

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 415

By: Morgan

AS INTRODUCED

An Act relating to motor vehicles; amending 47 O.S. 1991, Sections 581, as last amended by Section 1, Chapter 150, O.S.L. 2000, and 1111, as last amended by Section 4, Chapter 289, O.S.L. 1998 (47 O.S. Supp. 2000, Sections 581 and 1111), which relate to dealers and salespersons licensed by the Used Motor Vehicle and Parts Commission and to salvage titles; modifying definition; making exception; changing entity certifying cost of vehicle repair; 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 1, Chapter 150, O.S.L. 2000 (47 O.S. Supp. 2000, Section 581), is amended to read as follows:

Section 581. As used in Sections 581 et seq. 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. "Manufactured home" means a residential dwelling in one or more sections built in accordance with the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C., Section 5401, et seq. and rules promulgated pursuant thereto;

5. a. "Manufactured home 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, offers to sell, or attempts to negotiate a sale or exchange of interest in, new or used manufactured homes, or that is engaged wholly or in part in the business of selling any new and unused, or used, or both new and used manufactured homes. A valid franchise letter as proof of authorization to sell any new manufactured home product line or lines shall be attached to the application for a dealer license to sell manufactured homes.
- b. "Manufactured home dealer" shall not include any person who sells or contracts for the sale of a 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 a part of a real estate business. No person shall be considered a manufactured home dealer as to any manufactured home purchased or acquired by the person for purposes other than resale; provided, that the restriction set forth in this sentence shall not prevent an otherwise qualified person from utilizing a single manufactured home as a sales office;

6. "Manufactured home installer" means a person who is engaged in the business of installing or setting up manufactured homes and/or mobile homes as defined herein;

7. "Manufactured home manufacturer" means a person who manufactures, assembles, and sells new manufactured homes to new manufactured home retailers for resale in this state;

8. "Mobile home" means a residential dwelling fabricated in an off-site manufacturing facility, designed to be a permanent residence, but which is still transportable, that was built prior to the enacting of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C., Section 5401, et seq.;

9. "Person" means an individual, business, corporation, partnership, association, limited liability corporation, trust, firm, or company or legal entity, but does not extend to any financial institution or party extending floor plans or financing for the dealer's inventory or include any political subdivision;

10. "Rebuilder" means a used motor vehicle dealer who is engaged in the business of rebuilding repairable motor vehicles and who has paid the fee for and been issued a rebuilder certificate as provided by Section 591.5 of this title;

11. "Sale" or "sell" means the act of selling, brokering, exchanging, exchanging of an interest in, or renting with the option of purchasing, a new or used manufactured home for commission, profit, or gain of money or other thing of value;

12. "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;

13. "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;

14. a. "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 the person.

b. "Used motor vehicle dealer" shall not include:

- (1) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting pursuant to the judgment or order of any court,
- (2) public officers while performing their official duties,
- (3) employees of persons enumerated in the definition of "used motor vehicle dealer" when engaged in the specific performance of their duties as such employees,
- (4) mortgagees or secured parties as to sales of motor vehicles constituting collateral on a mortgage or security agreement, if the 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 the costs of collection,

- (5) 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,
- (6) any person, firm, corporation, or other legal entity who sells, or contracts for the sale of, the vehicles of the person, firm, corporation, or other legal entity when such vehicles are sold in liquidation, and any person, firm, corporation, or other legal entity who serves as an agent in such sale. The exclusion provided in this paragraph shall not extend to any person, firm, corporation, or other legal entity whose business is the purchase, sale, or rental with option to purchase, of motor vehicles, or to a location used for such purposes, or
- (7) 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 division shall not extend to a person who auctions five or more used motor vehicles in a nonliquidation sale held at a licensed used motor vehicle dealer location which is not regularly used as a vehicle auction;

15. "Used motor vehicle salesperson" 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; and

16. "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 the person.

SECTION 2. AMENDATORY 47 O.S. 1991, Section 1111, as last amended by Section 4, Chapter 289, O.S.L. 1998 (47 O.S. Supp. 2000, Section 1111), is amended to read as follows:

Section 1111. A. As used in this section:

1. "Loss" means the cost, in dollars, to repair or replace a vehicle which has been damaged by collision or other occurrence. The amount paid by an insurer to a holder of the certificate of title for repair of a damaged vehicle shall be prima facie evidence

of the amount of the loss. The amount paid by an insurer to a holder of the certificate of title for replacement of a damaged vehicle less the resale value of the damaged vehicle shall be prima facie evidence of the amount of the loss;

2. "Fair market value" means the value of a vehicle as listed in the current National Auto Dealers Association guidebook or other similar guidebook or the actual cash value, whichever is greater;

3. "Resale value" means the amount, in dollars, paid to the holder of a certificate of title by a willing buyer for a vehicle damaged by collision or other occurrence or recovered from theft;

4. "Total loss" means a loss which is equal to the fair market value of the vehicle immediately prior to the damage to or theft of the vehicle; and

5. "Vehicle" means a vehicle, as defined in paragraph 29 of Section 1102 of this title manufactured within the last seven (7) model years.

B. Any insurance company that pays a total loss on a claim for any vehicle including, but not limited to, a flood-damaged vehicle or recovered-theft vehicle, any junk dealer who receives a motor vehicle which is to be used for junk or for parts, or any other person permanently dismantling or junking a vehicle shall receive the certificate of title from the current holder of the certificate of title, shall detach the license plate from the vehicle, and shall return the license plate and the certificate of title to the Oklahoma Tax Commission or a motor license agent within thirty (30) days from receipt of the certificate. The Tax Commission shall cancel the certificate of title to the vehicle used for junk or parts and shall preserve the vehicle identification numbers on the certificate of title in the computer files for at least five (5) years. The Tax Commission shall transfer ownership of a stolen vehicle, not recovered from theft at the time of transfer, by salvage title to the insurer. The Tax Commission shall transfer

ownership of a vehicle damaged by flooding or other occurrence to the insurer by an original title, salvage title, or junked title, as may be appropriate, based upon an estimate of the amount of loss submitted by the insurer. All license plates surrendered to the Tax Commission shall be destroyed.

C. 1. If an insurance company pays a claim for a loss which is less than a total loss but the cost of repairing the vehicle for safe operation on the highway exceeds sixty percent (60%) of the fair market value of the vehicle, or if any vehicle not insured is damaged to the extent that the cost of repair for safe operation on the highway exceeds sixty percent (60%) of the fair market value of the vehicle, any holder of the certificate of title for the vehicle shall return the certificate of title to the Oklahoma Tax Commission or a motor license agent within thirty (30) days from receipt of payment for the loss.

2. Upon receipt of the certificate, the Tax Commission or motor license agent shall issue a salvage title for the vehicle. The title for any vehicle damaged by flooding shall be stamped with the words "Flood Damaged", and for any such vehicle which was recovered from a theft, the salvage title or rebuilt title shall be stamped with the words "Recovered Theft". A licensed dealer subject to the provisions of the Automotive Dismantlers and Parts Recycler Act, Section 591.1 et seq. of this title, shall not be required to pay registration fees, excise taxes, back taxes, or penalties on a vehicle as a prerequisite to obtaining a salvage title.

3. If the actual documented cost of repairing the vehicle for safe operation on the highway does not exceed sixty percent (60%) of the fair market value of the vehicle as defined in this section, the certificate of title shall be reissued to the holder and the vehicle shall not be subject to inspection as required under this section. The actual documented cost of repairing the vehicle pursuant to this

paragraph shall be certified by the ~~insurance company paying the~~  
~~loss~~ Department of Public Safety.

D. If a motor vehicle with a salvage title is placed in operative condition, application shall be made to the Tax Commission or a motor license agent for a rebuilt title. A visual inspection of the vehicle and examination of the vehicle identification numbers shall be conducted prior to the issuance of a rebuilt title. At the time of issuance, the salvage title shall be returned to the Tax Commission by the owner, or by the motor license agent if the motor license agent issues the rebuilt title. A visual inspection shall also be made of any out-of-state vehicle to be registered and titled in this state if the vehicle is within the class of vehicles for which a rebuilt title is required and a similar inspection has not been conducted by another state. The certificate of title for the rebuilt vehicle shall be stamped with the words, "This Rebuilt Vehicle Has Been Inspected By The Appropriate State Official".

E. 1. The visual inspections and examination of vehicle identification numbers shall include, but not be limited to:

- a. comparison of the vehicle identification numbers with the number recorded on the ownership records,
- b. inspection of the vehicle identification numbers and the VIN plate to detect possible alteration or other fraud,
- c. interpretation of the vehicle identification number recorded on the ownership documents to assure that it accurately describes the motor vehicle in question, and
- d. inspection of the odometer of the vehicle to detect rollback or alteration.

2. All vehicle damage shall be repaired before the examination is conducted. The following paperwork shall be presented to the motor licence agent: the salvage title and original receipts for

all parts placed on the vehicle. Components such as doors, motor, and transmission shall indicate the serial number or the vehicle identification number (VIN) of the auto the part was purchased from or removed from.

3. The motor license agent shall require documentation that the inspection required by Section 851 et seq. of this title has been performed on the vehicle within thirty (30) days of the motor license agent's inspection. The inspection shall not be required for any motor vehicle registered pursuant to the provisions of Section 1120 of this title or any trailer or semitrailer registered pursuant to the provisions of Section 1133 of this title.

F. The visual inspection and vehicle identification numbers examination shall be performed by a motor license agent at the location designated by the motor license agent. If the location of the inspection is not the place of business of the rebuilder, the motor license agent shall issue a permit authorizing the applicant to operate the vehicle upon the public streets, roads, and highways in route to and from the designated location for the inspection. The inspection and examination shall be performed within ten (10) working days after the owner of the vehicle requests the inspection and examination. Requests shall be made by completing the request form prescribed and provided by the Oklahoma Tax Commission.

G. Inspection and examination of a rebuilt vehicle shall be performed by a person employed by a motor license agent.

H. The fee for the examination by the motor license agent shall be Twenty-five Dollars (\$25.00), which shall be paid at the time of issuance of the certificate of title for the rebuilt vehicle. The motor license agent shall retain Five Dollars (\$5.00) and shall remit Twenty Dollars (\$20.00) to the Oklahoma Tax Commission which shall retain Ten Dollars (\$10.00) and transmit Ten Dollars (\$10.00) to the State Treasurer for deposit in the Department of Public Safety Revolving Fund. The motor license agent and its employees

and agents may not be sued for and shall not be liable for any damages allegedly arising out of the inspection of a vehicle or any acts or omissions in the performance of the inspection. The motor license agent may be held liable for any damages to the vehicle caused by the negligent acts or omissions in the performance of the inspection. Any person may be liable for any damages to a vehicle caused by the intentional acts or omissions in the performance of the inspection.

I. The rebuilt title and any subsequent transfers of such title shall also reflect that the vehicle was a salvage vehicle, flood-damaged vehicle or recovered-theft vehicle, if applicable, and also shall include the salvage date.

J. Any title for a motor vehicle issued pursuant to the laws of any other state which reflects that such vehicle is a salvage vehicle, a rebuilt vehicle or a junked vehicle or has any other brand or classification notation by that state shall be retained on the new title issued by the Oklahoma Tax Commission unless the actual documented cost of repairing the vehicle for safe operation on the highway does not exceed sixty percent (60%) of the fair market value of the vehicle as provided by this section.

K. When the insurance company pays a loss on a vehicle which is registered at the time of mishap, accident, burning, or flooding, the appropriate certificate of title shall be issued without the payment of additional registration fees or excise taxes, upon the submission of a police report or insurance adjuster's report and a declaration by the insurer that the vehicle is held for sale to a dealer. If the owner of the vehicle or other insured retains ownership of the damaged vehicle, the Oklahoma Tax Commission shall notify the owner or insured of the requirements of this section.

L. Any insurance company that pays a claim for a loss where the cost of repairing the vehicle for safe operation on the highway exceeds sixty percent (60%) of the market value of the vehicle or

pays a claim for a flood-damaged vehicle as defined in Section 1105 of this title shall notify, in writing, the holder of the certificate of title of the requirements of this section and shall notify the Oklahoma Tax Commission of the payment of such claim. The insurance company shall also send a copy of the notification to the holder of the title. The Oklahoma Tax Commission shall provide notice to the owner of the vehicle in writing requiring the owner to surrender the title along with the fee to the Tax Commission or one of its motor license agents within thirty (30) days from the receipt of notice for the issuance of the appropriate title based on the amount of loss. The Tax Commission shall reissue the appropriate title with the words "Flood Damaged" on the face of the title in the case of a flood-damaged vehicle; provided, no insurance company shall pay a claim for less than the amount to which the holder of the certificate of title is rightfully entitled in order to avoid compliance with this section.

M. Except as provided for in subsection N of this section, any person, firm, corporation, or other legal entity convicted of violating any provision of this section shall be guilty of a misdemeanor and shall be punished by a fine of not less than Three Hundred Dollars (\$300.00) or by incarceration in the county jail for not more than six (6) months, or by both the fine and incarceration.

N. Any owner of a titled vehicle who has knowledge that the title is not the proper type for the vehicle and, with intent to misrepresent the vehicle, fails to make the appropriate title changes, shall be guilty of a misdemeanor. Any person who has knowledge that the title is not the proper type for the vehicle, and with intent to misrepresent the vehicle, buys or receives any vehicle for which the appropriate title changes have not been made as required by this act shall be guilty of a misdemeanor. Any person found guilty in accordance with the provisions of this subsection shall be punished by a fine of not more than One Thousand

Dollars (\$1,000.00) for the first offense or Five Thousand Dollars (\$5,000.00) for the second or subsequent offense, or by imprisonment in the county jail for a term not exceeding six (6) months, or by both such fine and imprisonment.

O. Any owner of a salvage or junked vehicle shall submit the certificate of title to the Oklahoma Tax Commission or motor license agent for issuance of an appropriate title. Any holder of a certificate of title issued by this state, to a vehicle which no longer exists, shall surrender the certificate of title to the Oklahoma Tax Commission for cancellation. The vehicle identification number on the canceled certificate of title shall be preserved in the computer of the Oklahoma Tax Commission for at least five (5) years.

Nothing in this section shall be construed to prevent the transfer of ownership of a vehicle by assignment of the title to a used car dealer, wholesale used car dealer, or a licensed automotive dismantler or parts recycler.

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.

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