

EHB 1609

1 THE STATE SENATE  
2 Wednesday, April 13, 2005

3 ENGROSSED  
4 House Bill No. 1609  
5 As Amended

6 ENGROSSED HOUSE BILL NO. 1609 - By: MILLER (Doug) of the House and  
7 LASTER of the Senate.

8 [ motor vehicles - Used Motor Vehicle and Parts Dealers -  
9 adding definition - Manufactured Home Salesperson -  
10 licensing requirement - effective date ].

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

12 SECTION 1. AMENDATORY 47 O.S. 2001, Section 581, as  
13 amended by Section 1, Chapter 483, O.S.L. 2003 (47 O.S. Supp. 2004,  
14 Section 581), is amended to read as follows:

15 Section 581. As used in Section 581 et seq. of this title:

16 1. "Commission" means the Oklahoma Used Motor Vehicle and Parts  
17 Commission;

18 2. "Compensation" means anything of value including money,  
19 merchandise, rebates on purchases, trading stamps or any other thing  
20 of value;

21 3. "Consignment sale" means the sale of used motor vehicles  
22 belonging to another by a used motor vehicle dealer, whether or not  
23 title is transferred from the consignor to the used motor vehicle  
24 dealer;

1           4. "Factory" means a manufacturer, distributor, factory branch,  
2 distributor branch, factory representative or distributor  
3 representative, which manufacturers or distributes vehicle products;

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

8           6.    a. "Manufactured home dealer" means any person who, for a  
9                   commission or with intent to make a profit or gain of  
10                   money or other thing of value, sells, offers to sell,  
11                   or attempts to negotiate a sale or exchange of  
12                   interest in, new or used manufactured homes, or that  
13                   is engaged wholly or in part in the business of  
14                   selling any new and unused, or used, or both new and  
15                   used manufactured homes. A valid franchise letter as  
16                   proof of authorization to sell any new manufactured  
17                   home product line or lines shall be attached to the  
18                   application for a dealer license to sell manufactured  
19                   homes. "Manufactured home dealer" shall include a  
20                   manufactured home auction. A manufactured home  
21                   auction shall mean any person selling more than  
22                   twenty-five manufactured homes in an auction or  
23                   liquidation format. Only licensed manufactured home

1 dealers shall be authorized to purchase manufactured  
2 homes at such auctions.

3 b. "Manufactured home dealer" shall not include any  
4 person who sells or contracts for the sale of a  
5 personally titled manufactured home or homes, or any  
6 person acting as an auctioneer who has been engaged by  
7 a seller to direct, conduct, control, or be  
8 responsible for the sale of manufactured homes as a  
9 part of an auction or liquidation of an estate, or any  
10 Oklahoma licensed real estate broker or sales  
11 associate when buying or selling used mobile homes as  
12 a part of a real estate business. No person shall be  
13 considered a manufactured home dealer as to any  
14 manufactured home purchased or acquired by the person  
15 for purposes other than resale; provided, that the  
16 restriction set forth in this sentence shall not  
17 prevent an otherwise qualified person from utilizing a  
18 single manufactured home as a sales office; or

19 **c. A holder of a lien on a manufactured home may sell,**  
20 **exchange or transfer by lease-purchase the repossessed**  
21 **manufactured home and shall not be required to be**  
22 **licensed pursuant to this chapter. If the lien holder**  
23 **contracts with a person or company to sell the**

1                   repossessed manufactured home and the person or  
2                   company is not an employee, officer or principal of  
3                   the lien holder, such person or company shall be  
4                   licensed pursuant to this chapter;

5           7.   "Manufactured home salesperson" means any person who has  
6   been engaged by a manufactured home dealer to buy, sell, exchange,  
7   negotiate, or act as an agent for the purchase, sale, or exchange of  
8   an interest in a manufactured home. A person may not act as a  
9   salesperson nor may a manufactured home dealer employ the  
10   salesperson without applying for a salesperson's license within  
11   thirty (30) days of employment by the manufactured home dealer;

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

15           ~~8.~~ 9.   "Manufactured home manufacturer" means a person who  
16   manufactures, assembles, and sells new manufactured homes to new  
17   manufactured home retailers for resale in this state;

18           ~~9.~~ 10. "Mobile home" means a residential dwelling fabricated in  
19   an off-site manufacturing facility, designed to be a permanent  
20   residence, but which is still transportable, that was built prior to  
21   the enacting of the National Manufactured Housing Construction and  
22   Safety Standards Act of 1974, 42 U.S.C., Section 5401 et seq.;

1       ~~10.~~ 11. "Person" means an individual, business, corporation,  
2 partnership, association, limited liability corporation, trust,  
3 firm, or company or legal entity, but does not include any political  
4 subdivision;

5       ~~11.~~ 12. "Rebuilder" means a used motor vehicle dealer who is  
6 engaged in the business of rebuilding repairable motor vehicles and  
7 who has paid the fee for and been issued a rebuilder certificate as  
8 provided by Section 591.5 of this title;

9       ~~12.~~ 13. "Sale" or "sell" means the act of selling, brokering,  
10 exchanging, exchanging of an interest in, or renting with the option  
11 of purchasing, a new or used manufactured home for commission,  
12 profit, or gain of money or other thing of value;

13       ~~13.~~ 14. "Used motor vehicle" means any motor vehicle, as that  
14 term is defined in the Oklahoma Vehicle License and Registration  
15 Act, which has been sold, bargained, exchanged, given away or the  
16 title thereto transferred from the person who first took title from  
17 the manufacturer, importer, or dealer or agent of the manufacturer  
18 or importer, or so used as to have become what is commonly known as  
19 a "secondhand motor vehicle". In the event of transfer, on the  
20 statement of origin, from the original franchised dealer to any  
21 other dealer or individual other than a franchised dealer of the  
22 same make of vehicle, the vehicle shall be considered a used motor  
23 vehicle and must be titled in the new owner's name;

1       ~~14.~~ 15. "Used motor vehicle auction" means any business other  
2 than salvage pools which regularly engages in the sale or trade, or  
3 negotiates the sale or trade, of used motor vehicles by auction,  
4 whether by open or closed bid or by sale to or purchase by used  
5 motor vehicle dealers or individuals;

6       ~~15.~~ 16. a. "Used motor vehicle dealer" means any person who, for  
7                   a commission or with intent to make a profit or gain  
8                   of money or other thing of value, sells, brokers,  
9                   exchanges, rents with option to purchase, or offers or  
10                  attempts to negotiate a sale or exchange of an  
11                  interest in used motor vehicles, or who is engaged  
12                  wholly or in part in the business of selling used  
13                  motor vehicles, whether or not such motor vehicles are  
14                  owned by the person.

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

16               (1) receivers, trustees, administrators, executors,  
17               guardians, or other persons appointed by or  
18               acting pursuant to the judgment or order of any  
19               court,

20               (2) public officers while performing their official  
21               duties,

22               (3) employees of persons enumerated in the definition  
23               of "used motor vehicle dealer" when engaged in

1 the specific performance of their duties as such  
2 employees,

3 (4) mortgagees or secured parties as to sales of  
4 motor vehicles constituting collateral on a  
5 mortgage or security agreement, if the mortgagees  
6 or secured parties shall not realize for their  
7 own account from such sales any monies in excess  
8 of the outstanding balance secured by such  
9 mortgage or security agreement, plus the costs of  
10 collection,

11 (5) any person acting as an auctioneer who has been  
12 engaged by a seller to direct, conduct, control,  
13 or be responsible for the sale of used motor  
14 vehicles as part of an estate auction or  
15 liquidation,

16 (6) any person, firm, corporation, or other legal  
17 entity who sells, or contracts for the sale of,  
18 the vehicles of the person, firm, corporation, or  
19 other legal entity when such vehicles are sold in  
20 liquidation, and any person, firm, corporation,  
21 or other legal entity who serves as an agent in  
22 such sale. The exclusion provided in this  
23 paragraph shall not extend to any person, firm,

1 corporation, or other legal entity whose business  
2 is the purchase, sale, or rental with option to  
3 purchase, of motor vehicles, or to a location  
4 used for such purposes, or

5 (7) any person acting as an auctioneer who has been  
6 engaged by a seller to direct, conduct, control,  
7 or be responsible for the sale of used motor  
8 vehicles as part of an auction held at a licensed  
9 used motor vehicle dealer location. The  
10 exclusion provided in this division shall not  
11 extend to a person who auctions five or more used  
12 motor vehicles in a nonliquidation sale held at a  
13 licensed used motor vehicle dealer location which  
14 is not regularly used as a vehicle auction;

15 ~~16.~~ 17. "Used motor vehicle salesperson" means a person  
16 employed by a licensed used motor vehicle dealer to sell, broker,  
17 exchange, or negotiate a purchase, sale, or rental with option to  
18 purchase, used motor vehicles or an interest in used motor vehicles.  
19 The term "used motor vehicle salesperson" shall not include any  
20 person who:

21 a. uses the person's own funds for such transactions,

- 1           b.   operates independently as a used motor vehicle dealer  
2                    using a licensed used motor vehicle dealer's license  
3                    number, or
- 4           c.   is licensed by the Oklahoma Motor Vehicle Commission  
5                    to sell new or unused motor vehicles who also sells  
6                    used motor vehicles for the dealer at the motor  
7                    vehicle dealer's licensed franchise location;  
8                    provided, such a person shall only be authorized to  
9                    sell used motor vehicles for the dealer at the motor  
10                  vehicle dealer's licensed franchise location and to  
11                  represent the motor vehicle dealer at used motor  
12                  vehicle auctions without obtaining a separate used  
13                  motor vehicle salesperson's license; and

14       ~~17.~~ 18. "Wholesale used motor vehicle dealer" means any person  
15 who, for a commission or with intent to make a profit or gain of  
16 money or other thing of value, sells, brokers, exchanges, rents with  
17 option to purchase, or offers or attempts to negotiate a sale or  
18 exchange of interest in used motor vehicles exclusively to used  
19 motor vehicle dealers, or who is engaged in the business of selling  
20 used motor vehicles exclusively to used motor vehicle dealers,  
21 whether or not such motor vehicles are owned by the person.

1 SECTION 2. AMENDATORY 47 O.S. 2001, Section 582, as last  
2 amended by Section 1, Chapter 229, O.S.L. 2003 (47 O.S. Supp. 2004,  
3 Section 582), is amended to read as follows:

4 Section 582. A. There is hereby created the Oklahoma Used  
5 Motor Vehicle and Parts Commission, to be composed of ten (10)  
6 members who shall be selected as follows:

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

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

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

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

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

19           5.    Eight members plus the chair shall be engaged in the used  
20           motor vehicle industry or the automotive dismantler industry. There  
21           shall not be fewer than five members engaged in the principal  
22           business of the sale of used motor vehicles and there shall not be  
23           fewer than two members engaged in the principal business of

1 dismantling or disassembling motor vehicles for the purpose of  
2 selling the parts thereof. One of the at-large members shall be  
3 engaged in the principal business of selling manufactured homes as a  
4 licensed manufactured home dealer. Being engaged in one or more of  
5 such pursuits shall not disqualify a person otherwise qualified from  
6 serving on the Commission.

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

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

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

21 b. each member actively serving July 1, 2000, who was  
22 appointed on or before June 30, 2000, shall remain and

1 fulfill the term of his or her membership as set forth  
2 at the appointment,  
3 c. except for the chair, the term of office of each  
4 member of the Commission shall be for six (6) years,  
5 d. except for the chair and the at-large members, the  
6 term of office of any member will automatically expire  
7 if the member moves out of the congressional district  
8 from which appointed; however, if the congressional  
9 districts are modified each member shall complete the  
10 current term of office as provided in this section,  
11 e. in event of death, resignation, or removal of any  
12 person serving on the Commission, the vacancy shall be  
13 filled by appointment as aforesaid for the unexpired  
14 portion of the term,  
15 f. except for the chair, when the term of a member  
16 automatically expires, the vacancy shall be filled by  
17 appointment of a qualified successor for a term of six  
18 (6) years as aforesaid, except that the member shall  
19 serve until a successor is appointed and qualified.

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

22 C. The chair and members of the Commission shall receive Thirty  
23 Dollars (\$30.00) for each and every day actually and necessarily

1 spent in attending the meetings of the Commission, and shall be  
2 reimbursed for subsistence and traveling expenses incurred in the  
3 performance of their duties hereunder as provided by the State  
4 Travel Reimbursement Act; provided that such meeting payments shall  
5 not exceed the sum of Six Hundred Dollars (\$600.00) per annum to any  
6 one person.

7 D. 1. a. The Commission shall appoint a qualified person to  
8 serve as Executive Director who shall have had  
9 sufficient management and organizational experience in  
10 the automotive industry to direct the functions of the  
11 Commission.

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

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

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

22 2. The Commission may employ such clerical, technical, legal  
23 and other help and incur such expenses as may be necessary for the

1 proper discharge of its duties under Section 581 et seq. of this  
2 title.

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

6 E. 1. a. The Commission is hereby vested with the powers and  
7 duties necessary and proper to enable it to fully and  
8 effectively carry out the provisions and objectives of  
9 Section 581 et seq. of this title, and is hereby  
10 authorized and empowered, pursuant to the  
11 Administrative Procedures Act, to make and enforce all  
12 reasonable rules and to adopt and prescribe all forms  
13 necessary to accomplish said purpose.

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

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

1           d. The enumeration of any power or authority herein shall  
2           not be construed to deny, impair, disparage or limit  
3           any others necessary to the attainment thereof.

4           e. A copy of all rules adopted by the Commission shall be  
5           filed and recorded in the office of the Secretary of  
6           State and the State Librarian and Archivist, and same  
7           may be amended, modified or repealed from time to  
8           time.

9           2. The Commission's powers and duties shall include, but not be  
10          limited to, the following:

11           a. to license used motor vehicle dealers, used motor  
12           vehicle salespersons, wholesale used motor vehicle  
13           dealers, dismantlers, manufactured home dealers,  
14           manufactured home manufacturers, and manufactured home  
15           installers,

16           b. to inspect used motor vehicle dealer, dismantler and  
17           manufactured home dealer locations, and manufactured  
18           home manufacturers' factories or assembly sites to  
19           ensure that they are in an approved location, meet  
20           local zoning or other municipal requirements, and have  
21           sufficient facilities which shall include, but not be  
22           limited to, for retail businesses, a business sign, a

- 1 listed and usable telephone number, a restroom, and a  
2 sales office,
- 3 c. to inspect wholesale used motor vehicle dealer  
4 locations to ensure that they are in an approved  
5 location, meet local zoning or other municipal  
6 requirements, and have sufficient facilities which  
7 shall include, but not be limited to, a listed and  
8 usable telephone number in the dealer's name and a  
9 business office where records of the business are  
10 kept,
- 11 d. to require all dealer sales to have a condition of  
12 sale such as a warranty disclaimer, implied or written  
13 warranty or a service contract approved by the  
14 Commission,
- 15 e. to work with consumers and dealers to hear complaints  
16 on used vehicles and ~~parts and establish a Used Car~~  
17 ~~Consumer Action Panel to hear complaints on a~~  
18 ~~condition of sale, implied and written warranties, and~~  
19 ~~service complaints~~ manufactured homes, including  
20 installation, and
- 21 f. to serve as a dispute resolution panel for binding  
22 arbitration in accordance with Section 801 et seq. of  
23 Title 15 of the Oklahoma Statutes in contract

1           controversies between licensed used motor vehicle  
2           dealers, dismantlers and manufactured housing dealers,  
3           manufactured home dealers, installers, and  
4           manufacturers and their consumers when, by mutual  
5           written agreement executed after the dispute between  
6           the parties has arisen, both parties have agreed to  
7           use the Commission as their arbitration panel for  
8           contract disputes.

9           F. 1. All fees and charges collected under the provisions of  
10          Section 581 et seq. of this title shall be deposited by the  
11          Executive Director in the State Treasury in accordance with the  
12          depository laws of this state in a special fund to be known as the  
13          "Oklahoma Used Motor Vehicle and Parts Commission Fund", which fund  
14          is hereby created. Except as hereinafter provided, the monies in  
15          the fund shall be used by the Commission for the purpose of carrying  
16          out and enforcing the provisions of Section 581 et seq. of this  
17          title. Expenditures from the fund shall be warrants issued by the  
18          State Treasurer against claims submitted by the Commission to the  
19          Director of State Finance for approval.

20          2. At the close of each fiscal year, the Commission shall file  
21          with the Governor and the State Auditor and Inspector a true and  
22          correct report of all fees and charges collected and received by it  
23          during the preceding fiscal year and shall at the same time pay into

1 the General Revenue Fund of the state a sum equal to ten percent  
2 (10%) of the gross fees and charges so collected and received.

3 3. All expenses incurred by the Commission in carrying out the  
4 provisions of Section 581 et seq. of this title including, but not  
5 limited to, per diem, wages, salaries, rent, postage, advertising,  
6 supplies, bond premiums, travel and subsistence for the  
7 Commissioners, the Executive Director, employees, and legal counsel,  
8 and printing and utilities, shall be a proper charge against the  
9 fund, exclusive of the portion thereof to be paid into the General  
10 Revenue Fund as above set out; provided, that in no event shall  
11 liability ever accrue hereunder against the state in any sum  
12 whatsoever, or against the Oklahoma Used Motor Vehicle and Parts  
13 Commission Fund, in excess of the ninety percent (90%) of the fees  
14 and charges deposited therein.

15 SECTION 3. AMENDATORY 47 O.S. 2001, Section 583, is  
16 amended to read as follows:

17 Section 583. A. 1. It shall be unlawful and constitute a  
18 misdemeanor for any person to engage in business as, or serve in the  
19 capacity of, or act as a used motor vehicle dealer, used motor  
20 vehicle salesperson, wholesale used motor vehicle dealer,  
21 manufactured home dealer, manufactured home salesperson,  
22 manufactured home installer, or manufactured home manufacturer  
23 selling directly to a licensed manufactured home dealer in this

1 state without first obtaining a license or following other  
2 requirements therefor as provided in this section.

3 2. a. Any person engaging, acting, or serving in the  
4 capacity of a used motor vehicle dealer and/or a used  
5 motor vehicle salesperson, a manufactured home dealer,  
6 manufactured home salesperson, a manufactured home  
7 installer, or a manufactured home manufacturer, or  
8 having more than one place where any such business, or  
9 combination of businesses, is carried on or conducted  
10 shall be required to obtain and hold a current license  
11 for each such business, in which engaged.

12 b. A used motor vehicle dealer's license shall authorize  
13 one person to sell without a salesperson's license in  
14 the event such person shall be the owner of a  
15 proprietorship, or the person designated as principal  
16 in the dealer's franchise or the managing officer or  
17 one partner if no principal person is named in the  
18 franchise.

19 c. If after a hearing in accordance with the provisions  
20 of Section 585 of this title, the Oklahoma Used Motor  
21 Vehicle and Parts Commission shall find any person  
22 installing a mobile or manufactured home to be in  
23 violation of any of the provisions of this act, such

1 person may be subject to an administrative fine of not  
2 more than Five Hundred Dollars (\$500.00) for each  
3 violation. Each day a person is in violation of this  
4 act may constitute a separate violation. The maximum  
5 fine shall not exceed One Thousand Dollars  
6 (\$1,000.00). All administrative fines collected  
7 pursuant to the provisions of this subparagraph shall  
8 be deposited in the fund established in Section 582 of  
9 this title. Administrative fines imposed pursuant to  
10 this subparagraph may be enforceable in the district  
11 courts of this state.

12 d. A salesperson's license may not be issued under a  
13 wholesale used motor vehicle dealer's license.

14 3. Any person except persons penalized by administrative fine  
15 violating the provisions of this section shall, upon conviction, be  
16 fined not to exceed Five Hundred Dollars (\$500.00). A second or  
17 subsequent conviction shall be punished by a fine not to exceed One  
18 Thousand Dollars (\$1,000.00); provided that each day such unlicensed  
19 person violates this section shall constitute a separate offense,  
20 and any vehicle involved in a violation of this subsection shall be  
21 considered a separate offense.

22 B. 1. Applications for licenses required to be obtained under  
23 provisions of this act, Section 581 et seq. of this title, which

1 creates the Oklahoma Used Motor Vehicle and Parts Commission shall  
2 be verified by the oath or affirmation of the applicant and shall be  
3 on forms prescribed by the Commission and furnished to the  
4 applicants, and shall contain such information as the Commission  
5 deems necessary to enable it to fully determine the qualifications  
6 and eligibility of the several applicants to receive the license or  
7 licenses applied for. The Commission shall require in the  
8 application, or otherwise, information relating to:

- 9 a. the applicant's financial standing,
- 10 b. the applicant's business integrity,
- 11 c. whether the applicant has an established place of  
12 business and is engaged in the pursuit, avocation, or  
13 business for which a license, or licenses, is applied  
14 for,
- 15 d. whether the applicant is able to properly conduct the  
16 business for which a license, or licenses, is applied  
17 for, and
- 18 e. such other pertinent information consistent with the  
19 safeguarding of the public interest and the public  
20 welfare.

21 2. All applications for license or licenses shall be  
22 accompanied by the appropriate fee or fees in accordance with the  
23 schedule hereinafter provided. In the event any application is

1 denied and the license applied for is not issued, the entire license  
2 fee shall be returned to the applicant.

3 3. All bonds and licenses issued under the provisions of this  
4 act shall expire on December 31, following the date of issue and  
5 shall be nontransferable. All applications for renewal of licenses  
6 should be submitted by November 1 of each year, and licenses shall  
7 be issued by January 10. If applications have not been made for  
8 renewal of licenses, such licenses shall expire on December 31 and  
9 it shall be illegal for any person to represent himself or herself  
10 and act as a dealer thereafter. Tag agents shall be notified not to  
11 accept dealers' titles until such time as licenses have been issued.

12 4. A used motor vehicle salesperson's license shall permit the  
13 licensee to engage in the activities of a used motor vehicle  
14 salesperson. Salespersons shall not be allowed to sell vehicles  
15 unless applications, bonds, and fees are on file with the Commission  
16 and the motor vehicle salesperson's or temporary salesperson's  
17 license issued. A temporary salesperson's license, salesperson's  
18 renewal or reissue of salesperson's license shall be deemed to have  
19 been issued when the appropriate application, bond, and fee have  
20 been properly addressed and mailed to the Commission.

21 Dealers' payrolls and other evidence will be checked to  
22 ascertain that all salespersons for such dealers are licensed.

1 C. The schedule of license fees to be charged and received by  
2 the Commission for the licenses issued hereunder shall be as  
3 follows:

4 1. For each used motor vehicle dealer's license and each  
5 wholesale used motor vehicle dealer's license, Two Hundred Dollars  
6 (\$200.00). If a used motor vehicle dealer or a wholesale used motor  
7 vehicle dealer has once been licensed by the Commission in the  
8 classification for which he or she applies for a renewal of the  
9 license, the fee for each subsequent renewal shall be One Hundred  
10 Dollars (\$100.00); provided, if an applicant holds a license to  
11 conduct business as an automotive dismantler and parts recycler  
12 issued pursuant to Section 591.1 et seq. of this title, the initial  
13 fee shall be One Hundred Dollars (\$100.00) and the renewal fee shall  
14 be Seventy-five Dollars (\$75.00). If an applicant is applying  
15 simultaneously for a license under this paragraph and a license  
16 under paragraph 1 of Section 591.5 of this title, the initial  
17 application fee shall be One Hundred Fifty Dollars (\$150.00);

18 2. For a used motor vehicle dealer's license, for each place of  
19 business in addition to the principal place of business, Fifty  
20 Dollars (\$50.00);

21 3. For each used motor vehicle salesperson's license, Ten  
22 Dollars (\$10.00);

1           4. For each holder who possesses a valid new motor vehicle  
2 dealer's license from the Oklahoma Motor Vehicle Commission, One  
3 Hundred Dollars (\$100.00) shall be the initial fee for a used motor  
4 vehicle license and the fee for each subsequent renewal shall be One  
5 Hundred Dollars (\$100.00);

6           5.    a. For each manufactured home dealer's license, and for  
7                   each place of business in addition to the principal  
8                   place of business, Two Hundred Dollars (\$200.00).

9           b. For each renewal of a manufactured home dealer's  
10                   license, and renewal for each place of business in  
11                   addition to the principal place of business, One  
12                   Hundred Dollars (\$100.00);

13          6.    a. For each manufactured home installer's license, Two  
14                   Hundred Dollars (\$200.00).

15          b. For each renewal of a manufactured home installer's  
16                   license, Two Hundred Dollars (\$200.00); ~~and~~

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

20          b. For each renewal of a manufactured home manufacturer's  
21                   license, Seven Hundred Fifty Dollars (\$750.00); and

22          8. For each manufactured home salesperson's license or renewal  
23 thereof, Ten Dollars (\$10.00).

1       D. 1. The license issued to each used motor vehicle dealer,  
2 each wholesale used motor vehicle dealer, each manufactured home  
3 dealer, each manufactured home installer, and each manufactured home  
4 manufacturer shall specify the location of the place of business.  
5 If the business location is changed, the Oklahoma Used Motor Vehicle  
6 and Parts Commission shall be notified immediately of the change and  
7 the Commission may endorse the change of location on the license  
8 without charge. The license of each licensee shall be posted in a  
9 conspicuous place in the place or places of business of the  
10 licensee.

11       2. Every used motor vehicle salesperson shall have the license  
12 upon his or her person when engaged in business, and shall display  
13 same upon request. The name of the employer of the salesperson  
14 shall be stated on the license and if there is a change of employer,  
15 the license holder shall immediately mail the license to the  
16 Commission for its endorsement of the change thereon. There shall  
17 be no charge for endorsement of change of employer on the license or  
18 penalty for not having a license upon his or her person.

19       3. Every manufactured home installer shall have the license  
20 available for inspection at the primary place of business of the  
21 licensee. This license shall be valid for the licensee and all of  
22 the employees of the licensee. Any person who is not an employee of  
23 the licensee must obtain a separate manufactured home installer

1 license regardless of whether such person is acting in the capacity  
2 of a contractor or subcontractor.

3 E. 1. a. Each applicant for a used motor vehicle dealer's  
4 license shall procure and file with the Commission a  
5 good and sufficient bond in the amount of Fifteen  
6 Thousand Dollars (\$15,000.00). Each new applicant for  
7 a used motor vehicle dealer's license for the purpose  
8 of conducting a used motor vehicle auction shall  
9 procure and file with the Commission a good and  
10 sufficient bond in the amount of Fifty Thousand  
11 Dollars (\$50,000.00). An applicant who intends to  
12 conduct a used motor vehicle auction who provides  
13 proof that the applicant has check and title insurance  
14 in an amount not less than Fifty Thousand Dollars  
15 (\$50,000.00) shall only be required to have a bond in  
16 the amount of Twenty-five Thousand Dollars  
17 (\$25,000.00).

18 b. Each new applicant for a used motor vehicle dealer  
19 license for the purpose of conducting a used motor  
20 vehicle business which will consist primarily of non-  
21 auction consignment sales which are projected to equal  
22 Five Hundred Thousand Dollars (\$500,000.00) or more in  
23 gross annual sales shall procure and file with the

1 Commission a good and sufficient bond in the amount of  
2 Fifty Thousand Dollars (\$50,000.00). The Commission  
3 shall prescribe by rule the method of operation of the  
4 non-auction consignment dealer in order to properly  
5 protect the interests of all parties to the  
6 transaction and to provide sanctions against dealers  
7 who fail to comply with the rules.

8 c. Each applicant for a wholesale used motor vehicle  
9 dealer's license shall procure and file with the  
10 Commission a good and sufficient bond in the amount of  
11 Twenty-five Thousand Dollars (\$25,000.00).

12 d. Each applicant for a manufactured home dealer's  
13 license shall procure and file with the Commission a  
14 good and sufficient bond in the amount of Thirty  
15 Thousand Dollars (\$30,000.00).

16 e. Each manufactured home manufacturing facility selling  
17 directly to a licensed manufactured home dealer in  
18 this state shall procure and file with the Commission  
19 a good and sufficient bond in the amount of Thirty  
20 Thousand Dollars (\$30,000.00). In addition to all  
21 other conditions and requirements set forth herein,  
22 the bond shall require the availability of prompt and  
23 full warranty service by the manufacturer to comply

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

4 f. The bond shall be approved as to form by the Attorney  
5 General and conditioned that the applicant shall not  
6 practice fraud, make any fraudulent representation, or  
7 violate any of the provisions of this act in the  
8 conduct of the business for which the applicant is  
9 licensed. One of the purposes of the bond is to  
10 provide reimbursement for any loss or damage suffered  
11 by any person by reason of issuance of a certificate  
12 of title by a used motor vehicle dealer, a wholesale  
13 used motor vehicle dealer, or a manufactured home  
14 dealer.

15 2. If a motor vehicle dealer has a valid license issued by the  
16 Oklahoma Motor Vehicle Commission, then the bond as required by this  
17 subsection shall be waived.

18 3. Each applicant for a used motor vehicle salesperson's  
19 license shall procure and file with the Commission a good and  
20 sufficient bond in the amount of One Thousand Dollars (\$1,000.00).  
21 The bond shall be approved as to form by the Attorney General and  
22 conditioned that the applicant shall perform duties as a used motor

1 vehicle salesperson without fraud or fraudulent representation and  
2 without violating any provisions of this act.

3 4. The bonds as required by this section shall be maintained  
4 throughout the period of licensure. Should the bond be canceled for  
5 any reason, the license shall be revoked as of the date of  
6 cancellation unless a new bond is furnished prior to such date.

7 F. Any used motor vehicle dealer or wholesale used motor  
8 vehicle dealer is required to furnish and keep in force a minimum of  
9 Twenty-five Thousand Dollars (\$25,000.00) of single liability  
10 insurance coverage on all vehicles offered for sale or used in any  
11 other capacity in demonstrating or utilizing the streets and  
12 roadways in accordance with the financial responsibility laws of  
13 this state.

14 G. Any manufactured home dealer is required to furnish and keep  
15 in force a minimum of One Hundred Thousand Dollars (\$100,000.00) of  
16 garage liability or general liability with products and completed  
17 operations insurance coverage.

18 H. Any manufactured home installer is required to furnish and  
19 keep in force a minimum of Twenty-five Thousand Dollars (\$25,000.00)  
20 of general liability with products and completed operations  
21 insurance coverage.

22 SECTION 4. AMENDATORY 47 O.S. 2001, Section 584, is  
23 amended to read as follows:

1 Section 584. A. The Oklahoma Used Motor Vehicle and Parts  
2 Commission may deny an application for a license, ~~or~~ impose a fine  
3 not to exceed One Thousand Dollars (\$1,000.00) per occurrence and/or  
4 revoke or suspend a license after it has been granted, when any  
5 provision of Sections 581 through 585 of this title is violated or  
6 for any of the following reasons:

7 1. On satisfactory proof of unfitness of the applicant or the  
8 licensee, as the case may be, under the standards established by  
9 Section 581 et seq. of this title;

10 2. For fraud practices or any material misstatement made by an  
11 applicant in any application for license under the provisions of  
12 Section 581 et seq. of this title;

13 3. For any willful failure to comply with any provision of  
14 Section 581 et seq. of this title or with any rule promulgated by  
15 the Commission under authority vested in it by Section 581 et seq.  
16 of this title;

17 4. Change of condition after license is granted resulting in  
18 failure to maintain the qualifications for license;

19 5. Continued or flagrant violation of any of the rules of the  
20 Commission;

21 6. Being a used motor vehicle dealer, used motor vehicle  
22 salesperson, a wholesale used motor vehicle dealer, or a  
23 manufactured home dealer, a manufactured home installer, ~~or a~~

1 manufactured home manufacturer, or manufactured home salesperson

2 who:

- 3 a. resorts to or uses any false or misleading advertising  
4 in connection with business as a used motor vehicle  
5 dealer or salesperson, wholesale used motor vehicle  
6 dealer or manufactured home dealer, installer or  
7 manufacturer,
- 8 b. has committed any unlawful act which resulted in the  
9 revocation of any similar license in another state,
- 10 c. has been convicted of a crime involving moral  
11 turpitude,
- 12 d. has committed a fraudulent act in selling, purchasing  
13 or otherwise dealing in motor vehicles or manufactured  
14 homes or has misrepresented the terms and conditions  
15 of a sale, purchase or contract for sale or purchase  
16 of a motor vehicle or manufactured home or any  
17 interest therein including an option to purchase such  
18 motor vehicles or manufactured homes,
- 19 e. has engaged in business under a past or present  
20 license issued pursuant to Section 581 et seq. of this  
21 title, in such a manner as to cause injury to the  
22 public or to those with whom the licensee is dealing,

- 1           f.    has failed to meet or maintain the conditions and  
2                    requirements necessary to qualify for the issuance of  
3                    a license,  
4           g.    has failed or refused to furnish and keep in force any  
5                    bond required under Section 581 et seq. of this title,  
6                    ~~or~~  
7           h.    has installed or attempted to install a manufactured  
8                    home ~~or mobile home~~ in an unworkmanlike manner, or  
9           i.    employs unlicensed salesperson or other unlicensed  
10                   persons in connection with the sale of manufactured  
11                   homes;  
12        7.    Being a used motor vehicle dealer who:  
13            a.    does not have an established place of business,  
14            b.    employs unlicensed salespersons or other unlicensed  
15                    persons in connection with the sale of used vehicles,  
16            c.    fails or refuses to furnish or keep in force single  
17                    limit liability insurance on any vehicle offered for  
18                    sale and otherwise required under the financial  
19                    responsibility laws of this state, or  
20            d.    is not operating from the address shown on the license  
21                    if this change has not been reported to the  
22                    Commission; or  
23        8.    Being a manufactured home dealer who:

- 1           a.    does not have an established place of business,  
2           b.    fails or refuses to furnish or keep in force garage  
3                liability and completed operations insurance, or  
4           c.    is not operating from the address shown on the license  
5                if this change has not been reported to the  
6                Commission.

7           B.    The Commission shall deny an application for a license, or  
8   revoke or suspend a license after it has been granted, if a  
9   manufactured home dealer does not meet the following guidelines and  
10   restrictions:

11           1.    A display area for manufactured homes which is easily  
12   accessible, with sufficient parking for the public;

13           2.    An office for conducting business where the books, records,  
14   and files are kept, with access to a restroom for the public;

15           3.    Place of business which meets all zoning occupancy and other  
16   requirements of the appropriate local government and regular  
17   occupancy by a person, firm, or corporation engaged in the business  
18   of selling manufactured ~~or mobile~~ homes; and

19           4.    Place of business which is separate and apart from any other  
20   dealer's location.

21           C.    The Commission shall deny an application for a license, or  
22   revoke or suspend a license after it has been granted, if a  
23   manufactured home installer:

1        1. Installs or attempts to install a manufactured home ~~or a~~  
2 ~~mobile home~~ in a manner that is not in compliance with installation  
3 standards as set by the Commission pursuant to rule; or

4        2. Violates or fails to comply with any applicable rule as  
5 promulgated by the Commission concerning manufactured home  
6 installers.

7        D. The Commission shall deny an application for a license, or  
8 revoke or suspend a license after it has been granted, if a  
9 manufactured home manufacturer violates or fails to comply with any  
10 applicable rule as promulgated by the Commission concerning  
11 manufactured home manufacturers.

12        E. The Commission shall deny an application for a license by a  
13 motor vehicle manufacturer or factory if the application is for the  
14 purpose of selling used motor vehicles to any retail consumer in the  
15 state, other than through its retail franchised dealers, or acting  
16 as a broker between a seller and a retail buyer. This subsection  
17 does not prohibit a manufacturer from selling used motor vehicles  
18 where the retail customer is a nonprofit organization or a federal,  
19 state, or local government or agency. This subsection does not  
20 prohibit a manufacturer from providing information to a consumer for  
21 the purpose of marketing or facilitating the sale of used motor  
22 vehicles or from establishing a program to sell or offer to sell  
23 used motor vehicles through the manufacturer's retail franchised

1 dealers as provided for in Section 561 et seq. of this title. This  
2 subsection shall not prevent a factory from obtaining a wholesale  
3 used motor vehicle dealer's license or the factory's financing  
4 subsidiary from obtaining a wholesale used motor vehicle dealer's  
5 license.

6 F. Each of the aforementioned grounds for suspension,  
7 revocation, or denial of issuance or renewal of license shall also  
8 constitute a violation of Section 581 et seq. of this title, unless  
9 the person involved has been tried and acquitted of the offense  
10 constituting such grounds.

11 The suspension, revocation or refusal to issue or renew a  
12 license or the imposition of any other penalty by the Commission  
13 shall be in addition to any penalty which might be imposed upon any  
14 licensee upon a conviction at law for any violation of Section 581  
15 et seq. of this title.

16 SECTION 5. AMENDATORY 47 O.S. 2001, Section 585, is  
17 amended to read as follows:

18 Section 585. A. The Commission may deny any application for  
19 license, or suspend or revoke a license issued, or impose a fine, in  
20 accordance with the provisions of the Administrative Procedures Act,  
21 Section 250 et seq. of Title 75 of the Oklahoma Statutes. If the  
22 applicant or licensee is a used motor vehicle salesperson, the  
23 Commission shall in like manner also notify the person, firm,

1 association, corporation or trust with whom associated, or in whose  
2 association the applicant or licensee is about to enter. The  
3 Commission shall have the power to compel the production of records  
4 and papers bearing upon the complaints. The Commission shall have  
5 the power to subpoena and bring before it any person in this state,  
6 or take testimony of any such person by deposition, with the same  
7 fees and mileage and in the same manner as prescribed by law in  
8 judicial procedure before courts of the state in civil cases. Any  
9 party to the hearing shall have the right to the attendance of  
10 witnesses in his behalf upon designating to the Commission the  
11 person or persons sought to be subpoenaed. If the Commission shall  
12 determine that any licensee is guilty of violation of any of the  
13 provisions of this act, the license of the licensee shall be  
14 suspended or revoked, or a fine imposed as authorized by this act.

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

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

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

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

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

10       C. An appeal from the decision of the Commission to suspend or  
11 revoke a license or to impose a fine shall be taken in accordance  
12 with Article II of the Administrative Procedures Act, Section 308a  
13 et seq. of Title 75 of the Oklahoma Statutes.

14       D. Any applicant or licensee who knowingly or willfully makes  
15 or causes to be made any false statement of a fact required under  
16 the provisions of Section 581 et seq. of this title shall be subject  
17 to an administrative fine not to exceed One Thousand Dollars  
18 (\$1,000.00).

19       SECTION 6. This act shall become effective November 1, 2005.

20       COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 4-6-05 - DO  
21       PASS, As Amended.