

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)
3RD CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
SENATE BILL NO. 196

By: Littlefield of the Senate

and

Adair of the House

3RD CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public health and safety; amending 63 O.S. 1991, Sections 4002, as amended by Section 1, Chapter 284, O.S.L. 1992, 4005, as amended by Section 4, Chapter 284, O.S.L. 1992, 4037, 4044, as amended by Section 24, Chapter 284, O.S.L. 1992 and 4213, as amended by Section 54, Chapter 284, O.S.L. 1992 (63 O.S. Supp. 1992, Sections 4002, 4005, 4044 and 4213), which relate to the Oklahoma Vessel and Motor Registration Act, exemptions, dealer agreements, permits for display and sale of new vessels or motors held off premises and disposal of marine sewage in state waters; modifying statutory reference; exempting canoes from certain dealer agreements; increasing radius for certain display or sale; modifying certain date; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 4002, as amended by Section 1, Chapter 284, O.S.L. 1992 (63 O.S. Supp. 1992, Section 4002), is amended to read as follows:

Section 4002. As used in the Oklahoma Vessel and Motor Registration Act, Section 4002 et seq. of this title:

1. "Boat livery" means a business establishment engaged in renting or hiring out vessels for profit;
2. "Certificate of documentation" means a document issued by the United States Coast Guard which is legal proof of ownership of a vessel;
3. "Certificate of registration" means a document which is legal proof of registration of a vessel or motor;
4. "Certificate of title" means a document which is proof of legal ownership of a vessel and/or motor;
5. "Commission" means the Oklahoma Tax Commission;

6. "Dealer" means any person engaged in the business of selling, trading, renting with option to purchase, or attempting to negotiate or negotiating sales or exchanges of interests in new or used vessels or motors, or new and used vessels or motors, or any combination thereof;

7. "Dealer agreement" means the agreement, authorization or written contract between a manufacturer and distributor and a new vessel dealer which purports to establish the legal rights and obligations of the parties to the agreement, authorization or written contract with regard to the purchase and sale of new vessels or new motors;

8. "Designated successor" means one or more persons nominated by the new vessel dealer, in a written document filed by the dealer with the manufacturer or distributor at the time the dealer agreement is executed, to succeed the dealer in the event of his death or incapacity. If a designated successor is not able to succeed the new vessel dealer because of the designated successor's death or legal incapacity, the dealer shall execute a new document nominating a designated successor within sixty (60) calendar days after the date of the death or incapacity;

9. "Distributor" means a person, resident or nonresident, who in whole or in part offers for sale, sells, or distributes a new vessel or new motor to a new vessel dealer or who maintains a factory representative, resident or nonresident, or who controls a person, resident or nonresident, who in whole or in part offers for sale, sells, or distributes a new vessel or new motor to a new vessel dealer;

10. "Distributor branch" means a branch office similarly maintained by a distributor or wholesaler for the same purposes a factory branch is maintained;

11. "Distributor representative" means any person, firm, association, corporation or trust and each officer and employee thereof engaged as a representative of a distributor or distributor branch of vessels or motors, for the purpose of making or promoting the sale of his, its or their vessels or motors, or

for supervising or contacting his, its or their dealers or prospective dealers;

12. "Documented vessel" means any vessel in this state which shall have and carry on board the original certificate of documentation in legible form as issued by the United States Coast Guard or federal agency successor thereto. All documented vessels shall be required to display a current State of Oklahoma annual registration decal;

13. "Factory branch" means a branch office maintained by a person, firm, association, corporation or trust who manufactures or assembles vessels or motors for the sale of vessels or motors to distributors, or for the sale of vessels or motors to dealers, or for directing or supervising, in whole or in part, its representatives;

14. "Factory representative" means any person, firm, association, corporation or trust and each officer and employee thereof engaged as a representative of a manufacturer of vessels or motors or by a factory branch, for the purpose of making or promoting the sale of his, its or their vessels or motors, or for supervising or contacting his, its or their dealers or prospective dealers;

15. "Hull identification number" means the serial number affixed to the outside of the hull of a vessel on the upper starboard side (right) corner of the transom (back wall) which is assigned by the manufacturer or the Commission;

16. "Inboard motor" means an internal combustion engine mounted inside a vessel which provides the transfer of power to move a vessel through the water;

17. "Inboard/outboard motor" means an internal combustion engine mounted inside a vessel and an external stern drive attached through the transom of the vessel providing the transfer of power to move the vessel through the water;

18. "John boat" means a narrow, flat bottomed square-ended boat propelled by a pole, paddle or a motor less than ten horsepower;

19. "Lifeboat" means a vessel carried on another vessel in excess of sixty-five (65) feet for use if such other vessel has to be abandoned;

20. "Manufacturer" means a person who manufactures or assembles new vessels or new motors, or a distributor, factory branch, or factory representative;

21. "Motor" means any internal combustion engine mounted at the stern of a vessel or placed inside a vessel which provides the transfer of power to move the vessel through the water;

22. "New vessel dealer" means a person who holds a dealer agreement granted by a manufacturer or distributor for the sale of the manufacturer's or distributor's vessels or motors, who is engaged in the business of purchasing, selling, exchanging, or dealing in new vessels or new motors, and who has an established place of business;

23. "Operate" means to navigate or be in actual physical control of a vessel or otherwise use a vessel or motor;

24. "Outboard motor" means an internal combustion engine capable of being externally mounted at the stern of a vessel which provides the transfer of power to move a vessel through the water;

25. "Owner" means a person, other than a lienholder, having a property interest in or title to a vessel or motor. The term includes a person entitled to the use or possession of a vessel or motor subject to an interest in another person, reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security;

26. "Permanent number" means the distinctive and unique number which the Commission permanently assigns to a vessel, irrespective of any change of ownership of said vessel. The permanent number shall begin with the letters "OK", followed by four numerals, and then followed by two letters;

27. "Person" means a natural person, partnership, corporation, association, trust, estate or other legal entity;

28. "Proposed new vessel dealer" means a person who has an application pending for a new dealer agreement with a manufacturer

or distributor. Proposed new vessel dealer does not include a person whose dealer agreement is being renewed or continued;

29. "Purchase date" means the purchase date on a bill of sale or the date of complete assignment of title by the current owner;

30. "State" means the State of Oklahoma;

31. "State of principal use" means the state where the vessel or motor is used, is to be used, or remains for any period in excess of sixty (60) calendar days;

32. "Vessel" means every device, other than a seaplane on the water, used or capable of being used as a means of transportation on water, including but not limited to personal watercraft; and

33. "Waters of this state" means and includes all waters within the territorial limits of this state except any waters which are owned by a municipality; provided, such phrase shall not mean or include any lake the waters of which are entirely owned by a private person or persons, and to which the public is not permitted access, and which is not a part of the navigable waters of the United States; and provided further such phrase shall not include any lake of one hundred (100) acres or less.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 4005, as amended by Section 4, Chapter 284, O.S.L. 1992 (63 O.S. Supp. 1992, Section 4005), is amended to read as follows:

Section 4005. A. A vessel or motor shall not be required to be titled and registered pursuant to the provisions of the Oklahoma Vessel and Motor Registration Act, Section 4002 et seq. of this title, if:

1. Such vessel or motor is owned by the United States, a state other than the State of Oklahoma, any agency thereof, or any subdivision of the state; provided, however, if such vessel is used for recreational or rental purposes on the waters of this state, said vessel shall be registered and numbered in accordance with ~~this act~~ Section 4002 et seq. of this title;

2. Such vessel or motor is owned by a visiting nonresident and is currently registered in another state. Provided that if any such vessel or motor remains in Oklahoma in excess of sixty (60) calendar days, such vessel or motor shall be registered

pursuant to the provisions of the Oklahoma Vessel and Motor Registration Act and the registration fees due thereon from the date of entry into Oklahoma must be paid;

3. Such vessel or motor is from a country other than the United States provided such vessel or motor does not remain in Oklahoma in excess of sixty (60) calendar days;

4. Such vessel is a john boat, provided a john boat shall be required to be titled pursuant to the provisions of Section 4008 of this title;

5. Such vessel is used exclusively and solely as a lifeboat;

6. Such vessel is used exclusively and solely for racing purposes;

7. Such vessel is a commercial flotation device which is issued a permit by the Oklahoma Scenic River Commission pursuant to the provisions of Section 1461 et seq. of Title 82 of the Oklahoma Statutes; provided, a commercial flotation device shall be required to be titled pursuant to the provisions of Section 4008 of this title; or

8. Such vessel is a documented vessel provided such documented vessel shall be required to be registered pursuant to the provisions of Section 4016 of this title.

B. Motors classified as inboard motors shall not be required to be titled or registered pursuant to the provisions of the Oklahoma Vessel and Motor Registration Act.

C. All vessels and motors which are owned by the State of Oklahoma, its agencies or departments, or political subdivisions thereof, or which, under the law, would be exempt from direct ad valorem taxation, shall be titled and registered pursuant to the provisions of the Oklahoma Vessel and Motor Registration Act.

D. All other vessels shall be titled and registered pursuant to the provisions of the Oklahoma Vessel and Motor Registration Act.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 4037, is amended to read as follows:

Section 4037. A. The following are the subjects that shall be covered by a dealer agreement:

1. Length of term of dealer agreement;
2. Performance and marketing standards;
3. Notice provisions relative to termination, cancellation, or nonrenewal of a dealer agreement;
4. The parties' respective obligations relative to preparation and delivery of the product and warranty service;
5. The parties' respective obligations upon termination, cancellation, or nonrenewal of the dealer agreement relative to the disposal of inventory and equipment, furnishings, special tools, and signs required by the manufacturer or distributor and acquired within the two (2) years last preceding such termination, cancellation, or nonrenewal; and
6. Process and procedure for the resolution of disputes between the parties.

B. 1. No manufacturer shall enter into a dealer agreement with a dealer for the same product line regardless of brand name within a fifteen (15) mile radius of an existing dealer of the same product line regardless of brand name, provided any dealer agreements in existence on June 3, 1989, may be extended or re-issued.

2. The provisions of this subsection shall not apply to dealer agreements relating to inboard and inboard/outboard motors or to dealer agreements relating to canoes.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 4044, as amended by Section 24, Chapter 284, O.S.L. 1992 (63 O.S. Supp. 1992, Section 4044), is amended to read as follows:

Section 4044. The Oklahoma Tax Commission shall issue permits for displays and sales of new vessels or motors which are held off the premises of a licensed dealer thereof as follows:

1. A promotion by an individual new vessel or motor dealer which is held off the premises of such dealer and at which sales activities are conducted may be held only under the following conditions:

- a. the dealer participates in an advertised vessel or motor show in which at least two other vessel or motor dealers are participating,

- b. application for a permit for a sales promotion by an individual dealer shall be made to the Commission at least seven (7) calendar days prior to such promotion, and such permit shall be issued by the Commission upon payment of a fee of Fifty Dollars (\$50.00) per event,
- c. the permit shall be valid for a period not to exceed fourteen (14) consecutive days, and
- d. the Commission shall not issue a permit to a dealer if he has obtained a permit within the past forty-five (45) calendar days for the same location;

2. A dealer may not be denied a permit on the grounds that the sales promotion is to be held within the relevant market area of another dealer of the same product line; and

3. A dealer who fails to obtain such a permit shall be subject to the penalties and fines provided for in Section 4041 of Title 63 of the Oklahoma Statutes.

Provided, a permit shall not be required pursuant to the provisions of this section for a display or sale of new vessels or motors which is held off the premises of a licensed dealer if the display or sale is held within a ~~fifteen (15)~~ twenty-five (25) mile radius of the location of the dealership.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 4213, as amended by Section 54, Chapter 284, O.S.L. 1992 (63 O.S. Supp. 1992, Section 4213), is amended to read as follows:

Section 4213. A. No person shall place or dispose of marine sewage in any waters of this state.

B. On and after July 1, ~~1993~~ 1995, no person shall operate a vessel equipped with a marine toilet which is not a total retention system in accordance with federal regulations regarding marine toilets.

SECTION 6. 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.

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