licensure for certain persons and entities; modifying requirements for certain applications; modifying certain schedule of license fees; requiring certain entities to specify location of facilities; requiring certain posting of license; requiring physical possession of certain license; amending 47 O.S. 2021, Section 564.2, as last amended by Section 6, Chapter 240, O.S.L. 2024 (47 O.S. Supp. 2024, Section 564.2), which relates to certificates of registration; modifying list of salesperson to obtain certificate of registration; amending 47 O.S. 2021, Section 565, as last amended by Section 7, Chapter 240, O.S.L. 2024 (47 O.S. Supp. 2024, Section 565), which relates to denial, revocation, or suspension of license; requiring salespersons be employed by licensed dealers; modifying requirements for certain right of first refusal; requiring certain notice; outlining

details and requirements for certain purchase; amending 47 O.S. 2021, Section 566, as last amended by Section 12, Chapter 240, O.S.L. 2024 (47 O.S. Supp. 2024, Section 566), which relates to denial, suspension, or revocation of license; authorizing the denial, suspension, revocation, or imposition of fine for certain registration; detailing certain procedures; amending 47 O.S. 2021, Section 578.1, as last amended by Section 15, Chapter 240, O.S.L. 2024 (47 O.S. Supp. 2024, Section 578.1), which relates to procedures for establishing or relocating new vehicle dealers; requiring certain measurement from nearest property boundary; updating statutory language; and providing an effective date.

SUBJECT: Motor vehicles

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

SECTION 1. AMENDATORY 47 O.S. 2021, Section 561, as amended by Section 1, Chapter 240, O.S.L. 2024 (47 O.S. Supp. 2024, Section 561), is amended to read as follows:

Section 561. The Legislature finds and declares that the distribution and sale of new motor vehicles and powersport vehicles in ~~the State of Oklahoma~~ this state vitally affects the general economy of the state and the public interest and the public welfare, and that in order to promote the public interest and the public welfare, and in the exercise of its police powers, it is necessary to regulate and to license motor vehicle manufacturers, factories, distributors, and their respective representatives, new motor vehicle dealers, and powersport vehicle dealers, and to register salespersons of new motor vehicles and powersport vehicles doing business in Oklahoma, in order to prevent frauds, impositions and other abuses upon its citizens and to protect and preserve the investments and properties of the citizens of this state, and in order to avoid undue control of the independent new motor vehicle dealer or powersport vehicle dealer by the new motor vehicle or powersport vehicle manufacturing and distributing organizations, and in order to foster and keep alive vigorous and healthy competition by prohibiting unfair practices by which fair and honest competition is destroyed or prevented, and to protect the public against the creation or perpetuation of monopolies and practices detrimental to

the public welfare, to prevent the practice of requiring the buying of special features, appliances and equipment not desired or requested by the purchaser, to prevent false and misleading advertising, to prevent unfair practices by new motor vehicle dealers ~~or~~, powersports vehicle dealers, manufacturers, factories, and distributing organizations, to promote the public safety and prevent disruption of the franchise or dealership system of distribution of new motor vehicles ~~or~~ and powersports vehicles to the public and prevent deterioration of facilities for servicing new motor vehicles or powersport vehicles and keeping the same safe and properly functioning, and prevent bankrupting of new motor vehicle dealers and powersport dealers, who might otherwise be caused to fail because of such unfair practices.

SECTION 2. AMENDATORY 47 O.S. 2021, Section 562, as last amended by Section 2, Chapter 240, O.S.L. 2024 (47 O.S. Supp. 2024, Section 562), is amended to read as follows:

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

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

- a. recreational vehicles, as defined in the Recreational Vehicle Franchise Act, or
- b. powersport vehicles;

2. "New motor vehicle dealer" means any person, firm, association, corporation, or trust not excluded by this paragraph who sells, offers for sale, advertises to sell, leases, or displays new motor vehicles and holds a bona fide contract or franchise in effect with a manufacturer or distributor authorized by the manufacturer to make predelivery preparation of such vehicles sold to purchasers and to perform post-sale work pursuant to the manufacturer's or distributor's warranty. As used herein, "authorized predelivery preparation" means the rendition by the dealer of services and safety adjustments on each new motor vehicle in accordance with the procedure and safety standards required by the manufacturer of the vehicle to be made before its delivery to

the purchaser. "Performance of authorized post-sale work pursuant to the warranty", as used herein, means the rendition of services which are required by the terms of the warranty that stands extended to the vehicle at the time of its sale and are to be made in accordance with the safety standards prescribed by the manufacturer. The term includes premises or facilities at which a person engages only in the repair of motor vehicles if repairs are performed pursuant to the terms of a franchise and motor vehicle manufacturer's warranty. For the purpose of Sections 561 through 567, 572, 578.1, 579, and 579.1 of this title, the terms new motor vehicle dealer and "new motor vehicle dealership" shall be synonymous. The term new motor vehicle dealer does not include:

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

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

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

5. "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, that manufactures or assembles new and unused motor vehicles or new and unused powersport vehicles or that engages in the fabrication or assembly of motorized vehicles of a type required to be registered in this state;

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

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

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

9. "Factory representative" means any officer ~~or~~, agent, employee, or person engaged as a representative of a manufacturer of motor vehicles or powersport vehicles or by a factory branch, for the purpose of making or promoting the sale of its motor vehicles or powersport vehicles, or for supervising or contacting its dealers or prospective dealers;

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

11. "Franchise" means any contract or agreement between a new motor vehicle dealer or a powersports vehicle dealer and a manufacturer of a new motor vehicle or powersports vehicle or its distributor or factory branch by which the new motor vehicle dealer or new powersports vehicle dealer is authorized to engage in the activities of a new motor vehicle dealer or new powersports vehicle dealer as defined by this section;

12. "New or unused motor vehicle" means a vehicle which is in the possession of the manufacturer or distributor or has been sold only to the holder of a valid franchise granted by the manufacturer

or distributor for the sale of that make of new vehicle so long as the manufacturer's statement of origin has not been assigned to anyone other than a licensed franchised new motor vehicle dealer of the same line-make;

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

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

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

16. "Product" means new motor vehicles and new motor vehicle parts or new powersports vehicle and new powersports vehicle parts;

17. "Service" means motor vehicle or powersports vehicle warranty repairs including both parts and labor;

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

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

20. "Factory" means a manufacturer, distributor, factory branch, distributor branch, factory representative, or distributor representative, which manufactures or distributes vehicle products, motor vehicles or powersports vehicles, or that maintains factory representatives;

21. "Powersports vehicle" means any new or unused motorcycles, scooters, mopeds, all-terrain vehicles, and utility vehicles required to be registered under the Oklahoma Vehicle License and Registration Act, with the exception of all-terrain vehicles,

utility vehicles, and motorcycles used exclusively for off-road use which are sold by a retail implement dealer;

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

23. "Retail implement dealer" means a business engaged primarily in the sale of farm tractors as defined in Section 1-118 of this title or implements of husbandry as defined in Section 1-125 of this title or a combination thereof and is exempt from licensing by the Commission for the sale of all-terrain vehicles, utility vehicles, and motorcycles used exclusively for off-road use;

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

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

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

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

SECTION 3. AMENDATORY 47 O.S. 2021, Section 563, as last amended by Section 3, Chapter 240, O.S.L. 2024 (47 O.S. Supp. 2024, Section 563), is amended to read as follows:

Section 563. A. There is hereby created the Oklahoma New Motor Vehicle Commission, to be composed of nine (9) members. Seven of the members shall have been engaged in the manufacture, distribution, or sale of new motor vehicles and two members shall be lay members, all to be appointed by the Governor of the State of Oklahoma, with the advice and consent of the Senate. Appointments shall be made within thirty (30) days after November 1, 1985. Each of the Commissioners thus appointed shall, at the time of the appointment, be a resident in good faith of this state, shall be of

good moral character, and each of the industry related Commissioners shall have been actually engaged in the manufacture, distribution, or sale of new motor vehicles, new powersport vehicles or new recreational vehicles for not less than ten (10) years preceding the appointment. The members of the Commission shall serve at the pleasure of the Governor.

B. 1. The Commissioners shall elect a chair from amongst them whose term shall be for one (1) year with the right to succeed himself or herself.

2. There shall be three at large members of the Commission. Six members of the Commission shall be appointed from the following geographical areas with at least one member from each area:

- a. four areas of the state shall be the northwest, northeast, southwest, and southeast sections designated by Interstate 35 dividing the state east and west and Interstate 40 dividing the state north and south, excluding Oklahoma County and Tulsa County, and
- b. two additional areas shall be Oklahoma County and Tulsa County.

There shall not be more than two members of the Commission from any one area.

C. The terms of office of the members first appointed to the Commission shall be as follows:

1. The members appointed from the northwest, northeast, and southwest areas shall serve until June 30, 1987;

2. The members appointed from the southeast area and Oklahoma County and Tulsa County shall serve until June 30, 1989; and

3. The members appointed at large shall serve until June 30, 1991.

Each member shall serve until a successor is appointed and qualifies. Thereafter, the term of office of each member of the Commission shall be for six (6) years. The term of office of any member will automatically expire if the member moves out of the geographical area from which the member was appointed. In event of

death, resignation, removal, or term automatically expiring of any person serving on the Commission, the vacancy shall be filled by appointment as provided for the unexpired portion of the term. The Commission shall meet at Oklahoma City and complete its organization immediately after the membership has been appointed and has qualified. The chair and each member of the Commission shall take and subscribe to the oath of office required of public officers.

D. The members of the Commission shall receive reimbursement for subsistence and traveling expenses necessarily incurred in the performance of their duties as provided by the State Travel Reimbursement Act.

E. The Commission shall appoint a qualified person to serve as Executive Director thereof, which person shall have had not less than ten (10) years of experience in the motor vehicle industry. The Executive Director shall be appointed for a term of six (6) years, and shall not be subject to dismissal or removal without cause. The Commission shall fix the salary and prescribe the duties of the Executive Director. The Executive Director shall devote such time as necessary to fulfill the duties thereof, and before entering upon such duties shall take and subscribe to the oath of office. The Executive Director may employ such clerical, technical, and other help and legal services and incur such expenses as may be necessary for the proper discharge of the duties of the Executive Director under Section 561 et seq. of this title. The Commission shall maintain its office and transact its business in Oklahoma City, and it is authorized to adopt and use a seal. The Executive Director is hereby authorized to hire, retain, or otherwise acquire the services of an attorney to represent the Commission in any and all state and federal courts, and assist the Commission in any and all business or legal matters that may come before it. The attorney so representing the Commission shall discharge the duties under the direction of the Executive Director.

F. The Commission is hereby vested with the powers necessary to enable it to fully and effectively carry out the provisions and objects of Section 561 et seq. of this title, and is hereby authorized and empowered to make and enforce all reasonable rules and to adopt and prescribe all forms necessary to accomplish such purpose. All forms used by a new motor vehicle dealer or powersports vehicle dealer to facilitate the delivery of a vehicle pending approval of financing shall be approved by the Commission. Spot delivery agreement forms shall be required for all new motor vehicle or powersport vehicle deliveries subject to dealers finding

lending institutions to purchase the retail or lease installment contracts executed by the purchasing and selling parties.

G. All fees, charges and fines collected under the provisions of Section 561 et seq. of this title shall be deposited by the Executive Director in the State Treasury in accordance with the depository laws of this state in a special fund to be known as the "Oklahoma New Motor Vehicle Commission Fund", which is hereby created, and except as hereinafter provided the monies in the fund shall be used by the Commission for the purpose of carrying out and enforcing the provisions of Section 561 et seq. of this title. Expenditures from the fund shall be made upon vouchers approved by the Commission or its authorized officers.

At the close of each fiscal year, the Commission shall file with the Governor and the State Auditor and Inspector a true and correct report of all fees, fines and charges collected and received by it during the preceding fiscal year and shall at the same time pay into the General Revenue Fund of the state a sum equal to ten percent (10%) of the fees, fines, and charges collected and received.

All expenses incurred by the Commission in carrying out the provisions of Section 561 et seq. of this title, including but not limited to per diem, wages, salaries, rent, postage, advertising, supplies, bond premiums, travel, and subsistence for the Commissioners, the Executive Director, employees, and legal counsel, and printing and utilities, shall be a proper charge against such fund, exclusive of the portion thereof to be paid into the General Revenue Fund as above set out. In no event shall liability ever accrue hereunder against this state in any sum whatsoever, or against the Oklahoma New Motor Vehicle Commission Fund, in excess of the ninety percent (90%) of the fees, fines, and charges deposited therein.

SECTION 4. AMENDATORY 47 O.S. 2021, Section 564, as last amended by Section 4, Chapter 240, O.S.L. 2024 (47 O.S. Supp. 2024, Section 564), is amended to read as follows:

Section 564. A. It shall be unlawful for any person, firm, association, corporation, or trust to engage in business as, or serve in the capacity of, or act as a new motor vehicle dealer, powersports vehicle dealer, or new motor vehicle manufacturer, or distributor ~~of new motor vehicles or powersports vehicles, or,~~ factory branch, distributor branch ~~or,~~ factory representative, or distributor representative, as defined in Section 562 of this title,

in this state without first obtaining a license therefor as provided for by law. Any person, firm, association, corporation, or trust engaging in more than one of such capacities or having more than one place where such business is carried on or conducted in this state shall be required to obtain and hold a current license for each thereof. Provided that, a new motor vehicle dealer's or powersports vehicle dealer's license shall authorize one person to sell ~~in the event~~ without the necessity of registering as a salesperson, so long as such person ~~shall be the~~ is an owner of a proprietorship the dealership, or the person designated as principal in the dealer's franchise or the managing officer or one partner if no principal person is named in the franchise. It is further provided that a factory or an entity affiliated by any ownership or control by the factory shall not be permitted to be licensed as a new motor vehicle dealer in this state, except as provided by subparagraph b of paragraph 12 of Section 565 of this title.

B. Applications for licenses required to be obtained under the provisions of Section 561 et seq. of this title shall be verified by the oath or affirmation of the applicant and shall be on forms prescribed by the Oklahoma New Motor Vehicle Commission and furnished to the applicants, and shall contain information as the Commission deems necessary to enable it to fully determine the qualifications and eligibility of the several applicants to receive the license or licenses applied for. The Commission shall require in such application, or otherwise, information relating to the applicant's current financial standing, the applicant's business integrity, the applicant's criminal convictions or criminal or civil court proceedings history, whether the applicant has an established place of business and is primarily engaged in the pursuit, avocation, or business for which a license, or licenses, are applied for, and whether the applicant is able to properly conduct the business for which a license, or licenses, are applied for, and such other pertinent information consistent with the safeguarding of the public interest and the public welfare. All applications for license or licenses shall be accompanied by the appropriate fee or fees therefor in accordance with the schedule thereof hereinafter set out. In the event any application is denied and the license applied for is not issued, the entire license fee shall be returned to the applicant. All licenses issued under the provisions of Section 561 et seq. of this title shall expire on June 30, following the date of issue and shall be nontransferable. All applications for renewal of a license for a new motor vehicle dealer, powersports vehicle dealer, manufacturer, distributor, factory branch, distributor branch, or manufacturer's or distributor's

representative shall be submitted by June 1 of each year, and such license or licenses will be issued by July 1. If applications have not been made for renewal of licenses at the times described in this subsection, it shall be illegal for any person to represent himself or herself and act as a dealer, manufacturer, distributor, or manufacturer's or distributor's representative. Service Oklahoma and licensed operators will be notified not to accept ~~such dealers' titles~~ manufacturers' statements or certificates of origin for unlicensed dealers until such time as their licenses have been issued by the Commission.

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

1. For each manufacturer, distributor, factory branch, or distributor branch of new motor vehicles or powersports vehicles, Four Hundred Dollars (\$400.00) initial fee with annual renewal fee of Three Hundred Dollars (\$300.00);

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

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

~~4.~~ 3. For each new motor vehicle dealer, ~~except powersports vehicle dealers~~, initial fee of Three Hundred Dollars (\$300.00) per franchise sold at each location licensed, with an annual renewal fee of One Hundred Dollars (\$100.00) per franchise sold at each location licensed per year; and

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

D. The licenses issued to each new motor vehicle dealer, new powersports vehicle dealer, manufacturer, distributor, factory branch, or distributor branch shall specify the location ~~of the factory, office, or branch~~ thereof. In case such location is changed, the Commission may endorse the change of location on the license without charge unless the change of address triggers a

relocation of a new motor vehicle dealer or new powersports vehicle dealer pursuant to the provisions of Section 578.1 of this title. The licenses ~~of each new vehicle dealer~~ shall be posted in a conspicuous place in the ~~dealer's~~ licensee's place or places of business.

Every ~~motor vehicle~~ representative of a factory ~~representative~~ or distributor ~~representative~~ shall physically possess the license when engaged in business and shall display such upon request. The name of the employer ~~of such factory representative or distributor representative~~ shall be stated on the representative's license.

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

SECTION 5. AMENDATORY 47 O.S. 2021, Section 564.2, as last amended by Section 6, Chapter 240, O.S.L. 2024 (47 O.S. Supp. 2024, Section 564.2), is amended to read as follows:

Section 564.2. It shall be punishable by an administrative fine not to exceed Five Hundred Dollars (\$500.00) for any person, resident, or nonresident to engage in business as, or serve in the capacity of, a new motor vehicle salesperson or powersports vehicle salesperson in this state without first obtaining a certificate of registration with the Oklahoma New Motor Vehicle Commission. The cost of registration for each new salesperson shall be set at Twenty-five Dollars (\$25.00) to be renewed annually. The cost of registration and any administrative fine is to be borne by the salesperson's employing entity ~~of the new salesperson~~. The Commission shall promulgate rules and procedures necessary for the implementation and creation of the registry and the issuance of certificates of registration.

SECTION 6. AMENDATORY 47 O.S. 2021, Section 565, as last amended by Section 7, Chapter 240, O.S.L. 2024 (47 O.S. Supp. 2024, Section 565), is amended to read as follows:

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

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

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

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

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

5. Being a new motor vehicle dealer or new powersports vehicle dealer who:

- a. has required a purchaser of a new motor vehicle or new powersports vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser and installed by the new motor vehicle dealer or new powersports vehicle dealer,
- b. uses any false or misleading advertising in connection with business as a new motor vehicle dealer or new powersports vehicle dealer,
- c. has committed any unlawful act which resulted in the revocation of any similar license in another state,
- d. has failed or refused to perform any written agreement with any retail buyer involving the sale of a motor vehicle or powersports vehicle,
- e. has been convicted of a felony crime that substantially relates to the occupation of a new motor vehicle dealer or new powersports vehicle dealer and poses a reasonable threat to public safety,
- f. has committed a fraudulent act in selling, purchasing, or otherwise dealing in new motor vehicles or new powersports vehicles or has misrepresented the terms

and conditions of a sale, purchase or contract for sale or purchase of a new motor vehicle or new powersports vehicle or any interest therein including an option to purchase such vehicle,

- g. has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license, or
- h. completes any sale or transaction of an extended service contract, extended maintenance plan, or similar product using contract forms that do not conspicuously disclose the identity of the service contract provider;

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

7. Being a new motor vehicle dealer or new powersports vehicle dealer who:

- a. does not have an established place of business,
- b. does not provide for a suitable repair shop separate from the display room with ample space to repair or recondition one or more vehicles at the same time, and which is staffed with properly trained and qualified repair technicians and is equipped with such parts, tools, and equipment as may be requisite for the servicing of motor vehicles in such a manner as to make them comply with the safety laws of this state and to properly fulfill the dealer's or manufacturer's warranty obligation,
- c. does not hold a franchise in effect with a manufacturer or distributor of new or unused vehicles for the sale of the same and is not authorized by the manufacturer or distributor to render predelivery preparation of such vehicles sold to purchasers and to perform any authorized post-sale work pursuant to the manufacturer's or distributor's warranty,
- d. employs or utilizes the services of used motor vehicle lots or dealers or other unlicensed persons or

unregistered persons in connection with the sale of new vehicles,

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

8. Being a factory that has:

- a. either induced or attempted to induce by means of coercion or intimidation, any new motor vehicle dealer or powersports vehicle dealer:
 - (1) to accept delivery of any vehicle or vehicles, parts, or accessories therefor, or any other commodities including advertising material which shall not have been ordered by the new motor vehicle dealer,
 - (2) to order or accept delivery of any motor vehicle or powersports vehicle with special features, appliances, accessories, or equipment not included in the list price of the vehicles as publicly advertised by the manufacturer thereof, or
 - (3) to order or accept delivery of any parts, accessories, equipment, machinery, tools, appliances, or any commodity whatsoever,
- b. induced under threat or discrimination by the withholding from delivery to a new motor vehicle dealer or new powersports vehicle dealer certain models of motor vehicles, changing or amending unilaterally the new motor vehicle dealer's allotment of motor vehicles, and/or withholding and delaying delivery of the vehicles out of the ordinary course of business, in order to induce by such coercion any new

motor vehicle dealer or new powersports vehicle dealer to participate or contribute to any local or national advertising fund controlled directly or indirectly by the factory or for any other purposes such as contest, "giveaways", or other so-called sales promotional devices, and/or change of quotas in any sales contest; or has required new motor vehicle dealers, as a condition to receiving their vehicle allotment, to order a certain percentage of the vehicles with optional equipment not specified by the dealer; however, nothing in this section shall prohibit a factory from supporting an advertising association which is open to all new motor vehicle dealers or new powersports vehicle dealers on the same basis,

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

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

- f. failed to provide reasonable compensation to a new motor vehicle dealer substantially equivalent to the actual cost of providing a manufacturer required loaner or rental vehicle to any consumer who is having a vehicle serviced at the dealership. For purposes of this paragraph, actual cost is the average cost in the new motor vehicle dealer's region for the rental of a substantially similar make and model as the vehicle being serviced, or
- g. failed to make available to its new motor vehicle dealers a fair and proportional share of all new vehicles distributed to same line-make dealers in this state, subject to the same reasonable terms, including any vehicles distributed from a common new vehicle inventory pool outside of the factory's ordinary allocation process such as any vehicles the factory reserves to distribute on a discretionary basis;

9. Being a factory that:

- a. has attempted to coerce or has coerced any new motor vehicle dealer or new powersports vehicle dealer to enter into any agreement or to cancel any agreement; has failed to act in good faith and in a fair, equitable, and nondiscriminatory manner; has directly or indirectly coerced, intimidated, threatened, or restrained any new motor vehicle dealer; has acted dishonestly; or has failed to act in accordance with the reasonable standards of fair dealing,
- b. has failed to compensate its dealers for the work and services they are required to perform in connection with the dealer's delivery and preparation obligations according to the agreements on file with the Commission which must be found by the Commission to be reasonable, or has failed to adequately and fairly compensate its dealers for labor, parts, and other expenses incurred by the dealer to perform under and

comply with manufacturer's warranty agreements and recall repairs which shall include diagnostic work as applicable and assistance requested by a consumer whose vehicle was subjected to an over-the-air or remote change, repair, or update to any part, system, accessory, or function by the manufacturer and performed by the dealer in order to satisfy the consumer. Time allowances for the diagnosis and performance of repair work shall be reasonable and adequate for the work to be performed. Adequate and fair compensation, which under this provision shall be no less than the rates customarily charged for retail consumer repairs as calculated herein, for parts and labor for warranty and recall repairs shall, at the option of the new motor vehicle dealer, be established by the new motor vehicle dealer submitting to the manufacturer or distributor one hundred sequential nonwarranty consumer-paid service repair orders which contain warranty-like repairs, or ninety (90) consecutive days of nonwarranty consumer-paid service repair orders which contain warranty-like repairs, whichever is less, covering repairs made no more than one hundred eighty (180) days before the submission and declaring the average percentage labor rate and/or markup rate. A motor vehicle dealer may not submit a request to establish its retail rates more than once in a twelve-month period. That request may establish a parts markup rate, labor rate, or both. The new motor vehicle dealer or new powersports vehicle dealer shall calculate its retail parts rate by determining the total charges for parts from the qualified repair orders submitted, dividing that amount by the new motor vehicle dealer's total cost of the purchase of those parts, subtracting one (1), and multiplying by one hundred (100) to produce a percentage. The new motor vehicle dealer or new powersports vehicle dealer shall calculate its retail labor rate by dividing the amount of the new vehicle dealer's total labor sales from the qualified repair orders by the total labor hours charged for those sales. When submitting repair orders to establish a retail parts and labor rate, a new motor vehicle dealer or new powersports vehicle dealer need not include repairs for:

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

A manufacturer or distributor may, not later than forty-five (45) days after submission, rebut that declared retail parts and labor rate in writing by reasonably substantiating that the rate is not accurate or is incomplete pursuant to the provisions of this section. If the manufacturer or distributor determines the set of repair orders submitted by the new motor vehicle dealer or new powersports vehicle dealer pursuant to this section for a retail labor rate or retail parts markup rate is substantially higher than the new vehicle dealer's current warranty rates, the manufacturer or distributor may request, in writing, within forty-five (45) days after the

manufacturer's or distributor's receipt of the new vehicle dealer's initial submission, all repair orders closed within the period of thirty (30) days immediately preceding, or thirty (30) days immediately following, the set of repair orders initially submitted by the new motor vehicle dealer. All time periods under this section shall be suspended until the supplemental repair orders are provided. If the manufacturer or distributor requests supplemental repair orders, the manufacturer or distributor may, within thirty (30) days after receiving the supplemental repair orders and in accordance with the formula described in this subsection, calculate a proposed adjusted retail labor rate or retail parts markup rate, as applicable, based upon any set of the qualified repair orders submitted by the franchisee and following the formula set forth herein to establish the rate. The retail labor and parts rates shall go into effect thirty (30) days following the approval by the manufacturer or distributor. If the declared rate is rebutted, the manufacturer or distributor shall provide written notice stating the reasons for the rebuttal, an explanation of the reasons for the rebuttal, and a copy of all calculations used by the franchisor in determining the manufacturer or distributor's position and propose an adjustment in writing of the average percentage markup or labor rate based on that rebuttal not later than forty-five (45) days after submission. If the new motor vehicle dealer or new powersports vehicle dealer does not agree with the proposed average percentage markup or labor rate, the new vehicle dealer may file a protest with the Commission not later than thirty (30) days after receipt of that proposal by the manufacturer or distributor. In the event a protest is filed, the manufacturer or distributor shall have the burden of proof to establish the new vehicle dealer's submitted parts markup rate or labor rate was inaccurate or not complete pursuant to the provisions of this section. A manufacturer or distributor may not retaliate against any new motor vehicle dealer or new powersports vehicle dealer seeking to exercise its rights under this section. A manufacturer or distributor may require a dealer to submit repair orders in accordance with this section in order to

validate the reasonableness of a dealer's retail rate for parts or labor not more often than once every twelve (12) months. A manufacturer or distributor may not otherwise recover its costs from new vehicle dealers within this state including a surcharge imposed on a new motor vehicle dealer solely intended to recover the cost of reimbursing a dealer for parts and labor pursuant to this section; provided, a manufacturer or distributor shall not be prohibited from increasing prices for vehicles or parts in the normal course of business or from auditing and charging back claims in accordance with this section. All claims made by dealers for compensation for delivery, preparation, warranty, or recall repair work shall be paid within thirty (30) days after approval and shall be approved or disapproved within thirty (30) days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. The dealer's delivery, preparation, and warranty obligations as filed with the Commission shall constitute the dealer's sole responsibility for product liability as between the dealer and manufacturer. A factory may reasonably and periodically audit a new motor vehicle dealer or new powersports vehicle dealer to determine the validity of paid claims for dealer compensation or any charge-backs for warranty parts or service compensation. Except in cases of suspected fraud, audits of warranty payments shall only be for the one-year period immediately following the date of the payment. A manufacturer shall reserve the right to reasonable, periodic audits to determine the validity of paid claims for dealer compensation or any charge-backs for consumer or dealer incentives. Except in cases of suspected fraud, audits of incentive payments shall only be for a one-year period immediately following the date of the payment. A factory shall not deny a claim or charge a new motor vehicle dealer back subsequent to the payment of the claim unless the factory can show that the claim was false or fraudulent or that the new motor vehicle dealer or new powersports vehicle dealer failed to reasonably substantiate the claim by the written reasonable procedures of the factory. A factory shall not deny a claim or implement a charge-back against a new vehicle

dealer after payment of a claim in the event a purchaser of a new vehicle that is the subject of a claim fails to comply with titling or registration laws of this state and is not prevented from compliance by any action of the dealer; provided, that the factory may require the dealer to provide, within thirty (30) days of notice of charge-back, withholding of payment, or denial of claim, the documentation to demonstrate the vehicle sale, delivery, and customer qualification for an incentive as reported, including consumer name and address and written attestation signed by the dealer operator or general manager stating the consumer was not on the export control list and the dealer did not know or have reason to know the vehicle was being exported or resold.

The factory shall provide written notice to a dealer of a proposed charge-back that is the result of an audit along with the specific audit results and proposed charge-back amount. A dealer that receives notice of a proposed charge-back pursuant to a factory's audit has the right to file a protest with the Commission within thirty (30) days after receipt of the notice of the charge-back or audit results, whichever is later. The factory is prohibited from implementing the charge-back or debiting the dealer's account until either the time frame for filing a protest has passed or a final adjudication is rendered by the Commission, whichever is later, unless the dealer has agreed to the charge-back or charge-backs,

- c. fails to compensate the new motor vehicle dealer for a used motor vehicle:
 - (1) that is of the same make and model manufactured, imported, or distributed by the factory and is a line-make that the new motor vehicle dealer is franchised to sell or on which the new motor vehicle dealer is authorized to perform recall repairs,
 - (2) that is subject to a stop-sale or do-not-drive order issued by the factory or an authorized governmental agency,

- (3) that is held by the new motor vehicle dealer in the dealer's inventory at the time the stop-sale or do-not-drive order is issued or that is taken by the new motor vehicle dealer into the dealer's inventory after the recall notice as a result of a retail consumer trade-in or a lease return to the dealer inventory in accordance with an applicable lease contract,
- (4) that cannot be repaired due to the unavailability, within thirty (30) days after issuance of the stop-sale or do-not-drive order, of a remedy or parts necessary for the new motor vehicle dealer to make the recall repair, and
- (5) that is not at least in the prorated amount of one percent (1.00%) of the value of the vehicle per month beginning on the date that is thirty (30) days after the date on which the stop-sale order was provided to the new motor vehicle dealer until the earlier of either of the following:
 - (a) the date the recall remedy or parts are made available, or
 - (b) the date the new motor vehicle dealer sells, trades, or otherwise disposes of the affected used motor vehicle.

For the purposes of division (5) of this subparagraph, the value of a used vehicle shall be the average Black Book value for the year, make, and model of the recalled vehicle. A factory may direct the manner and method in which a new motor vehicle dealer must demonstrate the inventory status of an affected used motor vehicle to determine eligibility under this subparagraph; provided, that the manner and method may not be unduly burdensome and may not require information that is unduly burdensome to provide. All reimbursement claims made by new motor vehicle dealers pursuant to this section for recall remedies or repairs, or for compensation where no part or repair is reasonably available and the vehicle is subject to a stop-sale or do-not-drive order, shall be subject to

the same limitations and requirements as a warranty reimbursement claim made under subparagraph b of this paragraph. In the alternative, a manufacturer may compensate its franchised new motor vehicle dealers under a national recall compensation program; provided, the compensation under the program is equal to or greater than that provided under division (5) of this subparagraph, or as the manufacturer and new motor vehicle dealer otherwise agree. Nothing in this section shall require a factory to provide total compensation to a new motor vehicle dealer which would exceed the total average Black Book value of the affected used motor vehicle as originally determined under division (5) of this subparagraph. Any remedy provided to a new motor vehicle dealer under this subparagraph is exclusive and may not be combined with any other state or federal compensation remedy,

- d. unreasonably fails or refuses to offer to its same line-make franchised dealers a reasonable supply and mix of all models manufactured for that line-make, or unreasonably requires a dealer to pay any extra fee, purchase unreasonable advertising displays or other materials, or enter into a separate agreement which adversely alters the rights or obligations contained within the dealer's existing franchise agreement or which waives any right of the new motor vehicle dealer or new powersports vehicle dealer as protected by Section 561 et seq. of this title, or remodel, renovate, or recondition the dealer's existing facilities as a prerequisite to receiving a model or series of vehicles, except as may be necessary to sell or service the model or series of vehicles as provided by subparagraph e of this paragraph. It shall be a violation of this section for new vehicle allocation to be withheld subject to any requirement to purchase or sell any number of used or off-lease vehicles. The failure to deliver any such new motor vehicle shall not be considered a violation of the section if the failure is not arbitrary or is due to lack of manufacturing capacity or to a strike or labor difficulty, a shortage of materials, a freight embargo, or other cause over which the manufacturer has no control. However, this subparagraph shall not apply to limited production model vehicles, a vehicle

not advertised by the factory for sale in this state, vehicles that are subject to allocation affected by federal environmental laws or environmental laws of this state, or vehicles allocated in response to an unforeseen event or circumstance,

- e. except as necessary to comply with a health or safety law, or to comply with a technology requirement which is necessary to sell or service a vehicle that the franchised new motor vehicle dealer or new powersports vehicle dealer is authorized or licensed by the franchisor to sell or service, requires a dealer to construct a new facility or substantially renovate the dealer's existing facility unless the facility construction or renovation is justified by the economic conditions existing at the time, as well as the reasonably foreseeable projections, in the new motor vehicle dealer's market and in the automotive industry. However, this subparagraph shall not apply if the new motor vehicle dealer or new powersports vehicle dealer voluntarily agrees to facility construction or renovation in exchange for money, credit, allowance, reimbursement, or additional vehicle allocation to a dealer from the factory to compensate the dealer for the cost of, or a portion of the cost of, the facility construction or renovation. Except as necessary to comply with a health or safety law, or to comply with a technology or safety requirement which is necessary to sell or service a motor vehicle or powersports vehicle that the franchised dealer is authorized or licensed by the franchisor to sell or service, a new vehicle dealer which completes a facility construction or renovation pursuant to factory requirements shall not be required to construct a new facility or renovate the existing facility if the same area of the facility or premises has been constructed or substantially altered within the last ten (10) years and the construction or alteration was approved by the manufacturer as a part of a facility upgrade program, standard, or policy. For purposes of this subparagraph, "substantially altered" means to perform an alteration that substantially impacts the architectural features, characteristics, or integrity of a structure or lot. The term shall not include routine maintenance

reasonably necessary to maintain a dealership in attractive condition. If a facility upgrade program, standard, or policy under which the dealer completed a facility construction or substantial alteration does not contain a specific time period during which the manufacturer or distributor shall provide payments or benefits to a participating dealer, or the time frame specified under the program is reduced or canceled prematurely in the unilateral discretion of the manufacturer or distributor, the manufacturer or distributor shall not deny the participating dealer any payment or benefit under the terms of the program, standard, or policy as it existed when the dealer began to perform under the program, standard, or policy for the balance of the ten-year period, regardless of whether the manufacturer's or distributor's program, standard, or policy has been changed or canceled, unless the manufacturer and dealer agree, in writing, to the change in payment or benefit,

- f. requires a new motor vehicle dealer or new powersports vehicle dealer to establish an exclusive facility, unless supported by reasonable business, market, and economic considerations; provided, that this section shall not restrict the terms of any agreement for such exclusive facility voluntarily entered into and supported by valuable consideration separate from the new motor vehicle dealer's right to sell and service motor vehicles for the franchisor,
- g. requires a new motor vehicle dealer or new powersports vehicle dealer to enter into a site-control agreement covering any or all of the new motor vehicle dealer's facilities or premises; provided, that this section shall not restrict the terms of any site-control agreement voluntarily entered into and supported by valuable consideration separate from the new motor vehicle dealer's right to sell and service motor vehicles for the franchisor. Notwithstanding the foregoing or the terms of any site-control agreement, a site-control agreement automatically extinguishes if all of the factory's franchises that operated from the location that are the subject of the site-control

agreement are terminated by the factory as part of the discontinuance of a product line,

- h. refuses to pay, or claims reimbursement from, a new motor vehicle dealer or new powersports vehicle dealer for sales, incentives, or other payments related to a vehicle sold by the dealer because the purchaser of the new vehicle exported or resold the vehicle in violation of the policy of the factory unless the factory can show that, at the time of the sale, the new vehicle dealer knew or reasonably should have known of the purchaser's intention to export or resell the vehicle. There is a rebuttable presumption that the new vehicle dealer did not know or could not have known that the vehicle would be exported if the vehicle is titled and registered in any state of the United States, or
- i. requires a new motor vehicle dealer or new powersports vehicle dealer to purchase goods or services for the construction, renovation, or improvement of the new dealer's facility from a vendor chosen by the factory if goods or services available from other sources are of substantially similar quality and design and comply with all applicable laws; provided, however, that such goods are not subject to the factory's intellectual property or trademark rights and the new vehicle dealer has received the factory's approval, which approval may not be unreasonably withheld. Nothing in this subparagraph may be construed to allow a new motor vehicle dealer or new powersports vehicle dealer to impair or eliminate a factory's intellectual property, trademark rights, or trade dress usage guidelines. Nothing in this section prohibits the enforcement of a voluntary agreement between the factory and the new vehicle dealer where separate and valuable consideration has been offered and accepted;

10. Being a factory that:

- a. establishes a system of motor vehicle allocation or distribution which is unfair, inequitable, or unreasonably discriminatory. Upon the request of any new motor vehicle dealer or new powersports vehicle dealer franchised by it, a factory shall disclose in

writing to the dealer the basis upon which new vehicles are allocated, scheduled, and delivered among the new motor vehicle dealers of the same line-make for that factory, or

- b. changes an established plan or system of new motor vehicle or new powersports vehicle distribution. A new motor vehicle dealer or new powersports vehicle dealer franchise agreement shall continue in full force and operation notwithstanding a change, in whole or in part, of an established plan or system of distribution of the motor vehicles or new powersports vehicles offered or previously offered for sale under the franchise agreement. The appointment of a new importer or distributor for motor vehicles or new powersports vehicle offered for sale under the franchise agreement shall be deemed to be a change of an established plan or system of distribution. The discontinuation of a line-make shall not be deemed to be a change of an established plan or system of motor vehicle or new powersports vehicle distribution. The creation of a line-make shall not be deemed to be a change of an established plan or system of motor vehicle distribution as long as the new line-make is not selling the same, or substantially the same vehicle or vehicles previously sold through another line-make by new motor vehicle dealers or new powersports vehicle dealers with an active franchise agreement for the other line-make in the state if such dealers are no longer authorized to sell the comparable vehicle previously sold through their line-make. Changing a vehicle's powertrain is not sufficient to show it is substantially different. Upon the occurrence of such change, the manufacturer or distributor shall be prohibited from obtaining a license to distribute vehicles under the new plan or system of distribution unless the manufacturer or distributor offers to each vehicle dealer who is a party to the franchise agreement a new franchise agreement containing substantially the same provisions which were contained in the previous franchise agreement;

11. Being a factory that sells directly or indirectly new motor vehicles or new powersports vehicles to any retail consumer in the

state except through a new motor vehicle dealer or new powersports vehicle dealer holding a franchise for the line-make that includes the new motor vehicle or new powersports vehicle. This paragraph does not apply to factory sales of new vehicles to its employees, family members of employees, retirees and family members of retirees, not-for-profit organizations, or the federal, state, or local governments. The provisions of this paragraph shall not preclude a factory from providing information to a consumer for the purpose of marketing or facilitating a sale of a new vehicle or from establishing a program to sell or offer to sell new motor vehicles or new powersports vehicle through participating dealers subject to the limitations provided in paragraph 2 of Section 562 of this title;

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

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

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

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

- (3) This paragraph does not prohibit a factory from owning, operating, or controlling or acting in the capacity of a new motor vehicle dealer or new powersports vehicle dealer which was in operation prior to January 1, 2000.
- (4) This paragraph does not prohibit a factory from owning, directly or indirectly, a minority interest in an entity that owns, operates, or controls motor vehicle dealerships or powersports vehicle dealerships of the same line-make franchised by the manufacturer, provided that each of the following conditions are met:
 - (a) all of the new motor vehicle or new powersports vehicle dealerships selling the vehicles of that manufacturer in this state trade exclusively in the line-make of that manufacturer,
 - (b) all of the franchise agreements of the manufacturer confer rights on the dealer of the line-make to develop and operate, within a defined geographic territory or area, as many dealership facilities as the dealer and manufacturer shall agree are appropriate,
 - (c) at the time the manufacturer first acquires an ownership interest or assumes operation, the distance between any dealership thus owned or operated and the nearest unaffiliated new motor vehicle or new powersports vehicle dealership trading in

the same line-make is not less than seventy (70) miles,

- (d) during any period in which the manufacturer has such an ownership interest, the manufacturer has no more than three franchise agreements with new motor vehicle dealers or new powersports vehicle dealers licensed by the Oklahoma New Motor Vehicle Commission to do business within the state, and
- (e) prior to January 1, 2000, the factory shall have furnished or made available to prospective new vehicle dealers an offering circular in accordance with the Trade Regulation Rule on Franchising of the Federal Trade Commission, and any guidelines and exemptions issued thereunder, which disclose the possibility that the factory may from time to time seek to own or acquire, directly or indirectly, ownership interests in retail dealerships;

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

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

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

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

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

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

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

18. Being a factory that increases prices of new motor vehicles or new powersports vehicles which the dealer had ordered for retail consumers and notified the factory prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a retail consumer accompanied with proof of order submission to the factory shall constitute evidence of each such order, provided that the vehicle is in fact delivered to the consumer. Price differences applicable to new models or series motor vehicles at the time of the introduction of new models or

series shall not be considered a price increase for purposes of this paragraph. Price changes caused by any of the following shall not be subject to the provisions of this paragraph:

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

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

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

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

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

B. Notwithstanding the terms of any franchise agreement, in the event of a proposed sale or transfer of a new motor vehicle

dealership, the manufacturer or distributor shall be permitted to exercise a right of first refusal to acquire the assets or ownership interest of the dealer of the new motor vehicle ~~or new powersports vehicle~~ dealership, if such sale or transfer is conditioned upon the manufacturer or dealer entering into a dealer agreement with the proposed new owner or transferee, only if all the following requirements are met:

1. ~~To exercise its right of first refusal, the factory~~ The manufacturer or distributor must notify the new motor vehicle dealer ~~or new powersports vehicle dealer~~ of its intent to exercise the right of first refusal in writing within sixty (60) days of receipt of the completed proposal for the proposed sale or transfer;

2. The exercise of the right of first refusal will result in the new motor vehicle dealer ~~or new powersports vehicle dealer~~ and the owner of the dealership receiving the same or greater consideration as they have contracted to receive in connection with the proposed change of ownership or transfer. If the proposed new motor vehicle dealership sale or transfer includes the sale, transfer, or lease of the real property and improvements thereon, then the right of first refusal shall include the same terms for the purchase or lease of the real property and all improvements thereon for not less than the consideration the new motor vehicle dealer has contracted to receive in connection with the proposed sale or transfer;

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

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

5. a. For the purposes of this paragraph, "multi-dealership transaction" means any proposed sale, transfer, or assignment that involves two or more new motor vehicle dealerships that are being sold as part of the same overall transaction or a series of related transactions intended by the parties to constitute a single deal.
- b. In a multi-dealership transaction, the selling dealer may withdraw the proposed sale, transfer, or assignment of the dealership that is subject to the manufacturer's or distributor's right of first refusal in response to the manufacturer's or distributor's timely received notice of intent to exercise the right of first refusal as follows:
- (1) the selling dealer shall provide written notice to the manufacturer or distributor within thirty (30) days of receipt of the manufacturer's or distributor's timely received notice of intent to exercise the right of first refusal, stating that either:
- (a) the entire multi-dealership transaction has been withdrawn, or
- (b) the specific dealership subject to the timely received notice of manufacturer's or distributor's intent to exercise the right of first refusal has been excluded from the multi-dealership transaction,
- (2) upon the manufacturer's or distributor's receipt of the selling dealer's withdrawal notice under division (1) of this subparagraph, the proposed sale, transfer, or assignment of the dealership subject to the manufacturer's or distributor's timely received notice of intent to exercise the right of first refusal shall be deemed withdrawn, and the manufacturer's or distributor's right of first refusal with respect to that dealership shall be deemed extinguished, and

- (3) if the selling dealer does not provide the withdrawal notice within the thirty-day period, the manufacturer or distributor may proceed with exercising the right of first refusal.

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

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

- a. any motor vehicle or powersports vehicle sold by that person is limited to used motor vehicles or powersports vehicles that have been previously used exclusively and regularly by that person in the conduct of business and used motor vehicles or used powersports vehicles traded in on motor vehicles or powersports vehicles sold by that person,
- b. warranty repairs performed by that person on motor vehicles or powersports vehicles are limited to those vehicles that the person owns, previously owned, or takes in trade, and
- c. motor vehicle or powersports vehicle financing provided by that person to retail consumers for motor vehicles or powersports vehicles is limited to used vehicles sold by that person in the conduct of business; or

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

D. As used in this section:

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

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

E. Nothing in this section shall prohibit a manufacturer or distributor from requiring a dealer to be in compliance with the franchise agreement and authorized to sell a make and model based on applicable reasonable standards and requirements that include but are not limited to any facility, technology, or training requirements necessary to sell or service a vehicle, in order to be eligible for delivery or allotment of a make or model of a new motor vehicle or new powersports vehicle or an incentive.

SECTION 7. AMENDATORY 47 O.S. 2021, Section 566, as last amended by Section 12, Chapter 240, O.S.L. 2024 (47 O.S. Supp. 2024, Section 566), is amended to read as follows:

Section 566. The Oklahoma New Motor Vehicle Commission may deny any application for license or registration, or suspend or revoke a license or registration issued or impose a fine, only after a hearing of which the applicant, registrant, or licensee affected, shall be given at least ten (10) days' written notice specifying the reason for denying the applicant a license or registration, or, in the case of a revocation or suspension or imposition of a fine, the offenses of which the licensee or registrant is charged. The notices may be served as provided by law for the service of notices, or mailing a copy by certified mail to the last-known residence or business address of the applicant, registrant, or licensee. The hearing on the charges shall be at such time and place as the Commission may prescribe and the aforementioned notice shall further specify the time and place. If the applicant, registrant, or licensee is a salesperson, or factory ~~representative~~, or distributor representative, the Commission shall in like manner also notify the person, firm, association, corporation, or trust with whom he or she is associated, or in whose association he or she is about to enter. The Commission shall have the power to compel the production of all records, papers, and other documents which may be deemed relevant to the proceeding bearing upon the complaints. The Commission shall have the power to subpoena and bring before it any person, or take testimony of any such person by deposition, with the same fees and mileage and in the same manner as prescribed in proceedings before courts of the state in civil cases. Any party to the hearing shall have the right to the attendance of witnesses on his or her behalf

upon designating to the Commission the person or persons sought to be subpoenaed.

SECTION 8. AMENDATORY 47 O.S. 2021, Section 578.1, as last amended by Section 15, Chapter 240, O.S.L. 2024 (47 O.S. Supp. 2024, Section 578.1), is amended to read as follows:

Section 578.1. A. Notwithstanding the terms of a franchise and notwithstanding the terms of a waiver, if a factory intends or proposes to enter into a franchise to establish an additional new motor vehicle or powersports vehicle dealer or to relocate an existing new motor vehicle or powersports vehicle dealer within or into a relevant market area in which the same line-make of motor vehicle is currently represented, the factory shall provide at least sixty (60) days advance written notice to the Commission and to each new motor vehicle or powersports vehicle dealer of the same line-make in the relevant market area, of the intention of the factory to establish an additional dealer or to relocate an existing dealer within or into the relevant market area. For purposes of this section, any mileage distance shall be measured on a straight line from the nearest property boundary points for the dealership properties at issue. Further, for purposes of this section, the "relevant market area" means the area within a radius of fifteen (15) miles around the site of the proposed new motor vehicle or powersports vehicle dealership measured from the property boundary of primary dealership property. The notice shall be sent by certified mail to each party and shall include the following information:

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

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

B. The notification requirements prescribed in subsection A of this section shall not apply if:

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

2. A proposed additional dealer which is to be established at or within two (2) miles of a location at which a former licensed dealer for the same line-make of vehicle had ceased operating within the previous two (2) years;

3. The relocation of an existing dealer is within two (2) miles of the existing site of the dealership; or

4. The proposed site for the relocation of an existing dealer is farther away from all other dealers of the same line-make in that relevant market area.

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

D. The burden of proof to establish that good cause exists for permitting the proposed establishment of a new motor vehicle or new

powersports vehicle dealer or relocating an existing dealership shall be on the applicant who seeks to establish a dealership or the relocation of an existing dealership.

SECTION 9. This act shall become effective November 1, 2025.

Passed the House of Representatives the 21st day of May, 2025.

Presiding Officer of the House
of Representatives

Passed the Senate the 8th day of May, 2025.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____