

Oklahoma Motor Vehicle Commission Laws

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Oklahoma Motor Vehicle Commission Laws

Oklahoma Statutes Title 47 - Motor Vehicles

Section 561 Necessity for Regulation - Legislative Finding

The Legislature finds and declares that the distribution and sale of new motor vehicles in the State of Oklahoma 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, distributors, representatives, new motor vehicle dealers and salespersons of new motor 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 motor vehicle dealer by the motor 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 motor vehicle dealers, manufacturers and distributing organizations, to promote the public safety and prevent disruption of the franchise system of distribution of motor vehicles to the public and prevent deterioration of facilities for servicing motor vehicles and keeping same safe and properly functioning, and prevent bankrupting of motor vehicle dealers, who might otherwise be caused to fail because of such unfair practices.

Section 562 Definitions

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

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"** means any person 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 as an employee for any new motor 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 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 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 for the sale of motor vehicles to distributors, or for the sale of motor vehicles to new motor 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 engaged as a representative of a manufacturer of motor vehicles or by a factory branch, for the purpose of making or promoting the sale of its motor 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 employee thereof engaged as a representative of a distributor or distributor branch of motor vehicles, for the purpose of making or promoting the sale of its motor vehicles, or for supervising or contacting its dealers or prospective dealers;
11. **"Franchise"** means any contract or agreement between a new motor vehicle dealer and a manufacturer of a new motor vehicle or its distributor or factory branch by which the new motor vehicle dealer is authorized to engage in the activities of a new motor 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 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 is held responsible for the promotion and development of sales and rendering of service for the make of motor vehicle for which the new motor 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 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;
17. **"Service"** means motor 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;
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.
21. **"Powersports vehicle"** means motorcycles, scooters, mopeds, all-terrain vehicles, and utility vehicles;
22. **"Powersports vehicle dealer"** means any person, firm, or corporation 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.
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 563

Oklahoma New Motor Vehicle Commission

- 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; and each 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 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 his 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 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 deliveries subject to dealers finding lending institutions to purchase the retail 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 this 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 the State of Oklahoma 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 564 Licenses

- 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 dealer, or 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 shall be required to obtain and hold a current license for each thereof. Provided that, a new motor vehicle dealer's license shall authorize one person to sell in the event such person shall be the owner of a proprietorship, 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 or 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 financial standing, the applicant's business integrity, 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 dealer, manufacturer, distributor, 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. Motor license agents will be notified not to accept such dealers' titles until such time as 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 factory branch or distributor branch, 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, 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. 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 per year;
 5. 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; and

- D. The licenses issued to each new motor vehicle dealer, powersports dealer, manufacturer, distributor, factory branch, distributor branch, or representative, if a corporation, 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 pursuant to the provisions of Section 578.1 of this title. The license of each new motor vehicle dealer shall be posted in a conspicuous place in the new motor vehicle dealer's place or places of business.

Every motor vehicle factory representative or distributor representative if an individual 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 license and, in case of a change of employer, the holder of such license shall immediately mail such to the Commission for its endorsement of such change. The Commission shall endorse each such change of employer on licenses for a fee of Ten Dollars (\$10.00).

- E. The powersports 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 564.1 Off-Premises Displays

- A. The Oklahoma New Motor Vehicle Commission shall provide for off-premises displays of new motor vehicles by currently licensed new motor vehicle dealers. An off-premises event may be held for display purposes only under the following conditions:
1. The motor vehicles are for display purposes only and not for sale at the off-premises display event;
 2. No selling activities shall be conducted;
 3. The display is in the dealer's factory-approved area of sales and service responsibility;
 4. The dealer must obtain written approval from the manufacturer or distributor; and
 5. The dealer is responsible to obtain approval for the display location from the sponsoring entity.
- B. The Oklahoma New Motor Vehicle Commission is authorized to provide a variance to the distance requirements specified in this section for any off-premises display event if the off-premise display or sale is conducted within municipal, county, or state-owned or controlled facilities or within the grounds of any county, district, or state fair.

Section 564.2 Failure to Obtain Certificate of Registration - Fine

It shall be punishable by an administrative fine not to exceed Five Hundred Dollars (\$500.00) for any person, firm, association, corporation, or trust to engage in business as, or serve in the capacity of, a new motor 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 is to be borne by the 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 564.3 Dealership Management System Provider – Authorized Integrator

A. As used in this section:

1. **“Access fee”** means a requirement to pay money for access to protected dealer data;
2. **“Authorized integrator”** means a person who a dealer has a contractual relationship with or the dealer otherwise gives express written authorization to have access to protected dealer data stored on a dealer data system or to write protected dealer data to the dealer data system for the purpose of performing a specific function for the dealer;
3. **“Dealer data system”** means software, hardware, or firmware that a dealer leases or rents from a dealer management system provider for the purpose of storing protected dealer data;
4. **“Dealer management system provider”** means a person who, for compensation, maintains and provides access to a dealer data system in which a dealer stores protected dealer data;
5. **“Protected dealer data”** means:
 - a. consumer data that a dealer generated or that the consumer provided to the dealer that is not otherwise publicly available and the consumer has not otherwise provided consent or acknowledgment to share the information, and
 - b. any other dealer data in connection with the dealer’s daily business operations in which a dealer has rights in a dealer data system; and
6. **Authorized integrator** and **Dealer management system provider** do not include:
 - a. a manufacturer, distributor, importer, or any entity that is a subsidiary or affiliate of, or acts on behalf of, a manufacturer, distributor, or importer, or
 - b. a governmental body or other person that is acting in accordance with federal, state, or local law, or a valid court order.

B. A dealer management system provider may:

1. Condition access and ability of a dealer or authorized integrator to receive, share, copy, use, write, or transmit protected dealer data from or to a dealer data system on the dealer's or authorized integrator's compliance with security standards;
2. Require an authorized integrator to have express written authorization from a dealer before allowing the authorized integrator to gain access to, receive, share, copy, use, or transmit protected dealer data; and
3. Deny access to a dealer data system to a dealer if the dealer fails to pay an amount due to the dealer management system provider under a lease, contract, or other agreement concerning the dealer's access to or use of the dealer data system.

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

1. Imposing an access fee on a dealer or authorized integrator; and
2. Restricting a dealer or an authorized integrator from sharing protected dealer data or writing data or having access to a dealer data system. Prohibited restrictions pursuant to this paragraph include, but are not limited to:
 - a. limits on the scope or nature of protected dealer data to which a dealer or authorized integrator has access or may share or write to a dealer data system, and
 - b. a requirement for a dealer or authorized integrator to provide sensitive or confidential business information or information that a dealer or authorized integrator uses for competitive purposes in return for access to protected dealer data or an authorization to share or write protected dealer data to a dealer data system.

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

E. An authorized integrator shall:

1. Obtain express written authorization from a dealer before gaining access to, receiving, sharing, copying, using, writing, or transmitting protected dealer data;
2. Comply with security standards in gaining access to, receiving, sharing, copying, using, writing, or transmitting protected dealer data; and

3. Allow a dealer to withdraw, revoke, or amend any express written authorization the dealer provides under paragraph 1 of this subsection:
 - a. at the sole discretion of the dealer, if the dealer gives a thirty-day prior notice to an authorized integrator, or
 - b. immediately, for good cause.
- F. 1. This section does not prevent a dealer, a dealer management system provider, or an authorized integrator from discharging the obligations of a dealer, dealer management system provider, or of an authorized integrator under federal, state, or local law to secure and prevent unauthorized access to protected dealer data, or from limiting the scope of the obligations, in accordance with federal, state, or local law.
2. A dealer management system provider is not liable for any action that a dealer takes directly with respect to securing or preventing unauthorized access to protected dealer data, or for actions that an authorized integrator takes in appropriately following the written instructions of the dealer for securing or preventing unauthorized access to protected dealer data, to the extent that the actions prevent the dealer management system provider from meeting a legal obligation to secure or prevent unauthorized access to protected dealer data.
 3. A dealer is not liable for any action that an authorized integrator takes directly with respect to securing or preventing unauthorized access to protected dealer data, or for actions that the authorized integrator takes in appropriately following the written instructions of the dealer for securing or preventing unauthorized access to protected dealer data, to the extent that the actions prevent the dealer from meeting a legal obligation to secure or prevent unauthorized access to protected dealer data.
 4. An authorized integrator is not liable for any action that a dealer takes directly with respect to securing or preventing unauthorized access to protected dealer data, or for actions that the dealer takes in appropriately following the written instructions of the authorized integrator for securing or preventing unauthorized access to protected dealer data, to the extent that the actions prevent the authorized integrator from meeting a legal obligation to secure or prevent unauthorized access to protected dealer data.
 5. A manufacturer, distributor, importer, or any entity that is a subsidiary or affiliate of, or acts on behalf of, a manufacturer, distributor, or importer is not liable for any action that a dealer, dealer management system provider, authorized integrator, or other third party, except for a third party who the manufacturer has provided the data to as provided for in paragraph 7 of this subsection, takes directly with respect to securing or preventing unauthorized access to protected dealer data or for actions that an authorized integrator, dealer management system provider, or other third party takes in appropriately following the written instructions of the dealer for securing or preventing unauthorized access to protected dealer data.
 6. Notwithstanding any other agreement, an authorized integrator shall indemnify and hold the new motor vehicle dealer harmless from any third-party claims asserted against or damages incurred by the new motor vehicle dealer to the extent caused by access to, use of, or disclosure of consumer data in violation of this section.

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

Section 565

Application for License - Denial, Revocation, Suspension and Penalties

- 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 who:
 - a. has required a purchaser of a new motor vehicle or 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,
 - b. uses any false or misleading advertising in connection with business as a new motor 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,

- e. has been convicted of a felony crime that substantially relates to the occupation of a new motor 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 has misrepresented the terms and conditions of a sale, purchase or contract for sale or purchase of a new motor vehicle or any interest therein including an option to purchase such vehicle, or
 - 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;
7. Being a new motor 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 motor 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 in connection with the sale of new motor vehicles,
 - e. does not properly service a new motor 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:
 - (1) to accept delivery of any motor 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 with special features, appliances, accessories or equipment not included in the list price of the motor 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 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 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 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 under the terms of 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 material data and facts presented by the dealer 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 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 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 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 customer-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 new 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 shall calculate its retail parts rate by determining the total charges for parts from the qualified repair orders submitted, dividing that amount by the new motor vehicle dealer's total cost of the purchase of those parts, subtracting one (1), and multiplying by one hundred (100) to produce a percentage. The new motor vehicle dealer shall calculate its retail labor rate by dividing the amount of the new motor vehicle dealer's total labor sales from the qualified repair orders by the total labor hours charged for those sales. When submitting repair orders to establish a retail parts and labor rate, a new motor 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 motor vehicles owned by the new motor vehicle dealer or employee thereof at the time of the repair,
- (9) vehicle reconditioning, or
- (10) items that do not have individual parts 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 pursuant to this section for a retail labor rate or retail parts markup rate is substantially higher than the new motor 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 motor 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 does not agree with the proposed average percentage markup or labor rate, the new motor 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 motor 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 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 motor vehicle dealers within this state including a surcharge imposed on a new motor vehicle dealer solely intended to recover the cost of reimbursing a new motor vehicle 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 to determine the validity of paid claims for new motor vehicle 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 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 motor 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 new motor vehicle dealer, provided, that the factory may require the new motor vehicle 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 the 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 (30) days after issuance of the stop-sale or do-not-drive order, of a remedy or parts necessary to for the new motor vehicle dealer to make a 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 new motor vehicle dealer's existing franchise agreement or which waives any right of the new motor vehicle dealer as protected by Section 561 et. seq. of this title, or remodel, renovate, or recondition the new motor vehicle 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 recreational vehicles, 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 motor vehicle that the franchised new motor vehicle dealer is authorized or licensed by the franchisor to sell or service, requires a new motor vehicle dealer to construct a new facility or substantially renovate the new motor vehicle 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 voluntarily agrees to facility construction or renovation in exchange for money, credit, allowance, reimbursement, or additional vehicle allocation to a new motor vehicle dealer from the factory to compensate the new motor vehicle 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 that the franchised new motor vehicle dealer is authorized or licensed by the franchisor to sell or service, a new ~~motor~~ 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 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 vehicles for the franchisor,
- g. requires a new motor 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 from 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 for sales, incentives, or other payments related to a motor vehicle sold by the new motor vehicle dealer because the purchaser of the motor vehicle

exported or resold the motor vehicle in violation of the policy of the factory unless the factory can show that, at the time of the sale, the new motor vehicle dealer knew or reasonably should have known of the purchaser's intention to export or resell the motor vehicle. There is a rebuttable presumption that the new motor 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 to purchase goods or services for the construction, renovation, or improvement of the new motor vehicle 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 motor vehicle dealer has received the factory's approval, which approval may not be unreasonably withheld. Nothing in the subparagraph may be construed to allow a new motor vehicle dealer to impair or eliminate a factory's intellectual property, trademark rights, or trade dress usage guidelines. Nothing in the section prohibits the enforcement of a voluntary agreement between the factory and the new ~~motor~~ 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 franchised by it, a factory shall disclose in writing to the new motor vehicle dealer the basis upon which new motor vehicles are allocated, scheduled and delivered among the dealers of the same line-make for that factory;
- b. changes an established plan or system of motor vehicle distribution. A new motor 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 offered or previously offered for sale under the franchise agreement. The appointment of a new importer or distributor for motor vehicles 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 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 with an active franchise agreement for the other line-make in the state if such new motor vehicle 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 new motor 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 to any retail consumer in the state except through a new motor vehicle dealer holding a franchise for the line-make that includes the new motor vehicle. This paragraph does not apply to factory sales of new motor 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 motor vehicle or from establishing a program to sell or offer to sell new motor vehicles 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 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
 - (3) acts in the capacity of a new motor vehicle dealer.
- b.
 - (1) This paragraph does not prohibit a factory from owning or controlling a new motor 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 motor 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 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 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 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 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 dealerships selling the motor 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 dealership trading in the same line-make is not less than seventy (70) miles,
 - (d) during any period in which the manufacturer has such an ownership interest, the manufacturer has no more than three franchise agreements with new motor vehicle dealers licensed by the Oklahoma 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 motor vehicle dealers an offering circular in accordance with the Trade Regulation Rule on Franchising of the Federal Trade Commission, and any guidelines and exemptions issued thereunder, which disclose the possibility that the factory 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, other than in composite form to new motor 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 based on:
- a. any information derived from monthly financial statements provided to the factory, and
 - b. any information regarding any aspect of the profitability of a particular new motor 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 for the purpose of unfairly competing with dealers;
16. Being a factory which prohibits a new motor vehicle dealer from relocating after a written request by such new motor vehicle 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 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 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 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 which the new motor vehicle dealer had ordered for retail consumers and notified the factory prior to the new motor vehicle 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 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 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 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 motor vehicle dealer without consent of the new motor vehicle dealer, which consent shall not be unreasonably withheld;

20. Being a factory that denies any new motor vehicle dealer the right of free association with any other new motor vehicle dealer for any lawful purpose, unless otherwise permitted by the chapter; or
 21. Being a factory that requires a new motor 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 dealer, or
 - b. by measuring the new motor vehicle 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 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 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 must notify the new motor vehicle dealer in writing within sixty (60) days of receipt of the completed proposal for the proposed sale transfer;
 2. The exercise of the right of first refusal will result in the new motor 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;
 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.
- 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 and industrial and construction equipment and activities incidental to that business, provided that:

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

Section 565.1 Procedure for Prevention or Refusal to Honor Succession to Dealership to Designated Successor

A. For the purposes of this section, “designated successor” means a person who the new motor vehicle dealer has designated to take over operation of the dealership or a legal heir or devisee under the will of a new motor vehicle dealer or under the laws of descent and distribution of this state.

B. Notwithstanding the terms of any franchise agreement, and subject to the following conditions contained in paragraphs 1 through 5 of this subsection, any manufacturer or distributor who prevents or refuses to honor the succession to the operation of a dealership

by a designated successor without good cause or good faith, as defined in this section, shall be subject to the following procedure:

1. Within one hundred twenty (120) days after the death or departure of the new motor vehicle dealer, the manufacturer shall receive a written notice from the dealership of the designated successor who intends to become the successor dealership operator. If timely notice is not received, this paragraph shall not apply, and any succession shall be governed solely by the terms of the franchise;
2. Within thirty (30) days of receipt of the dealership's timely written notice, the manufacturer may request, and the designated successor shall, within a reasonable time, provide any information which is reasonably necessary for the manufacturer to evaluate the designated successor dealer and dealership, including applications, and financing;
3. Within sixty (60) days of receipt of such information, the manufacturer shall approve or disapprove the designated successor dealer, and in case of disapproval shall communicate in writing such disapproval and grounds for disapproval to the dealership;
4. Failure of the manufacturer to act in a timely manner with respect to any time period described above shall constitute a waiver of the manufacturer's right to disapprove the proposed succession; and
5. Within ten (10) days of the dealership's receipt of the manufacturer's notice of disapproval, the dealership may file a protest of the manufacturer's decision with the Oklahoma New Motor Vehicle Commission and request a hearing. Such hearing shall be heard in a substantially similar manner as provided by Section 566 of this title, except that the Commission shall render a final decision within sixty (60) days of the filing of the protest. The manufacturer shall have the burden of proof to show that its disapproval was for a good cause and in good faith. A denial shall not be for good cause and in good faith unless the factory establishes that the designated successor is not of good moral character or fails to meet the written, reasonable and uniformly applied requirements of the manufacturer or distributor relating to financial qualifications, general business experience, and other requirements relating to prospective franchisees. However, a designated successor who is a family member and who is of good moral character in accordance with reasonable factory qualifications and meets the factory's financial qualifications may rely on controlling executive management that is of good moral character and meets the factory's qualifications for general business experience. Any denial of the designated successor based upon a failure to agree to terms other than those contained in the existing franchise agreement, related addendums and agreements, and any written notice provided to the existing dealer prior to the manufacturer's or distributor's receipt of any written notice from the existing dealer of the proposed transfer shall not be considered good cause for such denial. However, any proposed change to the franchise pursuant to written notice from the manufacturer or distributor, to be valid, must be in compliance with existing law. The disapproval by the manufacturer shall be final if the dealership fails to file a timely protest of the disapproval. In the event that the Commission finds that the manufacturer's disapproval was not made for good cause, then it shall issue a final order requiring the manufacturer to honor the successor designated in the notice sent by the dealership. Notwithstanding

anything to the contrary in this section, a new motor vehicle dealer may designate any person as successor by filing a written instrument pursuant to the franchise with the manufacturer during the new motor vehicle dealer's lifetime. In such a case, the written instrument and franchise shall govern the dealership succession.

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

Section 565.2

Terminating, Canceling, or Failing to Renew Franchise

- A. Irrespective of the terms, provisions or conditions of any franchise, or the terms or provisions of any waiver, no manufacturer shall terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied the notice requirements as provided in this section and has good cause for cancellation, termination or nonrenewal. The manufacturer shall not attempt to cancel or fail to renew the franchise agreement of a new motor vehicle dealer in this state unfairly and without just provocation or without due regard to the equities of the dealer or without good faith as defined herein. As used herein, "good faith" means the duty of each party to any franchise agreement to act in a fair and equitable manner toward each other, with freedom from coercion or intimidation or threats thereof from each other.
- B. Irrespective of the terms, provisions, or conditions of any franchise, or the terms or provisions of any waiver, good cause shall exist for the purpose of a termination, cancellation, or nonrenewal when:
1. The new motor vehicle dealer has failed to comply with a provision of the franchise, which provision is both reasonable and of material significance to the franchise relationship, or the new motor vehicle dealer has failed to comply with reasonable performance criteria for sales or service established by the manufacturer, and the new motor vehicle dealer has been notified by written notice from the manufacturer; and
 2. The new motor vehicle dealer has received written notification of failure to comply with the manufacturer's reasonable sales performance standards, capitalization requirements, facility commitments, business-related equipment acquisitions, or other such remediable failings exclusive of those reasons enumerated in paragraph 1 of subsection C of this section, and the new motor vehicle dealer has been afforded a reasonable opportunity of not less than six (6) months to comply with such a provision or criteria.
- C. Irrespective of the terms, provisions, or conditions of any franchise agreement prior to the termination, cancellation, or nonrenewal of any franchise, the manufacturer shall furnish

notification of such termination, cancellation, or nonrenewal to the new motor vehicle dealer and the Oklahoma New Motor Vehicle Commission as follows:

1. Not less than ninety (90) days prior to the effective date of the termination, cancellation, or nonrenewal unless for a cause described in paragraph 2 of this subsection;
2. Not less than fifteen (15) days prior to the effective date of the termination, cancellation, or nonrenewal with respect to any of the following:
 - a. insolvency of the new motor vehicle dealer or the filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law,
 - b. failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business hours for seven (7) consecutive business days, provided that such failure to conduct business shall not be due to act of God or circumstances beyond the direct control of the new motor vehicle dealer, or
 - c. conviction of the new motor vehicle dealer of any felony which is punishable by imprisonment or a violation of the Federal Odometer Act; and
3. Not less than one hundred eighty (180) days prior to the effective date of the termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.

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

- D. Upon the affected new motor vehicle dealer's receipt of the aforementioned notice of termination, cancellation, or nonrenewal, the new motor vehicle dealer shall have the right to file a protest of such threatened termination, cancellation, or nonrenewal with the Commission within thirty (30) days and request a hearing. The hearing shall be held within one hundred eighty (180) days of the date of the timely protest by the dealer and in accordance with the provisions of the Administrative Procedures Act, Sections 250 through 323 of Title 75 of the Oklahoma Statutes, to determine if the threatened cancellation, termination, or nonrenewal of the franchise has been for good cause and if the factory has complied with its obligations pursuant to subsections A, B, and C of this section and the factory shall have the burden of proof. Either party may request an additional one-hundred-eighty-day extension of the hearing date from the Commission. Approval of the requested extension may not be unreasonably withheld or delayed. If the Commission finds that the threatened cancellation, termination, or nonrenewal of the franchise has not been for good cause or violates subsection A, B, or C of this section, then it shall issue a final order stating that the threatened termination is wrongful. A factory shall have the right to appeal such order. During the pendency of the hearing and after the decision, the franchise shall remain in full force and effect, including the right to transfer the franchise. If the Commission finds that the threatened cancellation, termination, or nonrenewal is for good cause and does not violate subsection A, B or C of

this section, the new motor vehicle dealer shall have the right to an appeal. During the pendency of the action, including the final decision or appeal, the franchise shall remain in full force and effect, including the right to transfer the franchise. If the new motor vehicle dealer prevails in the threatened termination action, the Commission shall award to the new motor vehicle dealer the attorney fees and costs incurred to defend the action.

- E. If the factory prevails in an action to terminate, cancel or not renew any franchise, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for:
1. New, current, and previous model year vehicle inventory which has been acquired from the manufacturer, and which is unused and has not been damaged or altered while in the new motor vehicle dealer's possession;
 2. Supplies and parts which have been acquired from the manufacturer, for the purpose of this section, limited to any and all supplies and parts that are listed on the current parts price sheet available to the new motor vehicle dealer;
 3. Equipment and furnishings, provided the new motor vehicle dealer purchased them from the manufacturer or its approved sources; and
 4. Special tools, with such fair and reasonable compensation to be paid by the manufacturer within ninety (90) days of the effective date of the termination, cancellation, or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and other items and is in a position to convey that title to the manufacturer.
 - a. For the purposes of paragraph 1 of this subsection, fair and reasonable compensation shall be no less than the net acquisition price of the vehicle paid by the new motor vehicle dealer.
 - b. For the purposes of paragraphs 2, 3, and 4 of this subsection, fair and reasonable compensation shall be the net acquisition price paid by the new motor vehicle dealer less a twenty-percent (20%) straight-line depreciation for each year following the dealer's acquisition of the supplies, parts, equipment, furnishings, and/or special tools.
- F. If a factory prevails in an action to terminate, cancel, or not renew any franchise and the new motor vehicle dealer is leasing the dealership facilities, the manufacturer shall pay a reasonable rent to the lessor in accordance with and subject to the provisions of subsection G of this section. Nothing in this section shall be construed to relieve a new motor vehicle dealer of its duty to mitigate damages.
- G. 1. Such reasonable rental value shall be paid only to the extent the dealership premises are recognized in the franchise and only if they are:
- a. used solely for performance in accordance with the franchise. If the facility is used for the operation of more than one franchise, the reasonable rent shall be paid based upon the portion of the facility utilized by the franchise being terminated, canceled or nonrenewed, and
 - b. not substantially in excess of facilities recommended by the manufacturer.

2. If the facilities are owned by the new motor vehicle dealer, within ninety (90) days following the effective date of the termination, cancellation, or nonrenewal, the manufacturer will either:
 - a. locate a qualified purchaser who will offer to purchase the dealership facilities at a reasonable price,
 - b. locate a qualified lessee who will offer to lease the premises for the remaining lease term at the rent set forth in the lease, or
 - c. failing the foregoing, lease the dealership facilities at a reasonable rental value for the portion of the facility that is recognized in the franchise agreement for one (1) year.

3. If the facilities are leased by the new motor vehicle dealer, within ninety (90) days following the effective date of the termination, cancellation, or nonrenewal the manufacturer will either:
 - a. locate a tenant or tenants satisfactory to the lessor, who will sublet or assume the balance of the lease,
 - b. arrange with the lessor for the cancellation of the lease without penalty to the new motor vehicle dealer, or
 - c. failing the foregoing, lease the dealership facilities at a reasonable rent for the portion of the facility that is recognized in the franchise agreement for one (1) year.

4. The manufacturer shall not be obligated to provide assistance under this section if the new motor vehicle dealer:
 - a. fails to accept a bona fide offer from a prospective purchaser, sublessee or assignee,
 - b. refuses to execute a settlement agreement with the lessor if such agreement with the lessor would be without cost to the new motor vehicle dealer, or
 - c. fails to make written request for assistance under this section within ninety (90) days after the effective date of the termination, cancellation, or nonrenewal.

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

- H. In addition to the repurchase requirements set forth in subsections E and G of this section, in the event the termination or cancellation is the result of a discontinuance of a product line, the manufacturer or distributor shall compensate the new motor vehicle dealer in an amount equivalent to the fair market value of the terminated franchise as of the date immediately preceding the manufacturer's or distributor's announcement or provide the new motor vehicle dealer with a replacement franchise on substantially similar terms and conditions as those offered to other same line-make dealers. The new motor vehicle dealer may immediately request payment

under this section following the announcement in exchange for canceling any further franchise rights, except payments owed to the new motor vehicle dealer in the ordinary course of business, or may request payment under this section upon the final termination, cancellation, or nonrenewal of the franchise. In either case, payment under this section shall be made not later than ninety (90) days after the fair market value is determined. If the factory and new motor vehicle dealer cannot agree on the fair market value of the terminated franchise or agree to a process to determine the fair market value, then the factory and new motor vehicle dealer shall utilize a neutral third-party mediator to resolve the disagreement.

Section 565.3

Sales, Transfers, or Assignments of Franchise – Notice to Manufacturers or Distributors

- A. A franchised vehicle dealer proposing a sale, transfer, or assignment of a franchise agreement or the business and assets of a dealership or an interest in a dealership to another person, hereinafter transferee, shall notify the manufacturer or distributor whose vehicles the dealer is franchised to sell of the proposed action of the dealer. The manufacturer or distributor may make written request to the proposed transferee to submit completed application forms and related information generally utilized by a manufacturer to evaluate such a proposal and a copy of all agreements related to the proposed sale, transfer, or assignment.
- B. The approval by the manufacturer or distributor of the sale, transfer, or assignment shall not be unreasonably withheld unless the proposed transferee is not of good moral character or fails to meet the written, reasonable, and uniformly applied requirements of the manufacturer or distributor relating to prospective franchisees. Approval of the transfer shall not be made contingent upon the transferee meeting unreasonable facility requirements or performance standards different than those contained in the transferor's franchise agreement and related addendum and agreements, and any written notices provided to the existing dealer prior to the manufacturer's or distributor's receipt of any written notice from the existing dealer of the proposed transfer. However, to be valid, any proposed change to the franchise pursuant to written notice from the manufacturer or distributor shall be in compliance with existing law. The burden of proof shall be upon the manufacturer or distributor to show good cause existed to withhold approval. The manufacturer or distributor that has made such a determination shall send a letter by certified mail to the dealer and the applicant of its refusal to approve the proposal, which shall include a statement of the specific grounds for refusal, with sixty (60) days after the later of:
1. Receipt by the manufacturer or distributor of the notice of the proposed sale, transfer, or assignment; or
 2. Receipt by the manufacturer or distributor of the information requested from the proposed transferee pursuant to subsection A of this section if the manufacturer

or distributor has requested such information within fifteen (15) days of receipt of written notice of the proposed sale, transfer, or assignment.

- C. Failure of the manufacturer or distributor to send its notice of refusal pursuant to subsection B of this section shall mean that the application for the proposed sale, transfer, or assignment is approved.
- D. If the proposed sale, transfer, or assignment is to an existing owner's family member or other existing owner, the manufacturer or distributor's evaluation of the proposal is limited to the written, reasonable, and uniformly applied requirements of the manufacturer or distributor relating to good moral character and financial qualifications. Notwithstanding the foregoing, a change in dealer operator shall be addressed pursuant to the provisions of section 565.1 of this title.
- E. A dealership or dealership owner receiving notice of refusal of the sale, transfer, or assignment shall have the right to file a protest with the Oklahoma New Motor Vehicle Commission within thirty (30) days of receipt of the refusal. In the event a protest is filed, the manufacturer or distributor shall have the burden of proof to establish the proposed transferee or the proposed transferee's controlling executive management is not of good moral character or fails to meet the written reasonable and uniformly applied requirements of the manufacturer or distributor relating to prospective franchisees or that the facility requirements are not different than those contained in the transferor's franchise agreement.
- F. Notwithstanding any other provision of this section, the dealer shall submit a signed copy of the dealer sales and service agreement resulting from any completed sale, transfer, or assignment of a franchise to the Oklahoma New Motor Vehicle Commission within fifteen (15) business days.

Section 565.4

Remote Software Upgrade – Change to Vehicle Functions and Features to a New Motor Vehicle

Any manufacturer or distributor who has new motor vehicle sales and service agreements with new motor vehicles dealers in this state shall allow its new motor vehicle dealers to offer consumers any remote software upgrade or change to vehicle functions and features to a new motor vehicle which is of a line-make the new motor vehicle dealer holds an active sales and service contract for, as any offered to consumers by the manufacturer or distributor, and such upgrade or change shall be available for an authorized new motor vehicle dealer to offer to consumers at any time during the life cycle of the vehicle, and subject to the manufacturer or distributor's requirements, provided the same continues to be made available and offered to consumers in this state by the manufacturer or distributor. This section does not apply to remote software upgrades or changes administered at no cost to the consumer or related solely to the safety, regulatory requirements, cybersecurity, recall of a motor vehicle, Oklahoma Statutes, or federal statutes. Nothing in this section shall be construed to limit or impair a manufacturer or distributor's intellectual property rights, or to grant a new motor vehicle dealer authority to sell, copy, modify, or use the manufacturer's or distributor's intellectual property in a manner that has not been authorized by the manufacturer or distributor. Nothing in this section shall obligate a manufacturer, distributor,

or other person to support or maintain any software or change to vehicle functions and features.

Section 566

Denial, Suspension or Revocation of License - Procedures and Fines

The Oklahoma New Motor Vehicle Commission may deny any application for license, or suspend or revoke a license issued or impose a fine, only after a hearing of which the applicant, or licensee affected, shall be given at least ten (10) days' written notice specifying the reason for denying the applicant a license, or, in the case of a revocation or suspension or imposition of a fine, the offenses of which the licensee is charged. The notices may be served as provided by law for the service of notices, or mailing a copy by registered mail to the last-known residence or business address of such applicant or licensee. The hearing on such 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 or licensee is a motor vehicle salesperson, 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 such hearing shall have the right to the attendance of witnesses in his behalf upon designating to the Commission the person or persons sought to be subpoenaed.

Section 566.1

Subjection to Provisions of Administrative Procedures Act

All rulings, orders, decisions, procedures or acts of the Oklahoma New Motor Vehicle Commission shall be subject to the provisions of the Administrative Procedures Act, Sections 301 through 326 of Title 75 of the Oklahoma Statutes.

Section 567

Injunctions

The Oklahoma New Motor Vehicle Commission is hereby authorized, without cost bond or deposit, to institute injunctive actions in courts of competent jurisdiction, in the name of the State of Oklahoma on the relation of the Commission, to enforce the provisions of Sections 561 through 567, 572, 578.1, 579 and 579.1 of this title. Any licensee or other person who violates or threatens to violate any provision of this chapter or rule promulgated thereunder or order of the Commission may be enjoined from so doing.

Section 572 Venue in Damage Actions

Any action brought to recover any damages that may be sustained by any motor vehicle dealer may be brought in the county in which said dealer is located and in addition to the action for damages he shall be entitled to sue for and have injunctive relief against the threatened loss, damage or injury to his business or property because of any violation of Sections 565 through 566 and 579 of this title or the threatened cancellation, termination or failure to renew any franchise agreement between any factory and said dealer, and the court may grant such injunctive relief, including temporary restraining orders, as it deems just and proper, notwithstanding any other provisions of law, and in addition to any other remedy which may be afforded under any other statute of this state.

Section 573 Liberal Construction

All provisions in this chapter shall be liberally interpreted to protect the public from fraud in the business of purchasing or selling motor vehicles and to protect the investments of its citizens in motor vehicles and dealerships and to protect the transportation system of the state and shall further be interpreted to affect existing as well as future franchise agreements.

Section 576 Petty Cash Fund - Creation

There is hereby created a petty cash fund not to exceed One Hundred Dollars (\$100.00) for the Oklahoma New Motor Vehicle Commission, which may be expended for small authorized expenses of the Commission.

Section 577 Administration

The Director of State Finance is authorized to prescribe forms, systems and procedures for its administration. The petty cash fund may be reimbursed from time to time by the filing of proper claims, accompanied by valid receipts for expenditures made.

Section 578.1

Sixty Day Notice of New Motor Vehicle Dealership Franchise - Exceptions

- 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 dealer or to relocate an existing new motor 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 dealer of the same line-make in the relevant market area, of the intention of the factory to establish an additional new motor vehicle dealer or to relocate an existing new motor vehicle dealer within or into the relevant market area. 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 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 new motor vehicle dealer will be established;
 2. The date on or after which the additional or relocated new motor vehicle dealer intends to commence business at the proposed location;
 3. The identity of all new motor vehicle dealers who are franchised to sell the same line-make vehicles as the proposed new motor vehicle 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 new motor vehicle dealership, the principal investors in the proposed additional or relocated new motor vehicle dealership, and the proposed dealer operator of the proposed additional or relocated new motor vehicle dealership; and
 5. The specific grounds or reasons for the proposed establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle dealer.
- B. The notification requirements prescribed in subsection A of this section shall not apply if:
1. The relocation of an existing new motor vehicle 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 new motor vehicle dealer for the same line-make of motor vehicle;
 2. A proposed additional new motor vehicle dealer which is to be established at or within two (2) miles of a location at which a former licensed new motor vehicle dealer for the same line-make of new motor vehicle had ceased operating within the previous two (2) years;
 3. The relocation of an existing new motor vehicle dealer is within two (2) miles of the existing site of the new motor vehicle dealership; or

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

Protest of Proposed New or Relocated Dealership – Hearing

- 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 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 new motor vehicle 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.

Burden of Proof

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

Section 579

Circumstances to be Considered in Determining Good Cause for Not Entering Into or Relocating Additional Franchise

In determining whether good cause has been established for permitting the proposed establishment or relocation of an additional franchise for the same line-make, the Oklahoma New Motor Vehicle Commission shall take into consideration, and must be persuaded, that good cause exists for entering into or relocating an additional franchise for the same line-make by the greater weight of facts and the existing circumstances, including, but not limited to:

1. Permanency of the investment of the proposed dealership;
2. Effect on the retail new motor vehicle business and the consuming public in the relevant market area;
3. Whether it is injurious to the public welfare for an additional new motor vehicle dealership to be established;

4. Whether the new motor vehicle dealers of the same line-make in that relevant market area are providing adequate competition and convenient consumer care for the motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel; and
5. Whether the establishment of an additional new motor vehicle dealership would increase competition, and therefore be in the public interest.

Section 579.1 Brokers Unlawful

- A. It shall be unlawful to be a broker.
- B. For the purposes of this section, "broker" means a person who, for a fee, commission or other valuable consideration, arranges or offers to arrange a transaction involving the sale of a new motor vehicle, and who is not:
 1. A new motor vehicle dealer or employee of such a dealer;
 2. A distributor or employee of such a distributor;
 3. A motor vehicle manufacturer or employee of such a manufacturer; or
 4. An auctioneer or any other person engaged in the auto auction business.

However, an individual shall not be deemed to be a broker if the individual is the owner of the new or used motor vehicle which is the object of the brokering transaction.

- C. Any person convicted of being a broker as defined by this section shall, upon conviction, be guilty of a misdemeanor punishable by imprisonment in the county jail for not more than one (1) year and a fine of not more than One Thousand Dollars (\$1,000.00). Any person convicted of a second or subsequent offense shall be guilty of a Schedule G felony offense, and the fine for a felony violation of this section shall be not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00).

Section 580 Licenses - Cause for Denial, Revocation or Suspension

The Commission may deny an application for a license, or revoke or suspend a license after it has been granted, if any party fails to comply with Section 3 or 4 of this act (Section 578 or 579 of this title).

Section 580.2**Insurance Coverage - Vehicles on Loan from Authorized Motor Vehicle Dealer**

During the time a person is operating a motor vehicle with the express or implied permission of a new motor vehicle dealer, as defined in Section 562 of this title, such person's motor vehicle liability policy shall have primary coverage with the motor vehicle liability policy of the new motor vehicle dealer having secondary coverage until the vehicle is returned. As used herein, "motor vehicle liability policy" means motor vehicle insurance against legal liability for the death, injury, or disability of any human being, or for damage to real or personal property. The motor vehicle liability policy of any person who has been loaned a vehicle by a new motor vehicle dealer pursuant to the terms of this section shall provide primary coverage for any death or injury of any human being or for any real or personal property damage, including damage to the loaned vehicle, with the motor vehicle insurance policy of the new motor vehicle dealer having secondary coverage for any death or injury of any human being or for any real or personal property damage, including damage to the loaned vehicle. The change in financial responsibility shall be evidenced by a release signed by the person operating the vehicle with the express or implied permission of the new motor vehicle dealer with the release to be returned to the person upon the return of the motor vehicle to the new motor vehicle dealer. The motor vehicle liability policy of such person shall meet the minimum financial responsibility requirements found in Section 47-7-324 of this title.

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

Recreational Vehicle Franchise Act

Legislative Finding and Necessity for Regulation

The Legislature finds and declares that the distribution and sale of recreational vehicles in the State of Oklahoma 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 recreational vehicle manufacturers, distributors, representatives, dealers and salespersons of recreational 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 recreational vehicle dealer by the recreational 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 dealer or purchaser, to prevent false and misleading advertising, to prevent unfair practices by recreational vehicle dealers, manufacturers and distributing organizations, to promote the public safety and prevent disruption of the franchise system of distribution of recreation vehicles to the public and prevent deterioration of facilities for servicing recreational vehicles and keeping same safe and properly functioning, and prevent bankrupting of recreational vehicle dealers, who might otherwise be caused to fail because of such unfair practices.

Section 596 Short Title

Sections 2 through 19 of this act shall be known and may be cited as the “Recreational Vehicle Franchise Act”.

Section 596.1 Definitions

As used in this act:

1. **“Area of sales responsibility”** means a geographical area agreed to by a dealer and the manufacturer in a dealer agreement in which the dealer has the exclusive right to display or sell the new recreational vehicles of a manufacturer of a particular line-make to the public;

2. **"Camping trailer"** means a vehicular unit that is mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping or travel use;
3. **"Dealer"** means any person, firm, corporation, or business entity licensed or required to be licensed pursuant to the provisions of this act to sell new recreational vehicles;
4. **"Dealer agreement"** means a written agreement or contract entered into between a manufacturer and a dealer that establishes the legal rights and obligations of the parties to that agreement or contract and pursuant to which the dealer is authorized to sell new recreational vehicles manufactured or distributed by the manufacturer;
5. **"Established place of business"** means a permanently enclosed building or structure, easily accessible to the public, with a paved or graveled lot for customer parking and for the showing and storage of vehicles. Established place of business shall not mean tents, temporary stands, lots, or other temporary quarters. The established place of business shall have a sign visible from the outside of the business which identifies the recreational vehicle dealership. The established place of business shall have an indoor office with public areas sufficient to conduct sales transactions with customers and have restroom facilities available for the public. The established place of business shall include a service and parts area, separated from the public areas, equipped with tools, equipment, and replacement parts necessary for reasonably expected warranty and service needs;
6. **"Factory campaign"** means an effort by a warrantor to contact recreational vehicle owners or recreational vehicle dealers in order to address an issue concerning a recreational vehicle problem, defective part or equipment;
7. **"Factory representative"** means any officer or agent engaged as a representative of a manufacturer of recreational vehicles or a factory branch for the purpose of making or promoting the sale of recreational vehicles of the manufacturer or for supervising or contacting dealers or prospective dealers of the manufacturer;
8. **"Family member"** means any of the following:
 - a. a spouse of an individual,
 - b. a child, grandchild, parent, sibling, niece, or nephew of an individual, or
 - c. the spouse of a child, grandchild, parent, sibling, niece, or nephew of an individual;
9. **"Fifth wheel trailer"** means a vehicular unit mounted on wheels that is designed to provide temporary living quarters for recreational, camping or travel use of such size and weight as to not require a special highway movement permit and is designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the rear axle of the tow vehicle;
10. **"Line-make"** means a specific series of recreational vehicle products that meet all of the following:

- a. are identified by a common series trade name or trademark,
 - b. are targeted to a particular market segment based on the decor, features, equipment, size, weight, and price range,
 - c. have dimensions and interior floor plans that distinguish the recreational vehicles from recreational vehicles that have substantially the same decor, features, equipment, weight, and price,
 - d. belong to a single, distinct classification of recreational vehicle product type that has a substantial degree of commonality in the construction of the chassis, frame, and body, and
 - e. are authorized for sale by the dealer in the dealer agreement;
11. **“Manufacturer”** means a person that manufactures or wholesales recreational vehicles or that distributes or wholesales recreational vehicles to dealers;
12. **“Motor home”** means a motorized, vehicular unit designed to provide temporary living quarters for recreational, camping or travel use;
13. **“OMVC”** means the Oklahoma Motor Vehicle Commission;
14. **“Person”** means an individual, partnership, corporation, limited liability company, association, trust, estate, or other legal entity;
15. **“Proprietary part”** means a recreational vehicle part manufactured by or for a manufacturer and sold exclusively by a manufacturer;
16. **“Recreational vehicle”** means a vehicle that:
- a. is primarily designed as a vehicle that also provides temporary living quarters for noncommercial, recreational or camping use,
 - b. is built to the standards of the National Fire Protection Association for recreational vehicles,
 - c. has its own motive power or is mounted on or towed by another vehicle,
 - d. is regulated by the National Highway Traffic Safety Administration as a vehicle or vehicle equipment,
 - e. does not require a special highway use permit for operation on the highways, and
 - f. an individual can easily transport and set up on a daily basis.

Recreational vehicles includes motor homes, travel trailers, fifth wheel travel trailers, folding camping trailers and truck campers;

17. **"Recreational vehicle salesperson"** means any person 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 of any new recreational vehicle for any new recreational vehicle dealer to any one or more third parties;
18. **"Transient customer"** means a person who:
- a. owns a recreational vehicle,
 - b. is temporarily traveling through the area of sales responsibility of a dealer,
 - c. engages the dealer to perform service work on that recreational vehicle, and
 - d. requires repairs that relate to the safe operations of that recreational vehicle or, if not undertaken, are of a nature that would render that recreational vehicle unusable;
19. **"Travel trailer"** means a vehicular unit mounted on wheels that is designed to provide temporary living quarters for recreational, camping or travel use of such size and weight as to not require a special highway movement permit when towed by a motorized vehicle;
20. **"Truck camper"** means a portable unit that is constructed to provide temporary living quarters for recreational, camping or travel use and consists of a roof, floor and sides and is designed to be loaded onto and unloaded from the back of a pickup truck; and
21. **"Warrantor"** means a manufacturer or any other person that provides a warranty to the consumer in connection with a new recreational vehicle or parts, accessories, or components of a new recreational vehicle. The term does not include a person that provides a service contract, mechanical or other insurance, or an extended warranty sold for separate consideration by a dealer or other person not controlled by a warrantor.

Section 596.2 License Requirements and Fees

- 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 recreational vehicle dealer, or new recreational vehicle salesperson in this state without first obtaining a license as provided for by law.
- B. The schedule of license fees to be charged and received by the OMVC for the licenses issued hereunder shall be as follows:
1. For each manufacturer or distributor of new recreational vehicles, an initial fee of Four Hundred Dollars (\$400.00) with an annual renewal fee of Three Hundred Dollars (\$300.00);

2. For each factory representative, an initial fee of One Hundred Dollars (\$100.00) with an annual renewal fee of One Hundred Dollars (\$100.00);
 3. For each new motor home dealer, an initial fee of Three Hundred Dollars (\$300.00) per franchise sold at each licensed location with an annual renewal fee of One Hundred Dollars (\$100.00) per franchise sold at each licensed location;
 4. For each fifth wheel trailer, travel trailer, camping trailer and truck camper dealer, an initial fee of Three Hundred Dollars (\$300.00) per manufacturer represented at each licensed location with an annual renewal fee of One Hundred Dollars (\$100.00) per manufacturer represented at each location; and
 5. For each salesperson, an initial fee of Twenty-five Dollars (\$25.00) with an annual renewal fee of Twenty-five Dollars (\$25.00).
- C. A manufacturer shall not sell or display for sale a recreational vehicle in this state except to a dealer or through a dealer that is licensed by the OMVC to sell recreational vehicles in the State of Oklahoma. The manufacturer shall also be required to have a dealer agreement with the dealer that meets the requirements of this act and is signed by both parties.
- D. A dealer shall not sell or display for sale a new recreational vehicle in this state unless the dealer is licensed by the OMVC to sell recreational vehicles in the State of Oklahoma. The dealer shall also be required to have a dealer agreement with the manufacturer of the recreational vehicle that meets the requirements of this act and is signed by both parties.

Section 596.3

Area of Sales Responsibility and Off-Premise Sales and Displays

- A. All of the following conditions shall apply to the area of sales responsibility of a dealer included in a dealer agreement between a manufacturer and a dealer:
1. The manufacturer shall designate in the dealer agreement the area of sales responsibility exclusively assigned to the dealer;
 2. The manufacturer shall not change the area of sales responsibility of a dealer or establish another dealer for the same line-make in that area during the term of the dealer agreement; and
 3. The area of sales responsibility may not be reviewed or changed without the consent of both parties until one (1) year after the execution of the dealer agreement.
- B. A dealer may not conduct sales activity or display for sale recreational vehicles outside of its designated area of sales responsibility.

- C. A dealer may sell off-premise within the area of sales responsibility of the dealer under the following circumstances:
1. At sanctioned recreational vehicle shows where the sales event is held off-premise and at least sixty-seven percent (67%) of the recreational vehicle dealers that are located within a sixty-mile radius of the location of the show participate in the show. A sanctioned recreational vehicle show may be held only under the following conditions:
 - a. the sponsoring entity of the sales event shall obtain a permit from the OMVC at the rate of Two Hundred Dollars (\$200.00) per event. The permit shall be for a period not to exceed ten (10) consecutive days,
 - b. dealer permits for a sanctioned recreational vehicle show described in this paragraph shall be obtained from the OMVC at a rate of Fifteen Dollars (\$15.00) for each motor home per sanctioned recreational vehicle show,
 - c. new recreational vehicle dealers whose manufacturer-approved area of responsibility includes the event location shall be eligible to participate in the sanctioned recreational vehicle show,
 - d. new recreational vehicle dealers shall obtain written approval from the manufacturer or distributor to participate in the sanctioned recreational vehicle show, and
 - e. the sanctioned recreational vehicle show shall be conducted within municipal, county, or state-owned or controlled facilities or within the grounds of any county, district, or state fair; and
 2. At nonsanctioned recreational vehicle shows where one or more dealers may sell recreational vehicles off-premise under the following conditions:
 - a. dealer permits for a nonsanctioned recreational vehicle show described in this paragraph shall be obtained from the OMVC at a rate of Fifteen Dollars (\$15.00) for each recreational vehicle per nonsanctioned recreational vehicle show,
 - b. the location of the nonsanctioned recreational vehicle show shall be within the manufacturer-approved area of responsibility,
 - c. the nonsanctioned recreational vehicle show shall occur no more than five (5) consecutive days per event, excluding county, district, or state fairs,
 - d. each dealer may participate in no more than eight nonsanctioned recreational vehicle shows per calendar year, and
 - e. nonsanctioned recreational vehicle shows shall be held on privately owned property no closer than two and one-half (2 1/2) miles to any

other nonparticipating recreational vehicle dealer; provided, however a nonsanctioned recreational vehicle show may be held on county or municipally owned property with no mileage barrier restriction.

- D. A dealer may display a recreational vehicle within the designated area of responsibility of the dealer for promotional purposes. At an off-premise display event, no sales activities shall be conducted including, but not limited to, negotiations, financing and accepting credit applications. Sales or finance personnel shall not be permitted to participate at an off-premise display event. A permit for the off-premise display event shall not be required.
- E. A dealer agreement shall include a designated principal of the dealer. A dealer agreement may identify a family member as the successor of the principal or include a succession plan of the dealer. A dealer may at any time change a designation or succession plan made in the dealer agreement by providing written notice to the manufacturer.

Section 596.4

Renewal of a Dealer Agreement – Stocking and Sales Target Restrictions

In a renewal of a dealer agreement, the manufacturer may not impose on the dealer stocking requirements or retail sales targets that are inconsistent with market growth or contraction in the area of sales responsibility of the dealer.

Section 596.5

Manufacturer Initiated Termination of a Dealer Agreement

- A. A manufacturer, directly or through any officer, agent, or employee, may terminate or not renew a dealer agreement without good cause. If the manufacturer terminates or does not renew the dealer agreement without good cause, the manufacturer shall comply with the provisions of subsections D and E of this section. If the manufacturer terminates or does not renew the dealer agreement with good cause, the provisions of subsections D and E of this section shall not apply.
- B. A manufacturer has the burden of showing good cause for terminating or not renewing a dealer agreement. All of the following factors shall be considered in determining whether there is good cause for a proposed termination or nonrenewal of a dealer agreement by a manufacturer:
 1. The extent of the penetration of the dealer in the relevant market area;
 2. The extent and quality of the service of the dealer under recreational vehicle warranties;
 3. The nature and extent of the investment of the dealer in business of the dealer;

4. The adequacy of the service facilities, equipment, parts, supplies, and personnel of the dealer;
 5. The effect of the proposed action on the community;
 6. Whether the dealer fails to follow agreed-upon procedures or standards related to the overall operation of the dealership; and
 7. The performance by the dealer under the terms of dealer agreement.
- C. Except as otherwise provided in this section, a manufacturer shall provide a dealer with written notice of a termination or nonrenewal of a dealer agreement. All of the following conditions apply to a notice described in this subsection:
1. Except as provided in paragraph 4 or 5 of this subsection, the manufacturer shall provide written notice at least ninety (90) days before the effective date of the termination or nonrenewal of the dealer agreement;
 2. The notice shall state all of the reasons for the termination or nonrenewal of the dealer agreement;
 3. The notice shall state that if the dealer provides to the manufacturer a written notification of the intent of the dealer to cure all claimed deficiencies within thirty (30) days after the dealer receives the notice, the dealer shall have one hundred twenty (120) days after the date of the notice to correct the claimed deficiencies. If all of the deficiencies are corrected within the one-hundred-twenty-day time period, the notice shall be deemed void and the manufacturer shall not terminate or not renew the dealer agreement because of the claimed deficiencies stated in the notice. If the dealer does not provide a notification of intent to cure deficiencies within the thirty-day time period, the termination or nonrenewal of the dealer agreement shall take effect sixty (60) days after the dealer received the notice from the manufacturer;
 4. A manufacturer may reduce the notice period described in paragraph 1 of this subsection from ninety (90) days to thirty (30) days and shall not be required to allow the dealer an opportunity to correct the deficiencies if the grounds for termination or nonrenewal of the dealer agreement by the manufacturer are any of the specific categories of good cause described in subsection F of this section; and
 5. A manufacturer shall not be required to provide notice or an opportunity to correct deficiencies under this subsection if the grounds for termination or nonrenewal of the dealer agreement by the manufacturer includes one of the following:
 - a. the dealer becomes insolvent,
 - b. the dealer is bankrupt, or
 - c. the dealer makes an assignment for the benefit of creditors.

- D. If a manufacturer terminates or does not renew a dealer agreement for good cause under this section the dealer, at its option, may require the manufacturer to repurchase any of the following from the dealer:
1. All new, untitled recreational vehicles that were acquired from the manufacturer within eighteen (18) months before the effective date of the notice of termination of the dealer agreement that have not been used, except for demonstration purposes and have not been altered or damaged, may be repurchased at one hundred percent (100%) of the net invoice cost of the recreational vehicles, including transportation, less applicable rebates and discounts to the dealer;
 2. All current and undamaged accessories and proprietary parts sold to the dealer for resale within the eighteen (18) months prior to the effective date of the termination of the dealer agreement that are accompanied by the original invoice may be repurchased at one hundred five percent (105%) of the original net price paid to the manufacturer to compensate the dealer for handling, packing, and shipping the accessories and parts; and
 3. Any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery, purchased by the dealer within the five (5) years prior to the effective date of the termination of the dealer agreement at the request of the manufacturer, if such equipment or machinery cannot be used in the normal course of the ongoing business of the dealer, may be repurchased at one hundred percent (100%) of the net cost of the dealer, plus freight, destination, delivery, and distribution charges and sales taxes.
- E. The dealer shall promptly return or arrange for the return of all of the items the manufacturer is required to repurchase under subsection D of this section at the expense of the manufacturer.
- F. As used in this section, “good cause” includes, but is not limited to, any of the following:
1. A conviction of a felony or a plea of guilty or nolo contendere to a felony by a dealer or an owner of a dealership of a crime that was committed during the time frame of the current dealer agreement; provided, there is full disclosure, in writing, of any felony conviction or plea of guilty or nolo contendere to any such felony crime that occurred within ten (10) years of entering into such dealer agreement;
 2. Abandonment or permanent closing of the business operations of a dealer for twenty-one (21) consecutive business days without contacting the manufacturer prior to the closing unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the dealer has no control;
 3. A material misrepresentation to a manufacturer by a dealer that severely affects the business relationship between the dealer and the manufacturer;
 4. Suspension or revocation of the license of a dealer or refusal to renew the license of the dealer by the OMVC;

5. A material violation of any of the provisions of the Recreational Vehicle Franchise Act by a dealer; or
6. The dealer becomes insolvent, is bankrupt, or makes an assignment for the benefit of creditors.

Section 596.6
Dealer Initiated Termination of a Dealer Agreement

- A. A dealer may terminate a dealer agreement with a manufacturer with or without good cause. If the dealer terminates or does not renew the dealer agreement with good cause, the manufacturer shall comply with the provisions of paragraphs D and E of this section. If the dealer terminates or does not renew the dealer agreement without good cause, the provisions of paragraphs D and E of this section shall not apply. A dealer that terminates a dealer agreement shall provide the manufacturer with written notice at least ninety (90) days prior to the effective date of the termination of the dealer agreement.
- B. All of the following conditions shall apply to a termination of a dealer agreement under this section for good cause:
 1. The notice described in subsection A of this section shall state all reasons for the proposed termination;
 2. The notice described in subsection A of this section shall state that if the manufacturer provides to the dealer a written notification of intent to cure all claimed deficiencies within thirty (30) days after the manufacturer receives the notice, the manufacturer shall have one hundred twenty (120) days after the date of the notice to correct the deficiencies. If all of the deficiencies are corrected within the one-hundred-twenty-day period, the notice shall be deemed void and the dealer shall not terminate the dealer agreement because of the claimed deficiencies stated in the notice. If the manufacturer does not provide a notification of intent to cure deficiencies within thirty (30) days of receiving the notice to terminate the dealer agreement, the termination shall take effect sixty (60) days after the manufacturer received from the dealer the notice to terminate;
 3. A dealer may reduce the notice period described in subsection A of this section from ninety (90) days to thirty (30) days and shall not be required to allow the manufacturer an opportunity to correct the deficiencies if the grounds for termination or nonrenewal of the dealer agreement by the dealer are any of the specific categories of good cause described in subsection C of this section; and
 4. A dealer is not required to provide notice or an opportunity to correct deficiencies under this section if the grounds for termination or nonrenewal of the dealer agreement by the dealer includes one of the following:

- a. the manufacturer becomes insolvent,
 - b. the manufacturer is bankrupt, or
 - c. the manufacturer makes an assignment for the benefit of creditors.
- C. The dealer has the burden of showing good cause. Any one of the following categories is considered good cause for a proposed termination of a dealer agreement by a dealer:
- 1. A conviction of a felony or a plea of guilty or nolo contendere to a felony by a manufacturer of a crime that was committed during the time frame of the current dealer agreement; provided, there is full disclosure, in writing, of any felony conviction or plea of guilty or nolo contendere to any such felony crime that occurred within ten (10) years of entering into such dealer agreement;
 - 2. Abandonment or permanent closing of the business operations of the manufacturer for twenty-one (21) consecutive business days without contacting the dealer prior to the closing unless the closing is due to an act of God, strike, labor difficulty, or other cause over which the manufacturer has no control;
 - 3. A material misrepresentation to the dealer by the manufacturer that severely affects the business relationship between the dealer and manufacturer;
 - 4. A material violation of any of the provisions of the Recreational Vehicle Franchise Act by the manufacturer;
 - 5. A material breach of the dealer agreement by the manufacturer; or
 - 6. The manufacturer becomes insolvent, is bankrupt, or makes an assignment for the benefit of creditors.
- D. If the manufacturer fails to cure any claimed deficiencies pursuant to subsection B of this section, the dealer may require that the manufacturer repurchase any of the following from the dealer:
- 1. All new, untitled recreational vehicles that were acquired from the manufacturer within eighteen (18) months prior to the effective date of the notice of termination of the dealer agreement that have not been used, except for demonstration purposes, and that have not been altered or damaged, may be repurchased at one hundred percent (100%) of the net invoice cost of the recreational vehicles, including transportation, less applicable rebates and discounts to the dealer;
 - 2. All current and undamaged accessories and proprietary parts sold to the dealer for resale within eighteen (18) months prior to the effective date of the termination of the dealer agreement that are accompanied by the original invoice may be repurchased at one hundred five percent (105%) of the original net price paid to the manufacturer to compensate the dealer for handling, packing, and shipping the accessories and parts; and

3. Any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery, purchased by the dealer within five (5) years prior to the effective date of the termination of the dealer agreement if such equipment or machinery cannot be used in the normal course of the ongoing business of the dealer, may be repurchased at one hundred percent (100%) of the net cost of the dealer, plus freight, destination, delivery, and distribution charges and sales taxes.
- E. The dealer shall promptly return or arrange for the return of all of the items the manufacturer is required to repurchase under subsection D of this section at the expense of the manufacturer.

Section 596.7

Sale of Remaining Inventory Post Termination

The OMVC may not prohibit a dealer from selling the remaining in stock inventory of a particular line-make after a dealer agreement has been terminated or not renewed pursuant to the provisions of Section 7 or 8 of this act. If recreational vehicles of a line-make are not returned or required to be returned to the manufacturer, the dealer may continue to sell all line-makes that were subject to the dealer agreement and are currently in stock until those line-makes are no longer in the dealer inventory.

Section 596.8

Change of Ownership of a Dealership

- A. All of the following conditions shall apply to a proposed sale of the business assets, transfer of the stock, or other transaction that will result in a change of ownership of a dealer, except a transaction described in subsection B of this section:
1. The dealer shall provide written notice to the manufacturer at least ninety (90) days prior to the proposed closing of the transaction;
 2. If the dealer is not in breach of the dealer agreement or in violation of the provisions of this act at the time the dealer provides the notice described in paragraph 1 of this subsection, the manufacturer shall not object to the proposed transaction, unless the prospective transferee meets one or more of the following:
 - a. the prospective transferee was previously a party to a dealer agreement with the manufacturer that the manufacturer terminated,
 - b. in the preceding ten (10) years, the prospective transferee was convicted of a felony crime or any crime of fraud, deceit or moral turpitude,

- c. the prospective transferee does not have an application for a recreational vehicle dealer license pending with the OMVC or a tentative dealer agreement with a recreational vehicle manufacturer to conduct business as a dealer in this state,
 - d. the prospective transferee does not have an active line of credit sufficient to purchase recreational vehicles from the manufacturer according to the terms of the dealer agreement, or
 - e. in the preceding ten (10) years, the prospective transferee was bankrupt or insolvent, made a general assignment for the benefit of creditors, or a receiver, trustee, or conservator was appointed to take possession of the business or property of the prospective transferee;
3. If the manufacturer objects to the proposed transaction, the manufacturer shall give written notice of an objection, including the reasons by the manufacturer for objecting, to the dealer within thirty (30) days after receiving the notice described in paragraph 1 of this subsection. If the manufacturer does not give notice of an objection within the thirty-day time period, the proposed transaction shall be considered approved by the manufacturer; and
 4. For purposes of paragraph 3 of this subsection, the manufacturer has the burden of demonstrating why the manufacturer objects to the proposed transaction.
- B. All of the following conditions apply concerning the death, incapacity, or retirement of the designated principal of a dealer:
1. The manufacturer shall provide the dealer an opportunity to designate, in writing, a family member as a successor to the dealer in the event of the death, incapacity, or retirement of the designated principal;
 2. The manufacturer shall not prevent or refuse to honor the succession to a dealership by a family member of the deceased, incapacitated, or retired designated principal of that dealer unless the manufacturer previously provided written notice to the dealer of any objections to the succession plan of the dealer within thirty (30) days after receiving the succession plan of the dealer or any modification of the succession plan of the dealer;
 3. Except as provided in paragraph 5 of this subsection, unless the dealer is in breach of the dealer agreement, a manufacturer shall not object to the succession to a dealership by a family member of the deceased, incapacitated, or retired designated principal, unless the successor meets one or more of the following:
 - a. in the preceding ten (10) years, the successor was convicted of a felony crime or any crime of fraud, deceit or moral turpitude,
 - b. in the preceding ten (10) years, the successor was bankrupt, insolvent, or made an assignment for the benefit of creditors,

- c. the successor was previously a party to a dealer agreement with the manufacturer that the manufacturer terminated for a breach of a dealer agreement,
 - d. the successor does not have an active line of credit sufficient to purchase recreational vehicles from the manufacturer according to the terms of the dealer agreement, or
 - e. the successor does not have an application for a recreational vehicle dealer license pending with the OMVC or a tentative dealer agreement with a recreational vehicle manufacturer to conduct business as a dealer in this state;
- 4. The manufacturer has the burden of proof regarding any objection to the succession to a dealership by a family member of the deceased, incapacitated, or retired designated principal; and
 - 5. The consent of the manufacturer shall be required for the succession to a dealership by a family member of the deceased, incapacitated, or retired designated principal if the succession involves a relocation of the business or an alteration of the terms and conditions of the dealer agreement.

Section 596.9

Warrantor Obligations and Provisions

- A. A warrantor has all of the following obligations to each dealer engaged in the sale or lease of products that are covered by a warranty from that warrantor:
 - 1. To specify in writing to the dealer the obligations of the dealer, if any, for preparation, delivery, and warranty service on its products;
 - 2. To compensate the dealer for warranty service required of the dealer by the warrantor;
 - 3. To provide the dealer with a schedule of compensation the warrantor will pay for warranty work and the time allowances of the warrantor for the performance of that work. All of the following conditions apply to the schedule of compensation required under this paragraph:
 - a. reasonable compensation for diagnostic work and warranty labor,
 - b. time allowances in the schedule for the diagnosis and performance of warranty labor shall be reasonable for the work to be performed, and
 - c. the compensation of a dealer for warranty labor shall be the actual retail labor rates charged by the dealer in the community in which the dealer is doing business;

4. To reimburse the dealer for warranty parts at actual wholesale cost, plus a minimum thirty percent (30%) handling charge and any freight costs to return warranty parts to the warrantor; and
 5. To deny dealer claims for warranty compensation only for cause, including, but not limited to, performance of nonwarranty repairs, material noncompliance with the published policies and procedures of the warrantor, lack of material documentation of claims, fraud, or misrepresentation.
- B. A warrantor may conduct audits of the records of a dealer that sells or leases its warranted products on a reasonable basis.
 - C. A dealer shall submit warranty claims to a warrantor within sixty (60) days after completing all warranty work on a warranted product.
 - D. A dealer shall notify the warrantor in writing if the dealer is unable to perform material or repetitive warranty repairs as soon as is reasonably possible.
 - E. A warrantor shall approve or disapprove a warranty claim on a warranted product in writing within thirty (30) days after the date the dealer submits the claim, if the claim is submitted in the manner and in the form prescribed by the warrantor. If a claim that is properly submitted is not specifically disapproved in writing by a warrantor within the thirty-day time period, the claim shall be considered approved by the warrantor and the warrantor shall pay the amount of the claim to the dealer within sixty (60) days after the dealer submitted the claim.

Section 596.10
Warrantor Obligations and Provisions (continued)

- A. A warrantor shall not do any of the following:
 1. Fail to perform all of its warranty obligations with respect to a warranted product;
 2. In any written notice of a factory campaign to recreational vehicle owners and dealers, fail to include the expected date by which necessary parts and equipment, including tires and chassis or chassis parts if required, will be available to dealers to perform the factory campaign work. The warrantor shall provide sufficient parts to the dealer to perform the factory campaign work. If the number of parts provided to the dealer pursuant to this paragraph exceed the requirements of the dealer to perform the factory campaign work, the dealer may return unused parts to the warrantor for credit after completion of the factory campaign;
 3. Subject to the provisions of Section 14 of this act, fail to compensate a dealer for authorized repairs of warranted products damaged during the manufacturing process or damaged while in transit to the dealer if the warrantor selected the carrier;

4. Fail to compensate a dealer for authorized warranty service under this section in accordance with the applicable schedule of compensation provided to the dealer pursuant to Section 11 of this act if the warranty service is performed in a timely and competent manner;
 5. Intentionally misrepresent in any way to a purchaser of a warranted product that any warranty concerning the manufacture, performance, or design of the warranted product is made by the dealer either as a warrantor or cowarrantor; or
 6. Require a dealer to make warranties to customers in any manner related to the manufacture of a warranted product.
- B. A warrantor shall indemnify the dealer for any money paid or costs incurred by a dealer in connection with a claim or cause of action asserted against the dealer to the extent that payment or costs incurred are based on the negligence or intentional misconduct of the warrantor. A warrantor shall not limit the obligation to indemnify described in this subsection by agreement with the dealer. The dealer shall provide a warrantor with a copy of any claim or complaint in which an allegation described in this subsection is made within ten (10) days after receiving that claim or complaint.
- C. As used in this section and Section 13 of this act:
1. "Products" mean new recreational vehicles or parts, accessories, or components of new recreational vehicles; and
 2. "Warranted products" mean products subject to a warranty from a specific warrantor.

Section 596.11 Dealer Warranty Service Obligations

- A. A dealer shall not do any of the following:
1. If a transient customer requests service work on a recreational vehicle of a line-make that the dealer is authorized to display and sell, fail to perform any warranty service work authorized by a warrantor in a reasonably competent and timely manner if failure to make such repairs would result in a safety related issue or might render the recreational vehicle unusable;
 2. Make a fraudulent warranty claim to a warrantor; or
 3. Misrepresent the terms of any warranty.
- B. A dealer shall indemnify a warrantor for any money paid or costs incurred by a warrantor in connection with a claim or cause of action asserted against the warrantor to the extent that payment or costs incurred are based on the negligence or intentional misconduct of the dealer. A dealer shall not limit the obligation to indemnify described in this subsection by agreement with the warrantor. The

warrantor shall provide a dealer with a copy of any claim or complaint in which an allegation described in this subsection is made within ten (10) days after receiving the claim or complaint.

Section 596.12 **Damage to RVs Prior to Arrival at Dealership**

- A. All of the following conditions apply if a new recreational vehicle is damaged before it is shipped to a dealer, or is damaged in transit to the dealer and the manufacturer selected the carrier or means of transportation:
1. The dealer shall notify the manufacturer of the damage within the time period specified in the dealer agreement and do one of the following:
 5. in the notice, request authorization to replace the components, parts, and accessories damaged, or otherwise correct the damage, from the manufacturer, or
 6. reject the recreational vehicle within the time period specified in the dealer agreement;
 2. If the manufacturer refuses or fails to authorize repair of the damage within ten (10) days after receiving notice under paragraph 1 of this subsection or if the dealer rejects the recreational vehicle because of the damage within the time period specified in the dealer agreement, ownership of the recreational vehicle reverts to the manufacturer; and
 3. The dealer shall exercise due care in the custody of the damaged recreational vehicle; provided, the dealer shall have no financial or other obligation with respect to that recreational vehicle.
- B. A dealer agreement shall include a time period for inspection and rejection of damaged recreational vehicles under subsection A of this section that is not less than two (2) business days after the physical delivery of the recreational vehicle to the dealer.
- C. If a dealer determines that a new recreational vehicle has an unreasonable number of miles on the odometer at the time the recreational vehicle is delivered to the dealer, the dealer may reject the recreational vehicle and said ownership of the recreational vehicle shall revert to the manufacturer. However, if the number of miles on the odometer of the recreational vehicle is less than the sum of the distance between the dealer and the factory of the manufacturer or point of distribution plus one hundred (100) miles, the dealer may not consider the number of miles on the odometer unreasonable for purposes of this subsection.

Section 596.13
Prohibited Activity of a Manufacturer – Coercion

- A. A manufacturer shall not coerce or attempt to coerce a dealer to purchase a product or service that the dealer did not order.
- B. A manufacturer shall not coerce or attempt to coerce a dealer to enter into any agreement with the manufacturer.
- C. A manufacturer shall not coerce or attempt to coerce a dealer to enter into an agreement with the manufacturer or any other person that requires the dealer to submit any disputes by the dealer to binding arbitration or otherwise waive the rights or responsibilities of the dealer under the provisions of this act.
- D. As used in this section, the term “coerce” includes, but is not limited to:
 - 1. Threatening to terminate or not renew a dealer agreement without good cause;
 - 2. Threatening to withhold line-makes or other product lines the dealer is entitled to display and sell under the dealer agreement; or
 - 3. Delay delivery of recreational vehicles as an inducement to amend the dealer agreement.

Section 596.14
Penalties for Violation of the Act

The Oklahoma Motor Vehicle Commission may deny an application for a license, revoke or suspend a license, impose a fine against a manufacturer or distributor in an amount not to exceed Ten Thousand Dollars (\$10,000.00) per occurrence, or impose a fine against a dealer in an amount not to exceed One Thousand Dollars (\$1,000.00) per occurrence if any provision of the Recreational Vehicle Franchise Act of Title 47 of the Oklahoma Statutes is violated 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 the Recreational Vehicle Franchise Act;
- 2. For any material misstatement made by an applicant in any application for any license under the provisions of the Recreational Vehicle Franchise Act;
- 3. For any failure to comply with any provision of the Recreational Vehicle Franchise Act or any rule promulgated by the OMVC under authority vested to the OMVC pursuant to the Recreational Vehicle Franchise Act;
- 4. A change of condition after a license is granted resulting in the failure to maintain the qualifications for a license;

5. Being a new recreational vehicle dealer or new recreational vehicle salesperson who:
 - a. has required a purchaser of a new recreational 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 dealer,
 - b. uses any false or misleading advertising in connection with business as a new recreational vehicle dealer or vehicle salesperson,
 - 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 recreational vehicle,
 - e. has been convicted of a crime involving moral turpitude,
 - f. has committed a fraudulent act in selling, purchasing or otherwise dealing in new recreational vehicles or has misrepresented the terms and conditions of a sale, purchase or contract for sale or purchase of a new recreational vehicle or any interest therein including an option to purchase such vehicle, or
 - g. has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license;
6. Being a new recreational vehicle salesperson who is not employed as such by a licensed new recreational vehicle dealer;
7. Being a new recreational 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 recreational vehicles at the same time and equipped with tools, equipment, and replacement parts as may be necessary for the servicing of recreational vehicles in such a manner as to make such vehicles comply with the safety laws of this state and properly fulfill the warranty obligation of the dealer or manufacturer,
 - c. does not hold a dealer agreement in effect with a manufacturer or distributor of new or unused recreational vehicles for the sale of the same and is not authorized by the manufacturer or distributor to render pre-delivery preparation of such vehicles sold to purchasers and perform authorized post-sale work pursuant to the warranty of the manufacturer or distributor,
 - d. employs unlicensed salespersons or employs or utilizes the services of used recreational vehicle lots, dealers or other unlicensed persons in connection with the sale of new recreational vehicles; or

8. Being a factory that has:
- a. induced or attempted to induce by means of coercion or intimidation any new recreational vehicle dealer:
 - (1) to accept delivery of any recreational vehicle or vehicles, parts or accessories for recreational vehicles, or any other commodities including advertising material which shall not have been ordered by the new recreational vehicle dealer,
 - (2) to order or accept delivery of any recreational vehicle with special features, appliances, accessories or equipment not included in the list price of the recreational vehicles as publicly advertised by the manufacturer of the recreational vehicle, 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 recreational vehicle dealer certain models of recreational vehicles, changing or amending unilaterally the allotment of recreational vehicles of a dealer or withholding and delaying delivery of such vehicles out of the ordinary course of business, in order to induce a dealer by such coercion to participate or contribute to any local or national advertising fund controlled directly or indirectly by the factory or for any other purposes including contests, giveaways, other sales promotional devices, or change of quotas in any sales contest, or
 - c. required recreational vehicle dealers, as a condition of receiving the vehicle allotment of the dealer, to order a certain percentage of the recreational vehicles with optional equipment not specified by the new recreational vehicle dealer; however, nothing in this paragraph shall prohibit a factory from supporting an advertising association which is open to all dealers on the same basis.

The Commission may deny any application for license, or suspend or revoke a license issued, or impose a fine, only after a hearing for which the applicant or licensee affected shall be given at least ten (10) days' written notice specifying the reason for denying the applicant a license, or, in the case of a revocation or suspension or imposition of a fine, the offense which the licensee is alleged to have committed. The notice may be served as provided by law for the service of notices, or mailing a copy by registered mail to the last-known residence or business address of the applicant or licensee. The hearing on alleged violations 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 or licensee is a motor vehicle salesperson, factory representative or distributor representative, the Commission shall in like manner additionally 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 person by deposition, with the same fees and mileage and

in the same manner as prescribed in the proceedings before courts of the state in civil cases. Any party to the hearing shall have the right to the attendance of witnesses in his or her behalf upon designating to the Commission the person or persons sought to be subpoenaed.

Section 596.15 **Provisions for Civil Action and Mediation**

- A. A dealer, manufacturer, or warrantor injured by another party who has violated a provision of this act may bring a civil action in court for the recovery of actual damages. The court shall award attorney fees and costs to the prevailing party in a civil action under this section.
- B. Venue for a civil action filed pursuant to this section shall be the county in which the business of the dealer is located. In an action involving more than one dealer, any county in which the business of any dealer that is party to the action is located is a proper venue for that action.
- C. Before bringing a civil action under this section, the party bringing suit for an alleged violation of this act shall serve a written demand for mediation on the offending party. The demand for mediation shall include a brief statement of the dispute and the relief sought by the party making the demand. The party making the demand for mediation shall serve the demand by certified mail to one of the following addresses:
 - 1. In an action between a dealer and a manufacturer, the address stated in the dealer agreement between the parties;
 - 2. In an action between a dealer and a warrantor that is not a manufacturer, the address stated in any agreement between the parties; or
 - 3. In an action between two dealers, the address of the offending dealer in the records of the OMVC.
- D. Within twenty (20) days after a demand for mediation is served under subsection C of this section, the parties shall mutually select an independent mediator who is approved by the OMVC, and meet with that mediator for the purpose of attempting to resolve the dispute at a location in this state selected by the mediator. The mediator may extend the date of the meeting for good cause shown by either party or if the parties agree to the extension.
- E. The service of a demand for mediation under subsection C of this section tolls the time for the filing of any complaint, petition, protest, or other action under this act until representatives of both parties have met with the mediator selected pursuant to subsection D of this section for the purpose of attempting to resolve the dispute. If a complaint, petition, protest, or other action is filed before that meeting, the court shall enter an order suspending the proceeding or action until the mediation meeting has occurred and may, if all of the parties to the proceeding or action stipulate in writing that they wish to continue to mediate under this section, enter an order suspending the proceeding or action for as long a period as the court considers appropriate. The

court may modify, extend, or revoke a suspension order issued under this subsection if it considers that action appropriate.

- F. Each of the parties to the mediation under this section is responsible for its own attorney fees. The parties shall equally divide the cost of the mediator.

Section 596.16

Grounds for Grant of Temporary or Permanent Injunction

- A. In addition to any remedy available under the provisions of this act or otherwise available by law, a manufacturer, warrantor, or dealer may apply to the court for the grant, after a hearing and for cause shown, of a temporary or permanent injunction or other equitable relief restraining any person from doing any of the following:
 - 1. Acting as a dealer without a proper license;
 - 2. Violating or continuing to violate the provisions of this act. A single violation of the provisions of this act shall be a sufficient basis for the court to grant equitable relief under this section; or
 - 3. Failing or refusing to comply with any requirement of the provisions of this act.
- B. The court may not require a bond as a condition to the grant of equitable relief under this section.
- C. If, on January 1, 2011, a dealership does not meet the requirements of the definition of established place of business as defined in Section 3 of this act, the dealership shall be eligible for licensing by the OMVC for that location. If the dealership moves the dealership to a new location, the new dealership shall comply with the requirements of the definition of established place of business as defined in Section 3 of this act.

Additional Laws Related To New Motor Vehicle Dealers

Sale, Barter or Exchange of Motor Vehicles on Sunday Prohibited Title 21 Chapter 36

Section 917 - Definitions

- A. The term "motor vehicle" as used in this act shall mean every vehicle intended primarily for use and operation on the public highways, which is self-propelled; and every vehicle intended primarily for operation on the public highways which is not driven or propelled by its own power, but which is designed either to be attached to or become a part of a self-propelled vehicle; but not including farm tractors and other machines and tools used in the production, harvesting and care of farm products.
- B. The term "antique, classic, or special interest automobile" as used in Section 918 of this title shall mean a motor vehicle which only travels on the highways of this state primarily for historical or exhibition purposes.

Section 918 – Sunday Sales Prohibited

No person, firm or corporation, whether owner, proprietor, agent or employee, shall keep open, operate or assist in keeping open or operating any place or premises or residences whether open or closed, for the purpose of selling, bartering, or exchanging, or offering for sale, barter, or exchange, any motor vehicle or motor vehicles, whether new, used or second hand, on the first day of the week, commonly called Sunday, except as otherwise provided in this section; and provided, however, that this act shall not apply to the opening of an establishment or place of business on the said first day of the week for other purposes, such as the sale of petroleum products, tires, automobile accessories, or for the purpose of operating and conducting a motor vehicle repair shop, or for the purpose of supplying such services as towing or wrecking. Antique, classic, or special interest automobiles sold, bartered, auctioned, or exchanged by any person, firm, or corporation are exempt from the provisions of this section, as well as off-premise sales of new motorized recreational vehicles approved by the Oklahoma Motor Vehicle Commission pursuant to the provisions of the Recreational Vehicle Franchise Act.

Section 919 - Penalty for Violation

Any person, firm, partnership, or corporation who violates any of the provisions of this act shall be guilty of a misdemeanor, and upon each conviction thereof, shall be punished by a fine of not less than Seventy-five Dollars (\$75.00) nor more than Five Hundred Dollars (\$500.00), or by imprisonment in the county jail for a period not to exceed six (6) months, or the court, in its discretion, may suspend or revoke the Oklahoma motor vehicle dealer's license issued under the provisions of 47 O.S. 1951 Sec. 22.15, or by such fine and imprisonment and suspension or revocation.

In-Transit License Plates (D-TAGS)
Title 47 Chapter 74 Section 1128

A. Every person manufacturing or having a contract to sell new vehicles in this state shall file a verified application for a general distinctive number for all new vehicles owned or controlled by the manufacturer or dealer; provided, the Oklahoma Tax Commission shall issue a license to sell such new motor vehicles only for those types of new vehicles for which the applicant has a sales contract or franchise; provided, further, that no license shall be issued to any applicant that has not complied with the provisions of Sections 561 through 568 of this title and does not hold a current license issued by the Oklahoma Motor Vehicle Commission pursuant thereto. A separate manufacturer's or dealer's license shall be required for each separate county within which such manufacturer or dealer has an established place of business and upon payment of a license fee of Ten Dollars (\$10.00) there shall be assigned and issued to such manufacturer or dealer a Certificate of Registration and one license plate which shall be displayed upon each vehicle of such manufacturer or dealer when same is operated, driven, or displayed on any street, road, or highway, in the same manner as hereinbefore provided for vehicles owned by other persons. Such a manufacturer or dealer in new vehicles may obtain as many additional license plates as may be desired, upon the payment of the sum of Ten Dollars (\$10.00) for each additional plate; provided that no such license plate issued to any manufacturer or dealer shall be used or displayed upon any secondhand or used vehicle, or upon any new vehicle which is used for a service car, or private use, or for hire. Any person, with consent of the dealer, may operate a motor vehicle, with the dealer's tag affixed, while contemplating purchase, so long as this intent is limited to a consecutive seventy-two-hour period, or a weekend. An individual holding a valid salesman's license issued by the Oklahoma Motor Vehicle Commission shall not be subject to this limitation. If such person also buys and sells used vehicles, he shall, after obtaining his new motor vehicle dealer's license from the Oklahoma Motor Vehicle Commission, also obtain a used motor vehicle dealer's license, from the Used Motor Vehicle and Parts Commission, the cost of which shall be as prescribed in Section 1101 et seq. of this title.

(Note: Subsequent legislation has raised the D-Tag fees to \$16.00 each)

- B. Each dealer and used motor vehicle dealer shall keep a record of the purchase and sale of each motor vehicle he buys or sells, which shall show the name of the seller or buyer as the case may be, and a complete description of the vehicle purchased or sold, and such other information as the Commission may prescribe.
- C. Application for manufacturer's or dealer's license must show that such dealer or manufacturer has not violated any of the provisions of this section; and such license shall be nonassignable; and any such license may be suspended temporarily or revoked by the Commission for violation or failure to comply with this section, provided, the holder of such license shall be given ten (10) days' notice of hearing to suspend or cancel such license. If any such person subject to any of the licenses required in this section fails to obtain it when due, a penalty of twenty-five cents (\$0.25) per day on each such license shall be charged in the same manner as is now provided on delinquent motor vehicle registrations, and after a period of thirty (30) days such penalty shall be equal to the

license fee. It shall be the duty of every person licensed to sell new or used motor vehicles to advise each purchaser in writing about his title requirements and payment of any taxes due. Each used motor vehicle must display a proper Oklahoma license plate or a used dealer's license plate. Dealers failing to comply with provisions of this section shall be responsible for all taxes due on such sales or on such vehicles.

- D. Every person engaged in the business of transporting and delivering new or used vehicles by driving, either singly or by towbar, saddle mount or full mount method, engaging in drive-way operations as defined in Section 3 of Title 85 of the Oklahoma Statutes, or any combination thereof, from the manufacturer or shipper to the dealer or consignee and using the public highways of this state shall file with the Commission a verified application for in-transit license plates to identify such vehicles. The application shall provide for a general distinctive number for all vehicles so transported. Upon payment of a license fee of Ten Dollars (\$10.00) there shall be assigned and issued to such person one in-transit plate. Such in-transit plate shall be used by such person only on vehicles when so transported. Such person may obtain as many additional in-transit plates as desired upon payment of a fee of Ten Dollars (\$10.00) for each additional plate. Provided, a used motor vehicle dealer shall use a used dealer license plate in lieu of the in-transit license plate for transporting a used motor vehicle and, in such cases, shall be exempt from making application for an in-transit license plate. Provided further, only a person who possesses a certificate issued by the Interstate Commerce Commission or the Corporation Commission to engage in the business of transporting and delivering manufactured homes for hire may use the in-transit license plates obtained by them as herein authorized for transporting new or used manufactured homes from one location to another location within Oklahoma or from a point in another state to a point in this state. Nothing contained in this section shall relieve any person from the payment of license fees otherwise provided by law. When the Commission deems it advisable and in the public interest, it may require the holder of any in-transit license, or any person making application therefor, to file a proper surety bond in any amount it deems proper, not to exceed Ten Thousand Dollars (\$10,000.00).
- E. The Oklahoma Tax Commission shall issue dealer licenses to new and used manufactured home dealers, new and used travel trailer dealers and new and used commercial trailer dealers.
- F. All licenses provided for in this section shall expire on December 31 of each year.

Damage Disclosure to Purchasers of New Motor Vehicles
Title 47 Chapter 74 Section 1112.1

- A. Every dealer shall disclose in writing to the purchaser of a new or previously unregistered motor vehicle, prior to entering into a contract for the vehicle or, if unknown at that time, prior to delivery of the vehicle, the following information:
1. Any material damage known by the dealer to have been sustained by the vehicle and subsequently repaired; and
 2. Any damage, including but not limited to material damage or flood damage, known by the dealer to have been sustained by the vehicle and not repaired.
- B. For purposes of this section, "material damage" means damage sustained by a motor vehicle as follows:
1. The damage required repairs having a value, including parts and labor calculated at the repairer's cost, exceeding three percent (3%) of the manufacturer's suggested retail price of the vehicle or Five Hundred Dollars (\$500.00), whichever is greater. The replacement of damaged or stolen components, excluding the cost of repainting or refinishing those components, if replaced by the installation of new original manufacturer's equipment, parts, or accessories that are bolted or otherwise attached as a unit to the vehicle, including but not limited to, the hood, bumpers, fenders, mechanical parts, instrument panels, moldings, glass, tires, wheels, and electronic instruments, shall be excluded from damage calculation, except that any damage having a cumulative repair or replacement value which exceeds ten percent (10%) of the manufacturer's suggested retail price of the vehicle shall be deemed material damage;
 2. The damage was to the frame or drive train of the motor vehicle;
 3. The damage occurred in connection with a theft of the entire vehicle; or
 4. The damage was to the suspension of the vehicle requiring repairs other than wheel balancing or alignment.

OKLAHOMA LEMON LAW
Title 15 Section 901

A. As used in this section:

1. "**Consumer**" means the purchaser, other than for purposes of resale, of a motor vehicle, any person to whom such motor vehicle is transferred during the duration of an express warranty applicable to such motor vehicle, and any other person entitled by the terms of such warranty to enforce the obligations of the warranty; and
2. "**Motor vehicle**" means any motor-driven vehicle required to be registered under the Oklahoma Motor Vehicle License and Registration Act, excluding vehicles above ten thousand (10,000) pounds gross vehicle weight and the living facilities of motor homes.

B. For the purposes of this act, if a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity, directly in writing, to the manufacturer, its agent or its authorized dealer during the term of such express warranties or during the period of one (1) year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, the manufacturer, its agent or its authorized dealer shall make such repairs as are necessary to conform the vehicle to such express warranties, notwithstanding the fact that such repairs are made after the expiration of such term or such one-year period.

C. If the manufacturer, or its agents or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use and value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall either accept a return of the vehicle from the consumer and refund to the consumer the full purchase price including all taxes, license, registration fees and all similar governmental fees, excluding interest, less a reasonable allowance for the consumer's use of the vehicle or replace the motor vehicle with a comparable new model acceptable to the consumer. If a comparable model cannot be agreed upon, the purchase price shall be refunded less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer, and lienholder if any, as their interests may appear. A reasonable allowance for use shall be the purchase or lease price of the new motor vehicle multiplied by a fraction having as the denominator one hundred twenty thousand (120,000) miles and having as the numerator the miles directly attributable to use by the consumer beyond fifteen thousand (15,000) miles. It shall be an affirmative defense to any claim under this act:

1. That an alleged nonconformity does not substantially impair such use and value; or
2. That a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle.

In no event shall the presumption described in this subsection apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and has had an opportunity to cure the defect alleged.

- D. It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if:
1. The same nonconformity has been subject to repair four or more times by the manufacturer or its agents or authorized dealers within the express warranty term or during the period of one (1) year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, but such nonconformity continues to exist; or
 2. The vehicle is out of service by reason of repair for a cumulative total of thirty (30) business days during such term or during such period, whichever is the earlier date.

The term of an express warranty, such one-year period and such thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike, fire, flood or other natural disaster.

- E. Nothing in this act shall in any way limit the rights or remedies which are otherwise available to a consumer under any other law.
- F. If a manufacturer has established an informal dispute settlement procedure which complies in all respects with the provisions of Title 16, Code of Federal Regulations, Part 703, as from time to time amended, the provisions of subsection C of this section concerning refunds or replacement shall not apply to any consumer who has not first resorted to such procedure.
- G. The Oklahoma Attorney General shall prepare and place on the Attorney General's website a written statement explaining the rights of a purchaser under this law. The dealer shall provide to the purchaser at the time of the original purchase of a new motor vehicle the written statement prepared by the Attorney General.
- H. Vehicles returned pursuant to the provisions of this act may not be resold in the state unless:
1. The manufacturer provides the same express warranty the manufacturer provided the original purchaser, except that the term of the warranty need only last for twelve thousand (12,000) miles or twelve (12) months after the date of resale, whichever is earlier; or
 2. The manufacturer, through its licensed dealer, provides the consumer with a written statement on a separate piece of paper that clearly discloses the reason or reasons the vehicle was reacquired by the manufacturer.
- I. Notwithstanding the provisions of subsection H of the section, returned vehicles shall not be resold if a new motor vehicle has been returned pursuant to the provisions of this act or a similar statute in another state because of nonconformity resulting in complete failure of the braking or steering system likely to cause death or serious bodily injury if the vehicle is driven.
- J. In any civil action pursuant to this section wherein the consumer is the prevailing party in the civil action, the consumer shall recover all costs and reasonable attorney fees as determined by the court.

Oklahoma Lemon Law (continued) Title 15 Section 901.1

Any manufacturer who reacquires or assists a dealer or lienholder to reacquire a motor vehicle registered in this state, prior to any sale, lease, or transfer of the vehicle in this state, or prior to exporting the vehicle to another state for sale, lease, or transfer if the vehicle was registered in this state and reacquired pursuant to this law shall:

1. Cause the vehicle to be retitled in the name of the manufacturer; and
2. Request the Oklahoma Tax Commission to brand the certificate of title with the notation "Lemon Law Buyback".

Laws governing the Used Motor Vehicle and Parts Commission can be found in:
Oklahoma Statutes Title 47 Sections 581 through 588

Administrative Rules of the Used Motor Vehicle and Parts Commission can be found either through the Secretary of State, Office of Administrative Rules Title 765, or on the Used Motor Vehicle and Parts Commission website www.umvpc.state.ok.us.