

ENROLLED SENATE
BILL NO. 1031

By: Rozell of the Senate

and

Sadler and Widener of the
House

An Act relating to motor vehicles; amending 47 O.S. 1991, Sections 581, as last amended by Section 1, Chapter 115, O.S.L. 1994, 583, as last amended by Section 10, Chapter 373, O.S.L. 1992, 585, as amended by Section 1, Chapter 121, O.S.L. 1994, 591.2, 591.9 and 591.11, as amended by Section 3, Chapter 242, O.S.L. 1992 (47 O.S. Supp. 1995, Sections 581, 583, 585 and 591.11), which relate to regulation of used motor vehicle dealers and automotive dismantlers and parts recyclers; adding and modifying definitions; modifying bond requirement for used motor vehicle dealer; defining term; allowing check and title insurance in lieu of bond in certain cases; broadening authority of Oklahoma Used Motor Vehicle and Parts Commission to include levying administrative fine for certain acts; modifying definitions; adding causes for taking certain disciplinary actions; clarifying language; 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, as last amended by Section 1, Chapter 115, O.S.L. 1994 (47 O.S. Supp. 1995, 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. "Consignment sale" means the sale of used motor vehicles belonging to another by a used motor vehicle dealer, whether or not title is transferred from the consignor to the used motor vehicle dealer;

4. "Used motor vehicle" means any motor vehicle, as that term is defined in the Oklahoma 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;

5. "Used motor vehicle auction" means any business other than salvage pools which regularly engages in the sale or trade, or negotiates the sale or trade, of used motor vehicles by auction, whether by open or closed bid or by sale to or purchase by used motor vehicle dealers or individuals;

6. "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,
- f. any person, firm or corporation who sells, or contracts for the sale of, the vehicles of the person, firm or corporation 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, or
- g. 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 auction held at a licensed used motor vehicle dealer location. The exclusion provided in this subparagraph shall not extend to a person who auctions five (5) or more used motor vehicles in a non-liquidation sale held at a licensed used motor vehicle dealer location which is not regularly used as a vehicle auction;

7. "Used motor vehicle salesman" means a person employed by a licensed used motor vehicle dealer to sell, broker, exchange, or negotiate a purchase, sale, or rental with option to purchase used motor vehicles or an interest in used motor vehicles. Used motor vehicle salesman shall not include any person who:

- a. uses the person's own funds for such transactions,
- b. operates independently as a used motor vehicle dealer using a licensed used motor vehicle dealer's license number, or
- c. is licensed by the Oklahoma Motor Vehicle Commission to sell new or unused motor vehicles who also sells used motor vehicles for the dealer at the motor vehicle dealer's licensed franchise location; provided, such a person shall only be authorized to sell used motor vehicles for the dealer at the motor vehicle dealer's licensed franchise location and to represent the motor vehicle dealer at used motor vehicle auctions without obtaining a separate used motor vehicle salesman's license;

8. "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;

9. "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; and

10. "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 583, as last amended by Section 10, Chapter 373, O.S.L. 1992 (47 O.S. Supp. 1995, Section 583), is amended to read as follows:

Section 583. A. 1. 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, wholesale used motor vehicle dealer, or a manufactured home dealer in this state without first obtaining a license therefor as provided in this section.

2. 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. 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. A salesman's license may not be issued under a wholesale used motor vehicle dealer's license.

3. 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. 1. Applications for licenses required to be obtained under provisions of this act, Section 581 et seq. of this title, 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 the 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 the application, or otherwise, information relating to:

- a. the applicant's financial standing,
- b. the applicant's business integrity,
- c. 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,
- d. whether the applicant is able to properly conduct the business for which a license, or licenses, is applied for, and

- e. such other pertinent information consistent with the safeguarding of the public interest and the public welfare.

2. 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.

3. 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.

4. 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); provided, if an applicant holds a license to conduct business as an automotive dismantler and parts recycler issued pursuant to Section 591.1 et seq. of this title, the initial fee shall be One Hundred Dollars (\$100.00) and the renewal fee shall be Seventy-five Dollars (\$75.00). If an applicant is applying simultaneously for a license under this paragraph and a license under paragraph 1 of Section 591.5, the initial application fee shall be One Hundred Fifty Dollars (\$150.00);

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, Ten Dollars (\$10.00);

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. 1. The license issued to each used motor vehicle dealer, 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.

2. 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. 1. a. 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). Beginning November 1, 1996, each new applicant for a used motor vehicle dealer's license for the purpose of conducting a used motor vehicle auction or whose business will consist primarily of consignment sales which total One Million Dollars (\$1,000,000.00) or more in gross sales shall procure and file with the Commission a good and sufficient bond in the amount of Fifty Thousand Dollars (\$50,000.00). For purposes of this subsection, "primarily of consignment sales" means seventy-five percent (75%) of sales in number of vehicles sold within the previous twelve (12) months. A new dealer with no history of consignment sales shall be required to purchase a bond in the amount of Ten Thousand Dollars (\$10,000.00). In lieu of the bond, an applicant for a used motor vehicle dealer's license for the purpose of conducting a used motor vehicle auction which is restricted to a dealer-to-dealer transaction may obtain check and title insurance in an amount not less than the amount of the used motor vehicle auction bond.

b. 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).

c. 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).

d. 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, a wholesale used motor vehicle dealer, or a manufactured home dealer.

2. 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.

3. 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.

4. 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 3. AMENDATORY 47 O.S. 1991, Section 585, as amended by Section 1, Chapter 121, O.S.L. 1994 (47 O.S. Supp. 1995, Section 585), is amended to read as follows:

Section 585. A. The Commission may deny any application for license, or suspend or revoke a license issued, or impose a fine, only after a hearing of which the applicant, or licensee affected, shall be given at least ten (10) days' written notice specifying the reason for denying the applicant a license, or, in the case of a fine, revocation or suspension, the offenses of which the licensee is charged. Notices may be served as provided by law for the service of notices, or mailing a copy by mail with return receipt requested to the last-known residence or business address of such applicant or licensee. A copy of notice shall be mailed by mail with return receipt requested to the surety on the licensee's or applicant's bond at the address of the surety given in the bond. The hearing on charges shall be at such time and place as the Commission may prescribe and the notice shall further specify the time and place. If the applicant or licensee is a used motor vehicle salesman, the Commission shall in like manner also notify the person, firm, association, corporation or trust with whom associated, or in whose association the applicant or licensee is about to enter. The Commission shall have the power to compel the production of records and papers bearing upon the complaints. The Commission shall have the power to subpoena and bring before it any person in this state, or take testimony of any such person by deposition, with the same fees and mileage and in the same manner as prescribed by law in judicial procedure before courts of the state in civil cases. Any party to the hearing shall have the right to the attendance of witnesses in his behalf upon designating to the Commission the person or persons sought to be subpoenaed. If the Commission shall determine that any applicant is not qualified to receive a license, a license shall not be granted to the applicant, and if the Commission shall determine that any licensee is guilty of violation of any of the provisions of this act, the license of the licensee shall be suspended or revoked.

B. The Commission may assess a fine not to exceed One Hundred Dollars (\$100.00) against a used motor vehicle dealer who:

1. Willfully fails to deliver certificates of title to purchasers of used motor vehicles within thirty (30) days of the sale of the vehicles;

2. Fails to properly reassign the certificate of title to a used motor vehicle as required by law upon the sale or transfer of ownership of the used motor vehicle;

3. Willfully sells a used motor vehicle for immediate use on the public streets, roads and highways which will not pass safety inspection standards or which does not have a valid safety inspection sticker at the time of sale, except for sales from dealer to dealer; or

4. Delivers a used motor vehicle to a potential purchaser with the intent to sell the vehicle, but does not complete the transaction within fifteen (15) calendar days of the delivery of the used motor vehicle.

C. The decision of the Commission granting or refusing to grant an application for a license or to suspend or revoke a license or to impose a fine shall not become final for a period of thirty (30) days from the date thereof, during which time said applicant or licensee may appeal from the decision of the Commission to the district court of Oklahoma County by filing a petition in the court, setting forth the facts relied upon and praying for a review of the decision, and mailing with return receipt requested, a copy of the petition to the Executive Director of the Commission, or causing service of summons directed to the Executive Director of the Commission to be issued, the petition to be mailed or the summons to be issued within thirty (30) days from the date of the decision of the Commission from which appeal is taken. On appeal, the issues shall be tried de novo, and the court shall enter an order with respect thereto as it shall deem just and equitable. Nothing herein shall be construed to limit the authority of the court to grant relief as the circumstances may require. If the issues involved were first presented to the Commission by a complaint filed with the Commission, the complainant may appeal from the decision of the Commission in the same manner as hereinabove prescribed.

D. Any applicant or licensee who knowingly or willfully makes or causes to be made any false statement of a fact required under the provisions of Section 581 et seq. of this title shall be subject to an administrative fine not to exceed One Thousand Dollars (\$1,000.00).

SECTION 4. AMENDATORY 47 O.S. 1991, Section 591.2, is amended to read as follows:

Section 591.2 As used in Section 591.1 et seq. of this title:

1. "Automotive dismantler and parts recycler" means a person, firm or corporation engaged in the business of purchasing, dismantling, or disassembling used motor vehicles for the purpose of selling the parts thereof, but shall not include a person who is primarily engaged in the business of rebuilding repairable motor vehicles;

2. "Motor vehicle" means every automobile, motorcycle, mobile trailer, semitrailer, truck, truck-tractor, trailer and other device which is self-propelled or drawn, in, upon, or by which any person or property is or may be transported or drawn upon a public highway, except such as is moved by animal power or used exclusively upon stationary rails or tracks, or an implement of husbandry;

3. "Place of business" means the place owned or leased and regularly occupied by a person, firm or corporation engaged in the business of an automotive dismantler and parts recycler, where the products for sale are displayed and offered for sale, and where the books and records required for the conduct of the business are maintained and kept;

4. "Salvage pool" means any person or business which regularly conducts a salvage disposal sale;

5. "Salvage disposal sale" means a scheduled sale at auction or by private bid of wrecked or repairable motor vehicles by insurance underwriters, or insurance companies, used motor vehicle dealers or automotive dismantlers and parts recyclers, either retail or wholesale; and

6. "Commission" means the Oklahoma Used Motor Vehicle and Parts Commission; and

7. "License" means the license issued pursuant to Section 591.1 et seq. of this title to operate an automotive dismantler and parts recycler business.

SECTION 5. AMENDATORY 47 O.S. 1991, Section 591.9, is amended to read as follows:

Section 591.9 The Oklahoma Used Motor Vehicle and Parts Commission is authorized to refuse a license or buyer's identification card (B.I.D.) to any person, firm or corporation for the following reasons:

1. Failure to meet the requirements of this act;
2. Failure to continue to meet the requirements of this act or of the rules promulgated by the Commission pursuant to the provisions of the Automotive Dismantlers and Parts Recycler Act, Section 591.1 et seq. of this title;
3. Upon satisfactory proof of unfitness of the applicant or the licensee, as the case may be, under the standards established by Section 591.1 et seq. of this title;
4. For the felony conviction of a state or federal law by an applicant, licensee, partner of an applicant or licensee, director, officer, or stockholder in the case of a corporate applicant or licensee, or an employee, manager, or any person having a pecuniary interest in the business involving:
 - a. theft,
 - b. violation of the Oklahoma certificate of title law or similar laws of other states,
 - c. alteration, obliteration, or removal of a vehicle identification number, or
 - d. any other act directly relating to the ability of the applicant or licensee to conduct an automotive dismantler and parts recycling business;
5. Commission of any unlawful act which resulted in the revocation of any similar license in another state; or
6. Engaging in 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 the licensee has dealt.

SECTION 6. AMENDATORY 47 O.S. 1991, Section 591.11, as amended by Section 3, Chapter 242, O.S.L. 1992 (47 O.S. Supp. 1995, Section 591.11), is amended to read as follows:

Section 591.11 Sales at a salvage pool or salvage disposal sale shall be opened only to persons possessing a license or a buyer's identification number to buy at a salvage pool or salvage disposal sale.

1. License and identification numbers to bid or buy at salvage pools or salvage disposal sales shall be issued by the Commission on a form prescribed by it and shall include, but not be limited to, the name, address, driver's license number, physical description and signature of the applicant; and the name and address of the employer of the applicant. The Commission may exact a fee not to exceed Ten Dollars (\$10.00) for the issuance or renewal of a buyer's identification card for a resident of this state and a fee not to exceed Two Hundred Ten Dollars (\$210.00) for the issuance or renewal of a buyer's identification card for a resident of another state. There shall be no more than three (3) B.I.D. cards per business, as defined in this act.
2. It shall be the duty of the owner, manager or person in charge of any salvage pool or salvage disposal sale to prohibit the bidding by any person who does not display the buyer's identification card number for such person and, further, to refuse to sell to any person any wrecked or repairable motor vehicle if such person does not display a valid buyer's identification card.
3. The buyer's identification card may be refused, canceled or revoked for the same reasons a license under this act may be refused, canceled or revoked. Any person whose buyer's identification card is refused, canceled or revoked shall enjoy the same review and appeal procedures as a person whose license is refused, canceled or revoked.

SECTION 7. This act shall become effective November 1, 1996.