

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2553

By: Nations

COMMITTEE SUBSTITUTE

An Act relating to motor vehicles; amending 47 O.S. 1991, Sections 583, as last amended by Section 3, Chapter 155, O.S.L. 1999 and 585, as last amended by Section 3, Chapter 332, O.S.L. 1996 (47 O.S. Supp. 1999, Sections 583 and 585), which relate to the used motor vehicles and parts dealers; increasing amount of bond for used motor vehicle dealer's license applicants; placing certain Commission actions under the Administrative Procedures Act; placing certain appeals under such act; providing an effective date; and delaring an emergency.

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 583, as last amended by Section 3, Chapter 155, O.S.L. 1999 (47 O.S. Supp. 1999, 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 salesperson, wholesale used motor vehicle dealer, manufactured home dealer, or manufactured home manufacturer selling directly to a licensed manufactured home dealer in this state without first obtaining a license or following other requirements 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 salesperson, 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 engaged. A used motor vehicle dealer's license shall authorize one person to sell without a salesperson'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 salesperson'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 or herself 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 salesperson's license shall permit the licensee to engage in the activities of a used motor vehicle salesperson. Salespersons shall not be allowed to sell vehicles unless applications, bonds, and fees are on file with the Commission and the motor vehicle salesperson's or temporary salesperson's license issued. A temporary salesperson's license, salesperson's renewal or reissue of salesperson'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 salespersons 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 or she 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 of this title, 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 salesperson'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); and

7. For each manufactured home manufacturer selling directly to a licensed manufactured home dealer in this state, Seven Hundred Fifty Dollars (\$750.00).

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 salesperson shall have the license upon his or her person when engaged in business, and shall display same upon request. The name of the employer of the salesperson shall be stated on the license and if there is a change of employer, the license holder shall immediately mail the 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 or her 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)~~ Fifteen Thousand Dollars (\$15,000.00). 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)~~ Fifteen Thousand Dollars (\$15,000.00). 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. Each manufactured home manufacturing facility selling directly to a licensed manufactured home dealer in this state shall procure and file with the Commission a good and sufficient bond in the amount of Thirty Thousand Dollars (\$30,000.00). In addition to all other conditions and requirements set forth herein, the bond shall require the availability of prompt and full warranty service by the manufacturer to comply

with all warranties expressed or implied in connection with each manufactured home which is manufactured for resale in this state.

- e. 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 the applicant 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 salesperson'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 duties as a used motor vehicle salesperson 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 2. AMENDATORY 47 O.S. 1991, Section 585, as last amended by Section 3, Chapter 332, O.S.L. 1996 (47 O.S. Supp. 1999, 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~~ in accordance with the provisions of the Administrative Procedures Act, Section 250 et seq. of Title 75 of the Oklahoma Statutes. If the applicant or licensee is a used motor vehicle ~~salesman~~ salesperson, 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, or a fine imposed as~~ authorized by this act.

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~~ An appeal from 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 herein above~~ prescribed be taken in accordance with Article II of the Administrative Procedures Act, Section 308a et seq. of Title 75 of the Oklahoma Statutes.

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 3. This act shall become effective July 1, 2000.

SECTION 4. 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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