ENGROSSED HOUSE
BILL NO. 1497

By: Winchester of the House

and

Laster of the Senate

(motor vehicles – amending Sections 582, 591.10 and 591.11 - used motor vehicle and parts dealers - effective date –

emergency)

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

SECTION 1. AMENDATORY 47 O.S. 2001, Section 582, as last amended by Section 2, Chapter 298, O.S.L. 2005 (47 O.S. Supp. 2005, 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 ten (10) members who shall be selected as follows:

1. One member shall be appointed from each congressional district and any remaining members, including the chair, shall be appointed from the state at large. However, when congressional districts are redrawn, each member appointed prior to July 1 of the year in which such modification becomes effective shall complete the current term of office and appointments made after July 1 of the year in which such modification becomes effective shall be based on the redrawn districts. Appointments made after July 1 of the year in which such modification becomes effective shall be from any redrawn districts which are not represented by a board member until such time as each of the modified congressional districts are represented by a board member; provided, the chair shall be appointed at large without regard to congressional district representation on the board;

2. All members shall be appointed by the Governor, by and with the advice and consent of the Senate;

3. a. each of the members appointed from a congressional district shall, at the time of appointment, be a resident in good faith of the congressional district from which appointed, and

b. each of the members appointed from the state at large shall, at the time of appointment and during the period of service, be residents in good faith of the state;

4. Each member shall be of good moral character and, for the ten-year period immediately preceding appointment, each of the used motor vehicle dealer representatives shall have been licensed for and actually engaged in the distribution or sale of used motor vehicles; each of the dismantler representatives shall have actually been licensed for and engaged in the principal business of dismantling or disassembling motor vehicles for the purpose of selling the parts thereof; and the manufactured housing representative shall have been licensed for and actually engaged in the principal business of selling manufactured homes; and

5. Eight members plus the chair shall be engaged in the used motor vehicle industry or the automotive dismantler industry. There shall not be fewer than five members engaged in the principal business of the sale of used motor vehicles and there shall not be fewer than two members engaged in the principal business of dismantling or disassembling motor vehicles for the purpose of selling the parts thereof. One of the at-large members shall be engaged in the principal business of selling manufactured homes as a licensed manufactured home dealer. Being engaged in one or more of such pursuits shall not disqualify a person otherwise qualified from serving on the Commission.

B. 1. The term of the chair shall be coterminous with that of the Governor making the appointment, and until a successor is appointed and is qualified.

2. The terms of office of each member of the Commission shall be subject to the following:

a. the Commission shall determine and certify the trade associations of manufactured home dealers that represent ten percent (10%) or more of the number of licensed manufactured home dealers in the state and shall certify each such association to the Governor. The Governor shall request a minimum of ten names from each such association and shall select one member from the manufactured home industry from the names provided,

b. each member actively serving July 1, 2000, who was appointed on or before June 30, 2000, shall remain and fulfill the term of his or her membership as set forth at the appointment,

c. except for the chair, the term of office of each member of the Commission shall be for six (6) years,

d. except for the chair and the at-large members, the term of office of any member will automatically expire if the member moves out of the congressional district from which appointed; however, if the congressional districts are modified each member shall complete the current term of office as provided in this section,

e. in event of death, resignation, or removal of any person serving on the Commission, the vacancy shall be filled by appointment as aforesaid for the unexpired portion of the term,

f. except for the chair, when the term of a member automatically expires, the vacancy shall be filled by

appointment of a qualified successor for a term of six (6) years as aforesaid, except that the member shall serve until a successor is appointed and qualified.

3. The chair and each member of the Commission shall take and subscribe to the oath of office required of public officers.

C. The chair 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. 1. a. The Commission shall appoint a qualified person to serve as Executive Director who shall have had sufficient management and organizational experience in the automotive industry to direct the functions of the Commission.

b. The Executive Director shall be appointed for a term of six (6) years, and shall not be subject to dismissal or removal without cause.

c. The Commission shall fix the salary and define and prescribe the duties of the Executive Director.

d. The Executive Director shall be in charge of the Commission's office, shall devote such time as necessary to fulfill the duties thereof, and, before entering upon these duties, shall take and subscribe to the oath of office.

2. 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 Section 581 et seq. of this title.

3. The Commission shall maintain its office and transact its business in Oklahoma City, and is authorized to adopt and use a seal.

E. 1. a. 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 Section 581 et seq. of this title, and is hereby authorized and empowered, pursuant to the Administrative Procedures Act, to make and enforce all reasonable rules and to adopt and prescribe all forms necessary to accomplish said purpose.

b. The Commission shall promulgate rules for the licensing of manufactured home installers.

c. The Commission shall promulgate rules to prescribe the contents of manufactured home sales agreements and to require that each manufactured home manufacturer issue with each new manufactured home a warranty comparable to warranties generally in use in the industry warranting the manufactured home to be free from material defects.

d. 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.

e. A copy of all rules 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. The Commission's powers and duties shall include, but not be limited to, the following:

a. to license used motor vehicle dealers, used motor vehicle salespersons, wholesale used motor vehicle

dealers, dismantlers, manufactured home dealers, manufactured home manufacturers, and manufactured home installers,

b. to inspect used motor vehicle dealer, dismantler and manufactured home dealer locations, and manufactured home manufacturers' factories or assembly sites 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, for retail businesses, a business sign, a listed and usable telephone number, a restroom, and a sales office,

c. to 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. to require all dealer sales to have a condition of sale such as a warranty disclaimer, implied or written warranty or a service contract approved by the Commission,

e. to work with consumers and dealers to hear complaints on used vehicles and manufactured homes, including installation, and

f. to serve as a dispute resolution panel for binding arbitration in accordance with Section 801 et seq. of Title 15 of the Oklahoma Statutes in contract controversies between licensed used motor vehicle dealers, dismantlers and manufactured housing dealers,

manufactured home dealers, installers, and manufacturers and their consumers when, by mutual written agreement executed after the dispute between the parties has arisen, both parties have agreed to use the Commission as their arbitration panel for contract disputes.

F. 1. All fees and charges collected under the provisions of Section 581 et seq. of this title 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. The Executive Director shall not deposit any fee which accompanies an incomplete buyer's identification card application as provided in Section 591 et seq. of this title, but shall return the fee and application to the applicant within five (5) business days accompanied by a letter containing a detailed explanation of the grounds upon which the application is determined to be incomplete. 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 Section 581 et seq. of this title. 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.

2. At the close of each fiscal year, 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.

3. All expenses incurred by the Commission in carrying out the provisions of Section 581 et seq. of this title 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 2. AMENDATORY 47 O.S. 2001, Section 591.10, as amended by Section 28, Chapter 519, O.S.L. 2004 (47 O.S. Supp. 2005, Section 591.10), is amended to read as follows:

Section 591.10 A. Any person, firm or corporation who is refused a license or whose license or B.I.D. card is canceled or revoked <u>or whose buyer's identification card application is not approved and B.I.D. card not issued by the Oklahoma Used Motor Vehicle and Parts Commission within sixty (60) days of receipt of the application by the Commission pursuant to paragraph 2 of subsection B of Section 591.11 of this title</u> shall be notified in person or by mail with return receipt requested to the address given on the application of the applicant or licensee and, upon written request within fifteen (15) days of receipt of such notice, shall be given a hearing upon the proposed action. The hearing may be conducted by the Commission and shall be held no more than thirty (30) days from receipt of the written request for a hearing. The hearing may be informal and the rules of evidence of the courts of Oklahoma shall not be required. Appeals from the decision of the Commission shall be governed by the Administrative Procedures Act.

B. In addition to the cancellation, revocation or refusal to issue or renew a license or buyer's identification or the imposition of any other penalty by the Commission, the Commission is hereby authorized to impose administrative fines for violations of the

Automotive Dismantlers and Parts Recycler Act in the amounts not to exceed Five Hundred Dollars ($500.00) for a first violation, One Thousand Dollars ($1,000.00) for a second violation and Five Thousand Dollars ($5,000.00) for a third violation.

SECTION 3. AMENDATORY 47 O.S. 2001, Section 591.11, as amended by Section 29, Chapter 519, O.S.L. 2004 (47 O.S. Supp. 2005, Section 591.11), is amended to read as follows:

Section 591.11 A. Sales at a salvage pool or salvage disposal sale shall be opened only to:

1. A person possessing an automobile dismantler's license or rebuilder certificate issued by the Oklahoma Used Motor Vehicle and Parts Commission and who has a buyer's identification card;

2. A person from another state who has a buyer's identification card; or

3. A foreign buyer who has a buyer's identification card.

B. A buyer's identification card 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, 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 an out-of-state buyer and a fee not to exceed Four Hundred Dollars ($400.00) for the issuance or renewal of a buyer's identification card for foreign buyers. There shall be no more than three ~~(3)~~ B.I.D. cards per business, as defined in the Automotive Dismantlers and Parts Recycler Act. A buyer's identification card fee shall be returnable only in the event that ~~the~~:

1. The permit application is denied by the Commission as allowed pursuant to the Automotive Dismantlers and Parts Recycler Act; or

2. The buyer's identification card application is not approved and the buyer's identification card is not issued by mail with return receipt requested to the address given on the application of the applicant by the Commission within sixty (60) days of receipt of the application by the Commission. When an application fee is returned to the applicant due to the failure of the Commission to approve the application within sixty (60) days, it shall be accompanied by a copy of the application and a letter containing a detailed explanation of why the Commission was unable to approve the application and information regarding the applicant's right to the review and appeal procedures provided in Section 591.10 of this title.

C. 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.

D. A buyer's identification card issued to a person, firm or corporation may be refused, canceled or revoked due to the refusal, cancellation or revocation of their automotive dismantler's license or rebuilder certificate issued by the Oklahoma Used Motor Vehicle and Parts Commission. Any person whose buyer's identification card is refused, canceled or revoked or whose buyer's identification card application is not approved and their buyer's identification card is not issued by the Commission within sixty (60) days of receipt of the application by the Commission shall enjoy the same review and appeal procedures provided in Section 591.10 of this title.

SECTION 4. This act shall become effective July 1, 2006.

SECTION 5. 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.

Passed the House of Representatives the 15th day of March, 2006.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2006.

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Presiding Officer of the Senate