

ENGROSSED HOUSE
BILL NO. 2041

BY: GREENWOOD and SETTLE of
the HOUSE

and

BROWN of the SENATE

AN ACT RELATING TO MOTOR VEHICLES; AMENDING 47 O.S.
1991, SECTIONS 581, 582, 583 AND 584, WHICH RELATE
TO USED MOTOR VEHICLE AND PARTS DEALERS; ADDING
DEFINITIONS; MODIFYING USED MOTOR VEHICLE AND PARTS
COMMISSION POWERS TO INCLUDE MANUFACTURED HOME
DEALERS; ADDING MANUFACTURED HOME DEALERS TO
LICENSING REQUIREMENTS; PROVIDING FOR LICENSE FEES
AND RENEWALS; REQUIRING BOND; REQUIRING LIABILITY
INSURANCE POLICY; PROVIDING GROUNDS FOR DENIAL,
REVOCATION OR SUSPENSION OF LICENSE; AND PROVIDING
AN EFFECTIVE DATE.

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 581, is
amended to read as follows:

Section 581. As used in Sections 581 through 587 of this title:

1. "Commission" means the Oklahoma Used Motor Vehicle and Parts
Commission.

2. "Compensation" means anything of value including money,
merchandise, rebates on purchases, trading stamps, or any other
thing of value.

3. "Used motor vehicle" means any motor vehicle, as that term is defined in the Motor Vehicle License and Registration Act, which has been sold, bargained, exchanged, given away, or the title thereto transferred from the person who first took title from the manufacturer, importer, or dealer or agent of the manufacturer or importer, or so used as to have become what is commonly known as a "secondhand motor vehicle". In the event of transfer, on the statement of origin, from the original franchised dealer to any other dealer or individual other than a franchised dealer of the same make of vehicle, the vehicle shall be considered a used motor vehicle and must be titled in the new owner's name.

4. "Used motor vehicle dealer" means any person who, for a commission or with intent to make a profit or gain of money or other thing of value, sells, brokers, exchanges, rents with option to purchase, or offers or attempts to negotiate a sale or exchange of an interest in used motor vehicles, or who is engaged wholly or in part in the business of selling used motor vehicles, whether or not such motor vehicles are owned by such person.

"Used motor vehicle dealer" shall not include:

- a. receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting pursuant to the judgment or order of any court,
- b. public officers while performing their official duties,
- c. employees of persons enumerated in the definition of "used motor vehicle dealer" when engaged in the specific performance of their duties as such employees,
- d. mortgagees or secured parties as to sales of motor vehicles constituting collateral on a mortgage or security agreement, if such mortgagees or secured parties shall not realize for their own account from

such sales any monies in excess of the outstanding balance secured by such mortgage or security agreement, plus costs of collection,

- e. any person, firm or corporation who sells, or contracts for the sale of, his own vehicles when such vehicles are sold in liquidation, and any person, firm or corporation who serves as an agent in such sale. The exclusion provided in this paragraph shall not extend to any person, firm or corporation whose business is the purchase, sale or rental with option to purchase motor vehicles, or to a location used for such purposes.

5. "Used motor vehicle salesman" shall include anyone who, for compensation of any kind, operates as a broker or is compensated for any referral of a prospective buyer to a dealer.

6. "Wholesale used motor vehicle dealer" means any person who, for a commission or with intent to make a profit or gain of money or other thing of value, sells, brokers, exchanges, rents with option to purchase or offers or attempts to negotiate a sale or exchange of interest in used motor vehicles exclusively to used motor vehicle dealers, or who is engaged in the business of selling used motor vehicles exclusively to used motor vehicle dealers, whether or not such motor vehicles are owned by such person.

7. "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained thereon. The term manufactured home shall not include any manufactured home

which is owned by a religious corporation or society and is used exclusively for religious purposes. "Mobile home" means a manufactured home transportable in one section. "Sectional home" means a manufactured home transportable in two or more sections. Said terms shall not include any travel trailer or any self-propelled vehicles used as living quarters, whether referred to as motor homes or by any other name. Provided, that trailers or semitrailers used for the transportation of goods or property, other than the personal belongings of the owner of such vehicle, shall not be included in this definition.

8. "Manufactured home dealer" means any person, firm or corporation engaged in the business of selling any new and unused, or used, or both new and used manufactured homes. Such information and a valid franchise letter as proof of authorization to sell any such new manufactured home product line or lines shall be attached to said application for a dealer license to sell manufactured homes. "Manufactured home dealer" shall not include any person, firm or corporation who sells or contracts for the sale of his own personally titled manufactured home or homes, or any person acting as an auctioneer who has been engaged by a seller to direct, conduct, control or be responsible for the sale of manufactured homes as a part of an auction or liquidation of an estate, or any Oklahoma licensed real estate broker or sales associate when buying or selling used mobile homes as part of their real estate business. No person, firm or corporation shall be considered a manufactured home dealer as to any manufactured home purchased or acquired by such person, firm or corporation for purposes other than resale; provided, that the restriction set forth in this sentence shall not prevent an otherwise qualified person, firm or corporation from utilizing a single manufactured home as a sales office.

SECTION 2. AMENDATORY 47 O.S. 1991, Section 582, is amended to read as follows:

Section 582. A. There is hereby created the Oklahoma Used Motor Vehicle and Parts Commission, to be composed of one member from each of the six congressional districts of the state, and a Chairman to be selected from the state at large, all to be appointed by the Governor of the state, by and with the advice and consent of the State Senate, such appointments to be made within sixty (60) days after the effective date of this act. Each of the Commissioners appointed shall, at the time of his appointment, be a resident in good faith of the congressional district from which he is appointed, except the Chairman, who shall be a resident in good faith of the state; and each shall be of good moral character and each shall have been actually engaged in the manufacture, distribution or sale of motor vehicles or manufactured homes in the state for not less than ten (10) consecutive years next preceding appointment. Being engaged in one or more of such pursuits shall not disqualify a person otherwise qualified from serving on the Commission.

B. The term of the Chairman shall be coterminous with that of the Governor making the appointment, and until his successor is appointed and is qualified. The terms of office of the members first appointed to the Commission shall be as follows: The members appointed from the First and Second Congressional Districts shall serve until June 30, 1982; the members appointed from the Third and Fourth Congressional Districts shall serve until June 30, 1984; and the members appointed from the Fifth and Sixth Congressional Districts shall serve until June 30, 1986; provided, however, that each member shall serve until his successor is appointed and is qualified. 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 congressional district from which he 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 aforesaid for the unexpired portion of the term. The Commission shall meet at Oklahoma City and complete its organization immediately after the entire membership has been appointed and has qualified. The Chairman and each member of the Commission shall take and subscribe to the oath of office required of public officers.

C. The Chairman and members of the Commission shall receive Thirty Dollars (\$30.00) for each and every day actually and necessarily spent in attending the meetings of the Commission, and shall be reimbursed for subsistence and traveling expenses incurred in the performance of their duties hereunder as provided by the State Travel Reimbursement Act; provided that such meeting payments shall not exceed the sum of Six Hundred Dollars (\$600.00) per annum to any one person.

D. The Commission shall appoint a qualified person to serve as Executive Director thereof, which person shall have had sufficient management and organizational experience in the automotive industry to direct the functions of the Commission. 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 his salary and shall define and prescribe his duties. The Executive Director shall be in charge of the Commission's office and shall devote such time as necessary to fulfill the duties thereof, and before entering upon his duties he shall take and subscribe to the oath of office. The Commission may employ such clerical, technical, legal and other help and incur such expenses as may be necessary for the proper discharge of its duties under this act. The Commission shall maintain its office and transact its business in Oklahoma City, and is authorized to adopt and use a seal.

E. 1. The Commission is hereby vested with the powers and duties necessary and proper to enable it to fully and effectively

carry out the provisions and objectives of this act, and is hereby authorized and empowered to make and enforce all reasonable rules and regulations and to adopt and prescribe all forms necessary to accomplish said purpose. The enumeration of any power or authority herein shall not be construed to deny, impair, disparage or limit any others necessary to the attainment thereof. A copy of all rules and regulations adopted by the Commission shall be filed and recorded in the office of the Secretary of State and the State Librarian and Archivist, and same may be amended, modified or repealed from time to time.

2. Among the Commission's powers and duties shall be included, but not limited to, the following:

- a. License used motor vehicle dealers, used motor vehicle salesmen, ~~and~~ wholesale used motor vehicle dealers, and manufactured home dealers,
- b. Inspect used motor vehicle dealer and manufactured home dealer locations to ensure that they are in an approved location, meet local zoning or other municipal requirements, and have sufficient facilities which shall include, but not be limited to, a business sign, a listed and usable telephone number, a restroom and a sales office,
- c. Inspect wholesale used motor vehicle dealer locations to ensure that they are in an approved location, meet local zoning or other municipal requirements, and have sufficient facilities which shall include, but not be limited to, a listed and usable telephone number in the dealer's name and a business office where records of the business are kept,
- d. Require all dealer sales to have a condition of sale such as warranty disclaimer, implied or written

warranty or a service contract approved by the Commission, and

- e. Work with consumers and dealers to hear complaints on used vehicles and parts and establish a Used Car Consumer Action Panel to hear complaints on a condition of sale, implied and written warranties and service complaints.

F. All fees and charges collected under the provisions of this act 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 Used Motor Vehicle and Parts Commission Fund", which fund 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 act; and expenditures from the fund shall be warrants issued by the State Treasurer against claims submitted by the Commission to the Director of State Finance for approval.

At the close of each fiscal year hereafter, the Commission shall file with the Governor and the State Auditor and Inspector a true and correct report of all fees 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 gross fees and charges so collected and received.

All expenses incurred by the Commission in carrying out the provisions of this act 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 the fund, exclusive of the portion thereof to be paid into the General Revenue Fund as above set out; provided, that in no event shall liability ever

accrue hereunder against the state in any sum whatsoever, or against the Oklahoma Used Motor Vehicle and Parts Commission Fund, in excess of the ninety percent (90%) of the fees and charges deposited therein.

SECTION 3. AMENDATORY 47 O.S. 1991, Section 583, is amended to read as follows:

Section 583. A. It shall be unlawful and constitute a misdemeanor for any person, firm, association, corporation or trust to engage in business as, or serve in the capacity of, or act as a used motor vehicle dealer, used motor vehicle salesman, ~~or~~ wholesale used motor vehicle dealer, or a manufactured home dealer in this state without first obtaining a license therefor as provided in this section; and any person, firm, association, corporation or trust engaging, acting or serving in the capacity of a used motor vehicle dealer and/or a used motor vehicle salesman, or a manufactured home dealer, or having more than one place where the business of a used motor vehicle dealer or a manufactured home dealer is carried on or conducted shall be required to obtain and hold a current license for each thereof in which he, it or they shall engage; provided that a used motor vehicle dealer's license shall authorize one person to sell without a salesman's license 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; provided that a salesman's license may not be issued under a wholesale used motor vehicle dealer's license. Any person, firm, association, corporation or trust violating the provisions of this section shall, upon conviction, be fined not to exceed Five Hundred Dollars (\$500.00). A second or subsequent conviction shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00); provided that each day such unlicensed person violates this section shall

constitute a separate offense, and any vehicle involved in a violation of this subsection shall be considered a separate offense.

B. Applications for licenses required to be obtained under provisions of this act which creates the Oklahoma Used Motor Vehicle and Parts Commission shall be verified by the oath or affirmation of the applicant and shall be on forms prescribed by the Commission and furnished to such applicants, and shall contain such 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 engaged in the pursuit, avocation or business for which a license, or licenses, is applied for, and whether the applicant is able to properly conduct the business for which a license, or licenses, is 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 in accordance with the schedule hereinafter provided. 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 bonds and licenses issued under the provisions of this act shall expire on December 31, following the date of issue and shall be nontransferable. All applications for renewal of dealers' licenses should be submitted by November 1 of each year, and licenses shall be issued by January 10. If applications have not been made for renewal of licenses, such licenses shall expire on December 31 and it shall be illegal for any person to represent himself and act as a dealer thereafter. Tag agents shall be notified not to accept dealers' titles until such time as licenses have been issued.

A used motor vehicle salesman's license shall permit the licensee to engage in the activities of a used motor vehicle salesman. Salesmen shall not be allowed to sell vehicles unless applications, bonds and fees are on file with the Commission and the motor vehicle salesman's or temporary salesman's license issued. A temporary salesman's license, salesman's renewal or reissue of salesman's license shall be deemed to have been issued when the appropriate application, bond and fee have been properly addressed and mailed to the Commission.

Dealers' payrolls and other evidence will be checked to ascertain that all salesmen for such dealers are licensed.

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 used motor vehicle dealer's license and each wholesale used motor vehicle dealer's license, Two Hundred Dollars (\$200.00). If a used motor vehicle dealer or a wholesale used motor vehicle dealer has once been licensed by the Commission in the classification for which he applies for a renewal of the license, the fee for each subsequent renewal shall be One Hundred Dollars (\$100.00);

2. For a used motor vehicle dealer's license, for each place of business in addition to the principal place of business, Fifty Dollars (\$50.00);

3. For each used motor vehicle salesman's license, Five Dollars (\$5.00);

4. For each holder who possesses a valid new motor vehicle dealer's license from the Oklahoma Motor Vehicle Commission, One Hundred Dollars (\$100.00) shall be the initial fee for a used motor vehicle license and the fee for each subsequent renewal shall be One Hundred Dollars (\$100.00);

5. For each manufactured home dealer's license, and for each place of business in addition to the principal place of business, Two Hundred Dollars (\$200.00);

6. For each renewal of a manufactured home dealer's license, and renewal for each place of business in addition to the principal place of business, One Hundred Dollars (\$100.00).

D. The license issued to each used motor vehicle dealer ~~and~~, each wholesale used motor vehicle dealer, and each manufactured home dealer shall specify the location of the place of business. If the business location is changed, the Commission shall be notified immediately of the change and the Commission may endorse the change of location on the license without charge. The license of each dealer shall be posted in a conspicuous place in the dealer's place or places of business.

Every used motor vehicle salesman shall have his license upon his person when engaged in his business, and shall display same upon request. The name of the employer of the salesman shall be stated on the license and if there is a change of employer, the license holder shall immediately mail his license to the Commission for its endorsement of the change thereon. There shall be no charge for endorsement of change of employer on the license or penalty for not having a license upon his person.

E. Each applicant for a used motor vehicle dealer's license shall procure and file with the Commission a good and sufficient bond in the amount of Ten Thousand Dollars (\$10,000.00). Each applicant for a wholesale used motor vehicle dealer's license shall procure and file with the Commission a good and sufficient bond in the amount of Twenty-five Thousand Dollars (\$25,000.00). Each applicant for a manufactured home dealer's license shall procure and file with the Commission a good and sufficient bond in the amount of Thirty Thousand Dollars (\$30,000.00). The bond shall be approved as to form by the Attorney General and conditioned that the applicant

shall not practice fraud, make any fraudulent representation, or violate any of the provisions of this act in the conduct of the business for which he is licensed. One of the purposes of the bond is to provide reimbursement for any loss or damage suffered by any person by reason of issuance of a certificate of title by a used motor vehicle dealer ~~or~~, a wholesale used motor vehicle dealer, or a manufactured home dealer.

If a motor vehicle dealer has a valid license issued by the Oklahoma Motor Vehicle Commission, then the bond as required by this subsection shall be waived.

Each applicant for a used motor vehicle salesman's license shall procure and file with the Commission a good and sufficient bond in the amount of One Thousand Dollars (\$1,000.00). The bond shall be approved as to form by the Attorney General and conditioned that the applicant shall perform his duties as a used motor vehicle salesman without fraud or fraudulent representation and without violating any provisions of this act.

The bonds as required by this section shall be maintained throughout the period of licensure. Should the bond be canceled for any reason, the license shall be revoked as of the date of cancellation unless a new bond is furnished prior to such date.

F. Any used motor vehicle dealer or wholesale used motor vehicle dealer is required to furnish and keep in force a minimum of Twenty-five Thousand Dollars (\$25,000.00) of single liability insurance coverage on all vehicles offered for sale or used in any other capacity in demonstrating or utilizing the streets and roadways in accordance with the financial responsibility laws of this state.

G. Any manufactured home dealer is required to furnish and keep in force a minimum of One Hundred Thousand Dollars (\$100,000.00) of garage liability and completed operations insurance coverage.

SECTION 4. AMENDATORY 47 O.S. 1991, Section 584, is amended to read as follows:

Section 584. A. The Commission may deny an application for a license, or revoke or suspend a license after it has been granted, for any of the following reasons:

1. On satisfactory proof of unfitness of the applicant or the licensee, as the case may be, under the standards established by this act;

2. For fraud practices or any material misstatement made by an applicant in any application for license under the provisions of this act;

3. For any willful failure to comply with any provision of this act or with any rule or regulation adopted and promulgated by the Commission under authority vested in it by this act;

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

5. Continued or flagrant violation of any of the rules or regulations of the Commission;

6. Being a used motor vehicle dealer, used motor vehicle salesman, ~~or~~ a wholesale used motor vehicle dealer, or a manufactured home dealer who:

- a. resorts to or uses any false or misleading advertising in connection with his business,
- b. has committed any unlawful act which resulted in the revocation of any similar license in another state,
- c. has been convicted of a crime involving moral turpitude,
- d. has committed a fraudulent act in selling, purchasing or otherwise dealing in motor vehicles or manufactured homes or has misrepresented the terms and conditions of a sale, purchase or contract for sale or purchase of a motor vehicle or manufactured home or any

interest therein including an option to purchase such motor vehicles or manufactured homes,

- e. has engaged in his business under a past or present license issued pursuant to this act, in such a manner as to cause injury to the public or to those with whom he is dealing,
- f. has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license, or
- g. has failed or refused to furnish and keep in force any bond required under this act;

7. Being a used motor vehicle dealer who:

- a. does not have an established place of business,
- b. employs unlicensed salesmen or other unlicensed persons in connection with the sale of used vehicles,
- c. fails or refuses to furnish or keep in force single limit liability insurance on any vehicle offered for sale and otherwise required under the financial responsibility laws of this state, or
- d. is not operating from the address shown on his license if this change has not been reported to the Commission; or

8. Being a manufactured home dealer who:

- a. does not have an established place of business,
- b. fails or refuses to furnish or keep in force garage liability and completed operations insurance, or
- c. is not operating from the address shown on his license if this change has not been reported to the Commission.

B. The Commission shall deny an application for a license, or revoke or suspend a license after it has been granted, if a

manufactured home dealer does not meet the following guidelines and restrictions:

1. A display area for mobile homes which is easily accessible, with sufficient parking for the public;

2. An office for conducting business where the books, records, and files are kept, with access to a restroom for the public;

3. Place of business shall meet all zoning occupancy and other requirements of the appropriate local government and shall be regularly occupied by a person, firm, or corporation engaged in the business of selling mobile homes; and

4. Place of business must be separate and apart from any other dealer's location;

Each of the aforementioned grounds for suspension, revocation, or denial of issuance or renewal of license shall also constitute a violation of this act, unless the person involved has been tried and acquitted of the offense constituting such grounds; ~~or.~~

~~9.~~ 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 a conviction at law for any violation of this act.

SECTION 5. This act shall become effective September 1, 1992.

Passed the House of Representatives the 4th day of March, 1992.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1992.

President of the Senate