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November 2019

## New Car Dealer Licensing in Oklahoma

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Oklahoma has two executive agencies dedicated to the regulation of car sales - not including the Corporation Commission, the Tax Commission, and the Department of Public Safety. The Oklahoma Motor Vehicle Commission (OMVC) regulates new car dealers, distributors, and manufacturers. The Oklahoma Used Motor Vehicle and Parts Commission oversees used car dealers, dismantlers, manufactured home dealers, manufactured home manufacturers, and manufactured home installers.

The current regulatory scheme for new car dealers includes numerous onerous and anticompetitive provisions that harm consumers. These include sections that: make it illegal for brokers to negotiate on behalf of buyers; prevent manufacturers from selling directly to consumers; give dealers enormous leverage over the placement of new dealerships as well as keeping manufacturers entangled with existing dealers, their heirs, or whomever a dealer decides to sell the franchise to; and mandatory licensing of dealers.<sup>1</sup> Restrictions on advertisements and limits on off-site showings further hinder the ability of new firms entering the field.<sup>2</sup> Since these laws prop up dealerships at the expense of consumers, they should be eliminated. In fact there is little to justify the existence of a dealer licensing scheme at all, much less one as burdensome as Oklahoma's.

### Commission

The Motor Vehicle Commission has nine members who are selected by the governor, with the advice and consent of the Senate. Seven members must be 10 year veterans of the new car industry (manufacturer, distributor or dealer), while the other two must be lay members. One member must be appointed from each of six geographic regions, the other two come from the state at large.<sup>3</sup>

The Commission is charged with ensuring compliance with all regulations and licensure related to the manufacture, distribution and sale of new cars. This includes the power to hear disputes over negative actions taken by the OMVC such as denial or revocation of a license or a fine. These dispute resolution responsibilities come fully loaded with quasi-judicial authority such as

subpoena power and "the power to compel the production of all records, papers and other documents".<sup>4</sup>

### Licensing

Oklahoma licenses several phases of new car distribution.<sup>5</sup> Car manufacturers and distribution centers must pay an initial fee of \$400 and an annual renewal fee of \$300. The same fee schedule applies to factory branches and distribution branches. Representatives of factories or dealers must pay \$100 per year. Dealers of cars and powersport vehicles one an initial \$300 fee, followed by an annual \$100 renewal fee.

The commission is charged with gathering from a license applicant "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." Business locations must be approved by the commission, and such location will be listed on the license. The commission must approve relocations.

### Evaluating Whether to License Car Dealers

The 1889 Institute has published "Policy Maker's Guide to Evaluating Proposed and Existing Professional Licensing Laws." It argues that there are two reasons to license an occupation: 1) an occupation's practices present a real and probable risk of harm to the general public or patrons if practitioners fail to act properly; AND 2) civil-law or market failure makes it difficult for patrons to obtain information, educate themselves, and judge whether an occupation's practitioners are competent.<sup>6</sup>

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***Is there a real and highly probable risk of significant harm to consumers if the occupation's practitioners do not act properly?***

Certainly not. While there is extreme danger should car manufacturers perform poorly, that risk does not carry into the heavily regulated field of car sales. In a worst case scenario, if a dealer or salesman performs poorly a consumer will pay too much or too little for the vehicle. Market forces will work to alleviate both problems. Common car sales websites already make it not only possible but easy to comparison shop.

***Is there a civil-law or market failure that makes it nearly impossible for patrons of these services to obtain information, educate themselves, and judge whether an occupation's practitioners are competent?***

Again, no. There has never been more information available to consumers. It's all there at the push of a button. Multiple websites help consumers comparison shop. It is possible to find not only competitive offers, but also what others have paid recently for similar vehicles, as well as reviews of specific dealerships.

1889 has previously analyzed 12 occupations. So far only once has the first question been answered affirmatively. The answer to the second question has, to date, always been "No." Car Dealer licensing breaks no new ground. The practice of car dealer licensing is warrantless by either consideration. And remember, only when the answer to *both* questions is "Yes" does licensing make sense.

The potential liability in delivering an unsafe car makes

manufacturers highly responsive to safety concerns. Dealers are merely the conduit through which the vehicles travel to consumers. Think of it like the plumbing in your home. As long as dealers do not somehow contaminate the car, it should arrive to consumers in the same condition it left the factory. If your pipe draws from clean water, that's what you'll get out of the sink, barring some sort of contaminant in the pipe. What possible motive would a car dealer have for making their wares worse than what a buyer could get across town?

## **Policy Recommendations**

It should be noted that just this last term the legislature made a very positive step in the right direction. Previously, salespeople were required to be licensed by the OMVC. This is a much more onerous form of regulation than mere registration. The legislature should be applauded for this move, and it should also be noted that the current legislature did not pass the vast majority of the current regulatory regime. But there is considerably more work to be done.

The state-sponsored car dealer cartel should be ended. Car dealers should not be protected from honest competition. This requires repealing the laws that grant geographic territories to one dealer each, instead opening each region up to genuine competition. It requires repealing the predatory anti-brokering law that prevents consumers from engaging an advocate to negotiate in their place. And it requires eliminating dealer licensing.

## **End Notes**



- 1 Mike Davis, *Fully Loaded: Oklahoma's Car Dealer Cartel*, 1889 Institute, November 2019, [https://img1.wsimg.com/blobby/go/8a89c4f1-3714-49e5-866b-3f6930172647/downloads/1889\\_NewCarDealer\\_PolicyAnalysis.pdf?ver=1573657378290](https://img1.wsimg.com/blobby/go/8a89c4f1-3714-49e5-866b-3f6930172647/downloads/1889_NewCarDealer_PolicyAnalysis.pdf?ver=1573657378290).
- 2 Okla. Admin. Code § 465:15-1-1 et seq., <https://www.ok.gov/omvc/pdf/Advertising%20Rules%2006-09.pdf>
- 3 47 O.S. § 563 (OSCN 2019), <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=82887>.
- 4 47 O.S. § 566 (OSCN 2019), <http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=82893>.
- 5 47 O.S. § 564 (OSCN 2019), <https://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=82888>
- 6 Byron Schlomach and Vance H. Fried, *Policy Maker's Guide to Evaluating Proposed and Existing Occupational Licensing Laws*, 1889 Institute, February 2017, [https://img1.wsimg.com/blobby/go/8a89c4f1-3714-49e5-866b-3f6930172647/downloads/1d0kmu3ds\\_137499.pdf](https://img1.wsimg.com/blobby/go/8a89c4f1-3714-49e5-866b-3f6930172647/downloads/1d0kmu3ds_137499.pdf).