STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1609 By: Miller (Doug)

AS INTRODUCED

An Act relating to motor vehicles; amending 47 O.S. 2001, Sections 581, as amended by Section 1, Chapter 483, O.S.L. 2003, 582, as last amended by Section 1, Chapter 229, O.S.L. 2003, 583, 584, and 585 (47 O.S. Supp. 2004, Sections 581 and 582), which relate to the Used Motor Vehicle and Parts Dealers; modifying certain definition; adding definition; modifying the powers and duties of the Used Motor Vehicle and Parts Commission; adding licensing requirement for Manufactured Home Salesperson; requiring certain fee; authorizing fine; adding certain violation; deleting certain violation imposed on used motor vehicle dealers; and providing an effective date.

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

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

Section 581. As used in Section 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. “Factory” means a manufacturer, distributor, factory branch, distributor branch, factory representative or distributor representative, which manufacturers or distributes vehicle products;

5. "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;

6. 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. “Manufactured home dealer” shall include a manufactured home auction. A manufactured home auction shall mean any person selling more than twenty-five manufactured homes in an auction or liquidation format. Only licensed manufactured home dealers shall be authorized to purchase manufactured homes at such auctions.

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; or

c. A holder of a lien on a manufactured home who sells, exchanges, or transfers by lease-purchase a repossessed manufactured home subject to the lien is not subject to the provisions of this chapter if the sale, exchange, or transfer is through a licensed manufactured home retail dealer who has entered into a contract with the lienholder for the sale, exchange, or transfer of the home;

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

8. "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;

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

~~9.~~ 10. "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.;

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

~~11.~~ 12. "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;

~~12.~~ 13. "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;

~~13.~~ 14. "Used motor vehicle" means any motor vehicle, as that term is defined in the Oklahoma 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;

~~14.~~ 15. "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;

~~15.~~ 16. 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;

~~16.~~ 17. "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. The term “used motor vehicle salesperson” 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 salesperson’s license; and

~~17.~~ 18. "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. 2001, Section 582, as last amended by Section 1, Chapter 229, O.S.L. 2003 (47 O.S. Supp. 2004, 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 ~~parts and establish a Used Car Consumer Action Panel to hear complaints on a condition of sale, implied and written warranties, and service complaints~~ 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. 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 3. AMENDATORY 47 O.S. 2001, Section 583, is amended to read as follows:

Section 583. A. 1. It shall be unlawful and constitute a misdemeanor for any person to engage in business as, or serve in the capacity of, or act as a used motor vehicle dealer, used motor vehicle salesperson, wholesale used motor vehicle dealer, manufactured home dealer, <u>manufactured home salesperson,</u> manufactured home installer, or manufactured home manufacturer selling directly to a licensed manufactured home dealer in this state without first obtaining a license or following other requirements therefor as provided in this section.

2. a. Any person engaging, acting, or serving in the capacity of a used motor vehicle dealer and/or a used motor vehicle salesperson, a manufactured home dealer, <u>manufactured home salesperson,</u> a manufactured home installer, or a manufactured home manufacturer, or

having more than one place where any such business, or combination of businesses, is carried on or conducted shall be required to obtain and hold a current license for each such business, in which engaged.

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

c. If after a hearing in accordance with the provisions of Section 585 of this title, the Oklahoma Used Motor Vehicle and Parts Commission shall find any person installing a mobile or manufactured home to be in violation of any of the provisions of this act, such person may be subject to an administrative fine of not more than Five Hundred Dollars ($500.00) for each violation. Each day a person is in violation of this act may constitute a separate violation. The maximum fine shall not exceed One Thousand Dollars ($1,000.00). All administrative fines collected pursuant to the provisions of this subparagraph shall be deposited in the fund established in Section 582 of this title. Administrative fines imposed pursuant to this subparagraph may be enforceable in the district courts of this state.

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

3. Any person except persons penalized by administrative fine violating the provisions of this section shall, upon conviction, be fined not to exceed Five Hundred Dollars ($500.00). A second or

subsequent conviction shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00); provided that each day such unlicensed person violates this section shall constitute a separate offense, and any vehicle involved in a violation of this subsection shall be considered a separate offense.

B. 1. Applications for licenses required to be obtained under provisions of this act, Section 581 et seq. of this title, which creates the Oklahoma Used Motor Vehicle and Parts Commission shall be verified by the oath or affirmation of the applicant and shall be on forms prescribed by the Commission and furnished to the applicants, and shall contain such information as the Commission deems necessary to enable it to fully determine the qualifications and eligibility of the several applicants to receive the license or licenses applied for. The Commission shall require in the application, or otherwise, information relating to:

a. the applicant's financial standing,

b. the applicant's business integrity,

c. whether the applicant has an established place of business and is engaged in the pursuit, avocation, or business for which a license, or licenses, is applied for,

d. whether the applicant is able to properly conduct the business for which a license, or licenses, is applied for, and

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

2. All applications for license or licenses shall be accompanied by the appropriate fee or fees in accordance with the schedule hereinafter provided. In the event any application is denied and the license applied for is not issued, the entire license fee shall be returned to the applicant.

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

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

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

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

1. For each used motor vehicle dealer's license and each wholesale used motor vehicle dealer's license, Two Hundred Dollars ($200.00). If a used motor vehicle dealer or a wholesale used motor vehicle dealer has once been licensed by the Commission in the classification for which he or she applies for a renewal of the license, the fee for each subsequent renewal shall be One Hundred Dollars ($100.00); provided, if an applicant holds a license to conduct business as an automotive dismantler and parts recycler issued pursuant to Section 591.1 et seq. of this title, the initial

fee shall be One Hundred Dollars ($100.00) and the renewal fee shall be Seventy-five Dollars ($75.00). If an applicant is applying simultaneously for a license under this paragraph and a license under paragraph 1 of Section 591.5 of this title, the initial application fee shall be One Hundred Fifty Dollars ($150.00);

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

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

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

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

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

6. a. For each manufactured home installer’s license, Two Hundred Dollars ($200.00).

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

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

   b. For each renewal of a manufactured home manufacturer’s license, Seven Hundred Fifty Dollars ($750.00)<u>; and</u>

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

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

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

3. Every manufactured home installer shall have the license available for inspection at the primary place of business of the licensee. This license shall be valid for the licensee and all of the employees of the licensee. Any person who is not an employee of the licensee must obtain a separate manufactured home installer license regardless of whether such person is acting in the capacity of a contractor or subcontractor.

E. 1. a. Each applicant for a used motor vehicle dealer's license shall procure and file with the Commission a good and sufficient bond in the amount of Fifteen Thousand Dollars ($15,000.00). Each new applicant for a used motor vehicle dealer's license for the purpose

of conducting a used motor vehicle auction shall procure and file with the Commission a good and sufficient bond in the amount of Fifty Thousand Dollars ($50,000.00). An applicant who intends to conduct a used motor vehicle auction who provides proof that the applicant has check and title insurance in an amount not less than Fifty Thousand Dollars ($50,000.00) shall only be required to have a bond in the amount of Twenty-five Thousand Dollars ($25,000.00).

b. Each new applicant for a used motor vehicle dealer license for the purpose of conducting a used motor vehicle business which will consist primarily of non-auction consignment sales which are projected to equal Five Hundred Thousand Dollars ($500,000.00) or more in gross annual sales shall procure and file with the Commission a good and sufficient bond in the amount of Fifty Thousand Dollars ($50,000.00). The Commission shall prescribe by rule the method of operation of the non-auction consignment dealer in order to properly protect the interests of all parties to the transaction and to provide sanctions against dealers who fail to comply with the rules.

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

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

e. Each manufactured home manufacturing facility selling directly to a licensed manufactured home dealer in this state shall procure and file with the Commission a good and sufficient bond in the amount of Thirty Thousand Dollars ($30,000.00). In addition to all other conditions and requirements set forth herein, the bond shall require the availability of prompt and full warranty service by the manufacturer to comply with all warranties expressed or implied in connection with each manufactured home which is manufactured for resale in this state.

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

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

3. Each applicant for a used motor vehicle salesperson's license shall procure and file with the Commission a good and sufficient bond in the amount of One Thousand Dollars ($1,000.00). The bond shall be approved as to form by the Attorney General and conditioned that the applicant shall perform duties as a used motor vehicle salesperson without fraud or fraudulent representation and without violating any provisions of this act.

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

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

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

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

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

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

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

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

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

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

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

6. Being a used motor vehicle dealer, used motor vehicle salesperson, a wholesale used motor vehicle dealer, or a manufactured home dealer, a manufactured home installer, ~~or a~~ manufactured home manufacturer, or manufactured home salesperson who:

a. resorts to or uses any false or misleading advertising in connection with business as a used motor vehicle dealer or salesperson, wholesale used motor vehicle dealer or manufactured home dealer, installer or manufacturer,

b. has committed any unlawful act which resulted in the revocation of any similar license in another state,

c. has been convicted of a crime involving moral turpitude,

d. has committed a fraudulent act in selling, purchasing or otherwise dealing in motor vehicles or manufactured homes or has misrepresented the terms and conditions of a sale, purchase or contract for sale or purchase of a motor vehicle or manufactured home or any interest therein including an option to purchase such motor vehicles or manufactured homes,

e. has engaged in business under a past or present license issued pursuant to Section 581 et seq. of this title, in such a manner as to cause injury to the public or to those with whom the licensee is dealing,

f. has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license,

g. has failed or refused to furnish and keep in force any bond required under Section 581 et seq. of this title, ~~or~~

h. has installed or attempted to install a manufactured home ~~or mobile home~~ in an unworkmanlike manner, or

i. employs unlicensed salesperson or other unlicensed persons in connection with the sale of manufactured homes;

7. Being a used motor vehicle dealer who:

a. does not have an established place of business,

b. employs unlicensed salespersons or other unlicensed persons in connection with the sale of used vehicles,

c. fails or refuses to furnish or keep in force single limit liability insurance on any vehicle offered for sale and otherwise required under the financial responsibility laws of this state, or

d. is not operating from the address shown on the license if this change has not been reported to the Commission; or

8. Being a manufactured home dealer who:

a. does not have an established place of business,

b. fails or refuses to furnish or keep in force garage liability and completed operations insurance, or

c. is not operating from the address shown on the license if this change has not been reported to the Commission.

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

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

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

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

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

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

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

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

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

E. The Commission shall deny an application for a license by a motor vehicle manufacturer or factory if the application is for the purpose of selling used motor vehicles to any retail consumer in the state, other than through its retail franchised dealers, or acting as a broker between a seller and a retail buyer. This subsection does not prohibit a manufacturer from selling used motor vehicles where the retail customer is a nonprofit organization or a federal, state, or local government or agency. This subsection does not prohibit a manufacturer from providing information to a consumer for the purpose of marketing or facilitating the sale of used motor vehicles or from establishing a program to sell or offer to sell used motor vehicles through the manufacturer's retail franchised dealers as provided for in Section 561 et seq. of this title. This subsection shall not prevent a factory from obtaining a wholesale used motor vehicle dealer's license or the factory's financing subsidiary from obtaining a wholesale used motor vehicle dealer's license.

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

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

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

Section 585. A. The Commission may deny any application for license, or suspend or revoke a license issued, or impose a fine, in accordance with the provisions of the Administrative Procedures Act,

Section 250 et seq. of Title 75 of the Oklahoma Statutes. If the applicant or licensee is a used motor vehicle salesperson, the Commission shall in like manner also notify the person, firm, association, corporation or trust with whom associated, or in whose association the applicant or licensee is about to enter. The Commission shall have the power to compel the production of records and papers bearing upon the complaints. The Commission shall have the power to subpoena and bring before it any person in this state, or take testimony of any such person by deposition, with the same fees and mileage and in the same manner as prescribed by law in judicial procedure before courts of the state in civil cases. Any party to the hearing shall have the right to the attendance of witnesses in his behalf upon designating to the Commission the person or persons sought to be subpoenaed. If the Commission shall determine that any licensee is guilty of violation of any of the provisions of this act, the license of the licensee shall be suspended or revoked, or a fine imposed as authorized by this act.

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

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

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

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

~~4.~~ Delivers a used motor vehicle to a potential purchaser with the intent to sell the vehicle, but does not complete the

transaction within fifteen (15) calendar days of the delivery of the used motor vehicle.

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

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

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

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