

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

3RD CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
HOUSE BILL NO. 1292

By: Widener of the House

and

Hooper of the Senate

3RD CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to motor vehicles; amending 47 O.S. 1991, Sections 581, as last amended by Section 9, Chapter 373, O.S.L. 1992 and 582, as amended by Section 2, Chapter 140, O.S.L. 1992, (47 O.S. Supp. 1992, Sections 581 and 582), which relate to used motor vehicles and parts; clarifying exception in definition; modifying membership in Oklahoma Used Motor Vehicle and Parts Commission; conforming language; modifying qualifications for membership on Commission; providing length of terms for additional members; and declaring an emergency.

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 581, as last amended by Section 9, Chapter 373, O.S.L. 1992 (47 O.S. Supp. 1992, 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 acting as an auctioneer who has been engaged by a seller to direct, conduct, control or be responsible for the sale of used motor vehicles as part of an estate auction or liquidation ~~of an~~ ~~estate~~, or

f. 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, as amended by Section 2, Chapter 140, O.S.L. 1992 (47 O.S. Supp. 1992, 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, two members to be selected from the state at large, 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 two at-large members and the Chairman, who shall be ~~a resident~~ residents 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, or engaged in the principal business of purchasing and dismantling or disassembling motor vehicles for the purpose of selling the parts thereof in the state for not less than ten (10) consecutive years next preceding appointment. Provided, there shall not be fewer than four (4) members engaged in the business of the sale of used motor vehicles and there shall not be fewer than two (2) members engaged in the principal business of dismantling or disassembling motor vehicles for the purpose of selling the parts thereof. 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; one at-large member appointed shall serve until June 30, 1996; and one at-large member appointed shall serve until June 30, 1998; 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~~ Except for the term of office of the two at-large members, 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

Req. No. 7320Page 5

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

Req. No. 7320Page 6

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, 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. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

