



## Courtesy of Advising Automobile Dealers LLC

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### **Section 565.2**

#### **Termination, Cancellation, or Failure 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 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 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.

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.

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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, and
- b. not substantially in excess of facilities recommended by the manufacturer;

2. If the facilities are owned by the new motor vehicle dealer, 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 term at reasonable rent, or
- c. failing the foregoing, lease the dealership facilities at a reasonable rental value for one (1) year;

3. If the facilities are leased by the new motor vehicle dealer, 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 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 after receiving an order from the Commission affirming the proposed termination, cancellation or nonrenewal.