An Act

ENROLLED SENATE
BILL NO. 387

By: Newberry and Mazzei of the Senate

and

Sears of the House

An Act relating to motor vehicles; amending 47 O.S. 2011, Sections 565, 565.1, 565.2 and 565.3, which relate to license violations; adding certain license violation, succession, termination and franchise agreement transfer; establishing procedures for fair compensation; setting time for rebuttal of certain rate; prohibiting retaliation; providing certain exception to audit periods; establishing procedure to notify of charge-backs; prohibiting certain construction, exclusive facility or site-control agreement; construing intellectual property; providing for relocation notice, approval and denial; prohibiting certain advertising, free association or products; modifying certain provisions dealing with new motor vehicle dealers succession and termination; setting time frame and procedures for terminations and transfers; and providing an effective date.

SUBJECT: Motor vehicle manufacturer and dealer procedures

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

SECTION 1. AMENDATORY 47 O.S. 2011, Section 565, is amended to read as follows:

Section 565. A. The Oklahoma Motor Vehicle Commission may deny an application for a license, or revoke or suspend a license or impose a fine not to exceed Ten Thousand Dollars ($10,000.00)

against a manufacturer or distributor or a fine not to exceed One Thousand Dollars ($1,000.00) against a dealer per occurrence that any provision of Sections 561 through 567, 572, 578.1, 579 and 579.1 of this title 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 Section 561 et seq. of this title;

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

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

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

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

a. has required a purchaser of a new motor 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 motor 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 motor 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 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 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 unlicensed salespersons, or 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 customer 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, or

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

and/or withholding and delaying delivery of such vehicles out of the ordinary course of business, in order to induce by such coercion any such 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, "give-aways" or other so-called sales promotional devices and/or change of quotas in any sales contest; or has required 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 new motor vehicle dealer; however, nothing in this section shall prohibit a factory from supporting an advertising association which is open to all dealers on the same 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, or fails to act in good faith and in a fair, equitable and nondiscriminatory manner; or has directly or indirectly coerced, intimidated, threatened or restrained any motor vehicle dealer; or 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 fail to adequately and fairly compensate its dealers for labor, parts and other expenses incurred by such dealer to perform under and comply with manufacturer's warranty agreements. ~~In determining whether the warranty compensation is adequate~~ Adequate and fair~~, the Commission shall consider the amount that is charged by the dealer or dealers in their areas of responsibility to their~~

~~nonwarranty work of like kind~~ compensation for parts shall be established by the dealer submitting to the manufacturer or distributor one hundred sequential nonwarranty customer-paid service repair orders which contain warranty-like parts, or ninety (90) consecutive days of nonwarranty customer-paid service repair orders which contain warranty-like parts, whichever is less, covering repairs made no more than one hundred eighty (180) days before the submission and declaring the average percentage markup. Adequate and fair compensation for labor shall be established by the dealer submitting to the manufacturer or distributor one hundred sequential customer-paid service repair orders which contain labor charges, or ninety (90) consecutive days of customer-paid service repair orders which contain labor charges, whichever is less. When submitting repair orders to calculate a labor rate, a dealer need not include repair orders for routine maintenance. A manufacturer or distributor may, not later than thirty (30) days after submission, rebut that declared rate in writing by reasonably substantiating that the rate is inaccurate or unreasonable in light of the practices of all other franchised motor vehicle dealers in an economically similar part of the state offering the same line-make vehicles. The retail rate shall go into effect thirty (30) days following the approval by the manufacturer, subject to audit of the submitted repair orders by the franchisor and a rebuttal of the declared rate as described above. If the declared rate is rebutted, the manufacturer or distributor shall propose an adjustment in writing of the average percentage markup based on that rebuttal not later than thirty (30) days after submission. If the dealer does not agree with the proposed average percentage markup, the 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 rate was inaccurate or unreasonable in light of the practices of all other

franchised motor vehicle dealers in an economically similar part of the state. A manufacturer or distributor may not retaliate against any new motor vehicle dealer seeking to exercise its rights under this provision. A manufacturer or distributor may require a dealer to submit repair orders in accordance with this section in order to validate a dealer's retail rate for parts or labor not more often than once every twelve (12) months. All claims made by dealers for compensation for delivery, preparation and warranty 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 dealer compensation or any charge-backs for warranty parts or service compensation. ~~Audits~~ 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. ~~Audits~~ 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. 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, ~~or~~

c. unreasonably fails or refuses to offer to its same line-make franchised dealers 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 remodel, renovate, or recondition the dealer's existing facilities as a prerequisite to receiving a model or series of 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 or limited production model vehicles,

d. 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 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

automotive industry. However, this subparagraph shall not apply if the factory provides money, credit, allowance, reimbursement, or additional vehicle allocation to a dealer to compensate the dealer for the cost of, or a portion of the cost of, the facility construction or renovation,

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

f. 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 provision shall not restrict the terms of any site-control agreement voluntarily entered into and supported by valuable consideration separate from the new motor vehicle dealer's right to sell and service motor vehicles for the franchisor. Notwithstanding the foregoing or the terms of any site-control agreement, a site-control agreement automatically extinguishes if all of the factory's franchises that operated from the location that are the subject of the site-control agreement are terminated by the factory as part of the discontinuance of a product line, or

g. requires a new motor vehicle dealer to purchase goods or services for the construction, renovation, or improvement of the 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 this 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 this 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 establishes a system of motor vehicle allocation or distribution which is unfair, inequitable or unreasonably discriminatory. Upon the request of any dealer franchised by it, a factory shall disclose in writing to the dealer the basis upon which new motor vehicles are allocated, scheduled and delivered among the dealers of the same line-make for that factory;

11. Being a factory that sells directly or indirectly new motor vehicles ~~or services~~ 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;

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 to the public,

(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 motor vehicle dealer for a period not to exceed twelve (12) months during the transition from one dealer to another 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 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 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 motor vehicle dealership trading in the same line-make is not less than seventy (70) miles,

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

(e) prior to January 1, 2000, the factory shall have furnished or made available to prospective motor vehicle dealers an offering-circular in accordance with the Trade Regulation Rule on Franchising of the Federal Trade Commission, and any guidelines and exemptions issued thereunder, which disclose the possibility that the factory 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 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 customer 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 site control unless agreed to as set forth in subparagraphs e and f of paragraph 9 of this subsection, ~~and~~

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 ~~the~~ each factory. Reasonable facility guidelines do not include a requirement to maintain site control unless agreed to by the dealer as set forth in subparagraphs e and f of paragraph 9 of this subsection; ~~and~~

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 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 customer. Price differences applicable to new models or series motor vehicles at the time of the introduction of new models or series shall not be considered a price increase for purposes of this paragraph. Price changes caused by any of the following shall not be subject to the provisions of this paragraph:

a. the addition to a motor vehicle 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 new motor vehicle dealer without consent of the dealer, which consent shall not be unreasonably withheld;

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

21. Being a factory that requires a new motor vehicle dealer to sell, offer to sell or sell exclusively an extended service contact, 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,

b. by measuring the 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 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 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 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 assets 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 it 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.

SECTION 2. AMENDATORY 47 O.S. 2011, Section 565.1, is amended to read as follows:

Section 565.1. Notwithstanding the terms of any franchise agreement, and subject to the following conditions contained in paragraphs 1 through 5 of this section, any manufacturer or distributor who prevents or refuses to honor the succession to a dealership by any legal heir or devisee under the will of a new motor vehicle dealer or under the laws of descent and distribution of this state 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 of the new motor vehicle dealer, the manufacturer shall receive a written notice from any legal heir or devisee who intends to establish a successor dealership. If timely notice is not so received, then 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 legal heir's or devisee's timely written notice, the manufacturer may request, and the legal heir or devisee shall, within a reasonable time, provide any information which is reasonably necessary for the manufacturer to evaluate the proposed successor dealer and dealership, including, but not limited to, applications, proposals for facilities and financing;

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

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;

5. Within ten (10) days of its receipt of the manufacturer's notice of disapproval, the legal heir or devisee may file a protest of the manufacturer's decision with the Oklahoma 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 legal heir or devisee, or the legal heir or devisee'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 financial qualifications, general business experience, and other requirements relating to prospective franchisees. However, a legal heir that is of good moral character in accordance with the factory's 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 and other requirements relating to prospective franchises. The disapproval by the manufacturer shall be final if the legal heir or devisee fails to file a timely protest of such 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 legal heir or devisee. 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 3. AMENDATORY 47 O.S. 2011, Section 565.2, is amended to read as follows:

Section 565.2. 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 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 Motor Vehicle Commission as follows:

1. Not less than ninety (90) days prior to the effective date of such 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 such 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 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 an 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 such 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. Such hearing shall be held in accordance with the provisions of the Administrative Procedures Act, Sections 301 through 326 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. 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 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 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 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 ~~a reasonable~~ the remaining lease term at ~~reasonable~~ 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 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~~; and~~.

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, subleases or assignee,

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

c. fails to make written request for assistance under this section within ~~one (1) month~~ ninety (90) days after ~~receiving an order from the Commission affirming~~ the ~~proposed~~ 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 of 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 dealer may immediately request payment under this provision following the announcement in exchange for cancelling any further franchise rights, except payments owed to the dealer in the ordinary course of business, or may request payment under this provision upon the final termination, cancellation or nonrenewal of the franchise. In either case, payment under this provision shall be made not later than ninety (90) days after the fair market value is determined. If the factory and 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 dealer shall utilize a neutral third party mediator to resolve the disagreement.

SECTION 4. AMENDATORY 47 O.S. 2011, Section 565.3, is amended to read as follows:

Section 565.3. 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 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 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, but may be made contingent upon the transferee meeting reasonable written requirements. 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, within 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 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. A dealer receiving notice of refusal of the sale, transfer, or assignment shall have the right to file a protest with the Commission within thirty (30) days of receipt of the refusal. A dealer receiving notice that the sale, transfer or assignment is contingent upon the transferee meeting facility and/or performance standards shall have the right to file a protest with the Commission within thirty (30) days of receipt of the notice. In the event a protest is filed, the manufacturer or distributor shall have the burden of proof to establish the transferee or the 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 reasonable based on the reasons set forth in subparagraph d of paragraph 9 of Section 565 of this title.

SECTION 5. This act shall become effective November 1, 2014.

Passed the Senate the 21st day of May, 2014.

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of May, 2014.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 23rd day of May, 2014, at 9:08 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 3rd day of June, 2014, at 10:59 o'clock A M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 3rd day of June, 2014, at 1:38 o'clock P M.

By: Chris Benge