

CS for SB 979

THE STATE SENATE  
Thursday, February 19, 2009

Committee Substitute for  
Senate Bill No. 979

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 979 - By: Brown of the Senate and Cox of the House.

[ public health and safety - registration - Marine Vessel Advisory Committee - codification - effective date ]

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 4033, is amended to read as follows:

Section 4033. A. It shall be unlawful for any person to engage in the business of selling, or to serve in the capacity of, or act as a dealer of new or used vessels, or motors, or new and used vessels, and motors or any combination thereof in this state without first obtaining a license ~~therefor~~ as provided for by the Oklahoma Vessel and Motor Registration Act. Any person having more than one location where such business is carried on or conducted shall be required to obtain and hold a current license for each such location.

B. 1. Dealer licenses issued pursuant to this section shall be issued only to persons that prove to the satisfaction of the Oklahoma ~~Tax~~ Used Motor Vehicle and Parts Commission that they are clearly recognizable as bona fide dealers. Proof of bona fide

1 dealer status shall include, but need not be limited to, the  
2 following:

- 3 a. Maintenance of a display area capable of regularly  
4 displaying at least three vessels or motors, or a  
5 minimum of one thousand two hundred (1,200) square  
6 feet, indoors or outdoors,
- 7 b. Annual sales of substantial numbers of new or used  
8 vessels or motors. "Substantial sales" normally means  
9 sale of five or more vessels or motors unless the  
10 applicant can show unusual circumstances justifying  
11 lesser sales,
- 12 c. Consistent identification of the business as a dealer  
13 or mercantile establishment in advertising, signs,  
14 telephone book listings, and the like. The dealership  
15 must be clearly identifiable as such by any person who  
16 visits or deals with it,
- 17 d. Location of dealership in areas where zoning permits  
18 such sales and commercial operations,
- 19 e. Regular hours of operation from May 1 to September 1,  
20 inclusive, at least five (5) days per week, and
- 21 f. a picture, upon application for a new license, of the  
22 business location which includes the selling lot and  
23 the office and business sign.

1           2.    The Oklahoma ~~Tax~~ Used Motor Vehicle and Parts Commission  
2 shall issue a license to sell new vessels or motors only to those  
3 persons having a dealer agreement to sell new vessels or new motors  
4 in this state.

5           C.    1.   Applications for licenses required to be obtained  
6 pursuant to the provisions of this section shall be verified by the  
7 oath or affirmation of the applicant and shall be on forms  
8 prescribed by the Commission and furnished to such applicants, and  
9 shall contain such information as the Commission deems necessary to  
10 enable it to fully determine the qualifications and eligibility of  
11 the applicant to receive the license requested.  The Commission  
12 shall require in such application, or otherwise, information  
13 relating to:

- 14           a.    the applicant's financial standing,
- 15           b.    the applicant's business integrity,
- 16           c.    whether the applicant has an established place of  
17                business and is primarily engaged in the pursuit,  
18                avocation or business for which a license or licenses  
19                have been requested,
- 20           d.    whether the applicant is able to properly conduct the  
21                business for which a license or licenses have been  
22                requested, and

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

4 All such applications for license or licenses shall be  
5 accompanied by the appropriate fee or fees therefor in accordance  
6 with the schedule set out in Section 4034 of this title.

7 2. In the event any such application is denied and the license  
8 for which requested is not issued, the entire license fee shall be  
9 returned to the applicant.

10 3. All licenses issued under the provisions of the Oklahoma  
11 Vessel and Motor Registration Act shall expire on December 31  
12 following the date of issue, except for those licenses issued by or  
13 after January 1, 2010, as those licenses and all licenses issued  
14 thereafter shall expire on June 30, and shall be nontransferable.  
15 ~~All applications~~ Applications for renewal of a license issued  
16 pursuant to the provisions of this section shall be submitted by  
17 December 1 ~~of each year, 2009,~~ and such license will be issued by  
18 January 1, 2010. After such applications for renewal that are in  
19 force between December 2009 and June 30, 2010, all applications for  
20 renewal of a license shall be submitted by June 1 of each year and  
21 such license shall be issued by July 1. If applications have not  
22 been made for renewal of licenses by December 31, 2010, or by June  
23 30 of each year, it shall be illegal for any person to sell or to

1 serve in the capacity or act as a dealer. If after January 31,  
2 2010, or by June 30 of each year the license has not been renewed or  
3 the renewal paid, then such licensee shall be required to apply for  
4 a license as a new applicant. Motor vehicle license agents will be  
5 notified not to accept such dealers' titles until such time as  
6 licenses have been issued by the Commission. Provided, however,  
7 such dealers may transfer titles to vessels or motors purchased for  
8 resale prior to the expiration of their license. Such dealer shall  
9 provide the purchaser with a copy of the invoice showing purchase of  
10 the vessel or motor prior to the expiration of the dealer's license.  
11 Such transfers shall only be allowed within two (2) years of the  
12 license expiration.

13 D. Application for a dealer's license must show that such  
14 dealer has not violated any of the provisions of this section.

15 E. The Oklahoma Tax Commission may require every person  
16 licensed as a dealer, pursuant to the provisions of this subsection,  
17 to make a report to the Commission within a period of seven (7) days  
18 after the transfer by such person of the legal ownership of every  
19 vessel or motor upon a form prescribed and furnished by the  
20 Commission, showing the name and address of the purchaser, a  
21 description of the vessel or motor, including but not limited to the  
22 make, model, year made, permanent vessel number or motor number, as  
23 the case might be, the date of the transfer and such other

1 information as the Commission may require, and containing a  
2 certificate signed by the seller that the purchaser was given notice  
3 at the time of the sale or transfer that the purchaser is required  
4 by law to obtain a certificate of title for such vessel or motor  
5 from the Commission within thirty (30) calendar days after such sale  
6 or transfer. The Commission may cancel or suspend, in the manner  
7 provided by law, the license of any person licensed as a dealer  
8 pursuant to the provisions of this section who fails or refuses to  
9 comply with the provisions of this section. Dealers failing to  
10 comply with provisions of this section shall be responsible for all  
11 taxes due on such sales or on such vessels or motors.

12 F. The license of each dealer shall be posted in a conspicuous  
13 place in the dealer's place or places of business.

14 G. 1. A new dealer's license authorizes a dealer to transfer,  
15 purchase and sell new and used vessels and motors.

16 2. A used dealer's license authorizes a dealer to transfer,  
17 purchase and sell used vessels and motors.

18 3. A new dealer's license or a used dealer's license authorizes  
19 a dealer to transfer and assign titles and purchase new and used  
20 vessels and motors without paying excise tax.

21 H. Any dealer agreement executed or renewed on and after the  
22 ~~effective date of this act~~ November 1, 1989, shall comply with the  
23 provisions of the Oklahoma Vessel and Motor Registration Act.

1 SECTION 2. AMENDATORY 63 O.S. 2001, Section 4034, is  
2 amended to read as follows:

3 Section 4034. The schedule of license fees to be charged and  
4 received by the Oklahoma ~~Tax~~ Used Motor Vehicle and Parts Commission  
5 for the licenses issued pursuant to Section 4033 of this title shall  
6 be as follows:

7 1. For the license issued initially to each dealer of new or  
8 used vessels or new and used motors, the fee shall be ~~Two Hundred~~  
9 ~~Dollars (\$200.00)~~ Three Hundred Dollars (\$300.00) per location  
10 licensed. In addition to the license fee, a Ten Dollar (\$10.00) fee  
11 per dealer agreement for each such vessel or motor sold at each  
12 location licensed shall be charged. The annual renewal fee shall be  
13 ~~One Hundred Dollars (\$100.00)~~ One Hundred Fifty Dollars (\$150.00)  
14 per location per year. Any changes in the make of vessels or motors  
15 sold at any location licensed shall be specified in the renewal  
16 application. A fee of Ten Dollars (\$10.00) per location shall be  
17 charged for such additional dealer agreement for each such vessel or  
18 motor sold, ~~and~~ .

19 2. ~~For the license issued initially to each dealer of used~~  
20 ~~vessels or motors, the fee shall be Fifty Dollars (\$50.00) per each~~  
21 ~~location licensed with an annual renewal fee of Fifty Dollars~~  
22 ~~(\$50.00) per location per year~~ For a license issued or renewed and  
23 in force for the period between January and June of 2010, an amount

1 of one-half (1/2) of the amount prescribed by this subsection for  
2 the applicable fee shall be added to the license fee applied for by  
3 the applicant. For licenses issued or renewed after June 2010, the  
4 fees shall remain the same pursuant to paragraph 1 of this section.

5 SECTION 3. AMENDATORY 63 O.S. 2001, Section 4037.1, is  
6 amended to read as follows:

7 Section 4037.1 In the event that a dealer seeks to establish a  
8 new vessel or new motor dealership or relocate an existing vessel or  
9 motor dealership within or into a relevant market area where the  
10 same product line is then represented, the dealer shall notify the  
11 ~~Tax~~ Oklahoma Used Motor Vehicle and Parts Commission and each new  
12 vessel or new motor dealer of such product line in the relevant  
13 market area of the intention to establish or relocate a dealership  
14 within or into that market area. The relevant market area is the  
15 area within a radius of fifteen (15) miles of the site of the  
16 proposed new vessel or new motor dealership. Within fifteen (15)  
17 days of receiving such notice such new vessel or new motor dealer  
18 may file with the Commission a protest to the establishing or  
19 relocating of the proposed new vessel or new motor dealership. When  
20 such a protest is filed, the Commission shall inform the dealer that  
21 a timely protest has been filed, and that the dealer shall not  
22 establish or relocate the proposed new vessel or new motor  
23 dealership until the Commission has held a hearing, nor thereafter,

1 if the Commission has determined that there is good cause for not  
2 permitting such new vessel or new motor dealership. The  
3 manufacturer or factory representative of the same product line may  
4 obtain a waiver of protest from each new vessel or new motor dealer  
5 of the same product line within that relevant market area. If a  
6 waiver of protest from each dealer within the relevant market area  
7 is not attached to the application for the new dealer seeking to  
8 establish, the Commission shall render a final decision no later  
9 than sixty (60) days after the Commission's receipt of the notice of  
10 protest. In any hearing held pursuant to this section on additional  
11 dealerships or relocation of dealerships the new dealer or existing  
12 dealer relocating shall have the burden of proof. For the purposes  
13 of this section, the reopening in a relevant market area of a new  
14 vessel or new motor dealership that has not been in operation for  
15 two (2) years or more shall be deemed the establishment of a new  
16 vessel or new motor dealership. For the purpose of this section,  
17 the designation of an additional location in an existing dealership  
18 agreement shall be deemed to be the establishment of a new vessel or  
19 new motor dealership.

20 SECTION 4. AMENDATORY 63 O.S. 2001, Section 4037.2, is  
21 amended to read as follows:

22 Section 4037.2 In determining whether good cause has been  
23 established for not entering into or relocating an additional

1 dealership for the same product line, the ~~Tax~~ Oklahoma Used Motor  
2 Vehicle and Parts Commission shall take into consideration the  
3 existing circumstances, including, but not limited to:

4 1. Permanency of the investment of the proposed dealership;

5 2. Effect on the retail new vessel or new motor business and  
6 the consuming public in the relevant market area;

7 3. Whether it is injurious to the public welfare for an  
8 additional new vessel or new motor dealership to be established;

9 4. Whether the new vessel or new motor dealers of the same  
10 line-make in that relevant market area are providing adequate  
11 competition and convenient consumer care for the new vessel or new  
12 motor and service facilities, equipment, supply of new vessel or new  
13 motor parts, and qualified service personnel; and

14 5. Whether the establishment of an additional new vessel or new  
15 motor dealership would increase competition, and therefore be in the  
16 public interest.

17 SECTION 5. AMENDATORY 63 O.S. 2001, Section 4041, is  
18 amended to read as follows:

19 Section 4041. The Oklahoma ~~Tax~~ Used Motor Vehicle and Parts  
20 Commission may deny an application for a license, or revoke or  
21 suspend a license or impose a fine not to exceed ~~Five Hundred~~  
22 ~~Dollars~~ ~~(\$500.00)~~ One Thousand Dollars (\$1,000.00) against a dealer  
23 for each day that any provision of this section or Sections 4033

1 through 4040 of this title is violated or for any of the following  
2 reasons:

3 1. On satisfactory proof of unfitness of the applicant in any  
4 application for any license pursuant to the provisions of the  
5 Oklahoma Vessel and Motor Registration Act;

6 2. For any material misstatement made by an applicant in any  
7 application for any license pursuant to the provisions of the  
8 Oklahoma Vessel and Motor Registration Act;

9 3. For any failure to comply with any provision of the Oklahoma  
10 Vessel and Motor Registration Act or any rule promulgated by the  
11 Commission under authority vested in it by the Oklahoma Vessel and  
12 Motor Registration Act, Section 4002 et seq. of this title;

13 4. A change of condition after license is granted resulting in  
14 failure to maintain the qualifications for license;

15 5. Being a dealer who:

16 a. has required a purchaser of a new vessel or motor, as  
17 a condition of sale and delivery thereof, to also  
18 purchase special features, appliances, accessories or  
19 equipment not desired or requested by the purchaser  
20 and installed by the dealer,

21 b. uses any false or misleading advertising in connection  
22 with his business as such a dealer,

- 1 c. has committed any unlawful act which resulted in the  
2 revocation of any similar license in another state,  
3 d. has failed or refused to perform any written agreement  
4 with any retail buyer involving the sale of a vessel  
5 or motor,  
6 e. has been convicted of a crime involving moral  
7 turpitude,  
8 f. has committed a fraudulent act in selling, purchasing,  
9 or otherwise dealing in vessels or motors or has  
10 misrepresented the terms and conditions of a sale,  
11 purchase, or contract for sale or purchase of a vessel  
12 or motor or any interest therein including an option  
13 to purchase such vessel or motor, or  
14 g. has failed to meet or maintain the conditions and  
15 requirements necessary to qualify for the issuance of  
16 a license;

17 6. Being a dealer who does not have an established place of  
18 business;

19 7. Being a new vessel or new motor dealer who:

- 20 a. does not provide for a suitable repair shop separate  
21 from the display room with ample space to repair or  
22 recondition one or more vessels or motors at the same  
23 time, and which is equipped with such parts, tools and

1 equipment as may be requisite for the servicing of  
2 vessels or motors in such a manner as to make them  
3 comply with the safety laws of this state and to  
4 properly fulfill the dealer's or manufacturer's  
5 warranty obligation. Provided that the provisions of  
6 this subparagraph shall not apply to:

7 (1) mercantile establishments engaged in the selling  
8 of vessels and motors if:

9 (a) such vessel and motor business does not  
10 constitute more than ten percent (10%) of  
11 the business of such establishment,

12 (b) the vessels sold at such establishment are  
13 under fourteen (14) feet in length, and

14 (c) the outboard motors sold at such  
15 establishment are under ten (10) horsepower,  
16 or

17 (2) dealers which are engaged solely in the business  
18 of selling canoes. For the purposes of this  
19 subsection, "canoe" shall mean a vessel that is  
20 long relative to its width, that has curved sides  
21 and is tapered to two (2) pointed ends, or is  
22 tapered to one (1) pointed end and blunt on the  
23 other end, and is generally of traditional shape,



- 1           a.    the dealer participates in an advertised vessel or  
2                    motor show in which at least two other vessel or motor  
3                    dealers are participating,
- 4           b.    application for a permit for a sales promotion by an  
5                    individual dealer shall be made to the Commission at  
6                    least seven (7) calendar days prior to such promotion,  
7                    and such permit shall be issued by the Commission upon  
8                    payment of a fee of Fifty Dollars (\$50.00) per event,
- 9           c.    the permit shall be valid for a period not to exceed  
10                   fourteen (14) consecutive days, and
- 11          d.    the Commission shall not issue a permit to a dealer if  
12                   he has obtained a permit within the past forty-five  
13                   (45) calendar days for the same location;

14          2.    A dealer may not be denied a permit on the grounds that the  
15                sales promotion is to be held within the relevant market area of  
16                another dealer of the same product line;

17          3.    A dealer who fails to obtain such a permit shall be subject  
18                to the penalties and fines provided for in Section 4041 of Title 63  
19                of the Oklahoma Statutes.

20          Provided, a permit shall not be required pursuant to the  
21                provisions of this section for a display or sale of new vessels or  
22                motors which is held off the premises of a licensed dealer if the

1 display or sale is held within a twenty-five (25) mile radius of the  
2 location of the dealership; and

3 4. Prior to the completion of a sale at an off-premises  
4 location, the dealer shall be required to disclose in writing to any  
5 person purchasing a new vessel or motor the following information:

- 6 a. that location of the dealership making the sale, and  
7 b. that other dealers may not be willing to do repair or  
8 warranty work on vessels not purchased at their  
9 dealership.

10 Any salesperson working at an off-premises location shall not wear  
11 any identification or clothing indicating an affiliation with  
12 another retailer.

13 SECTION 7. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 4045 of Title 63, unless there  
15 is created a duplication in numbering, reads as follows:

16 A. There is hereby created the Marine Vessel Advisory  
17 Committee. The Committee shall assist and advise the Oklahoma Used  
18 Motor Vehicle and Parts Commission on issues in the marine industry  
19 and shall advise the Commission on all matters pertaining to the  
20 licensure of vessel and/or motor dealers.

21 B. The Committee shall be composed of four appointed members,  
22 who are licensed new and used vessel dealers pursuant to Sections  
23 4033 et seq. of Title 63. A fifth member shall be an ex officio

1 member of the Commission designated from their membership. Two  
2 members shall serve initial terms until September 1, 2010. One  
3 member shall serve an initial term until September 1, 2011. One  
4 member shall serve an initial term until September 1, 2012. All  
5 terms thereafter shall be for a period of three (3) years for each  
6 successive appointment. All vacancies shall be appointed in the  
7 same manner as the initial appointment.

8 C. The Commission shall appoint the Committee members pursuant  
9 to rules to be adopted by the Commission and at a minimum the rules  
10 shall include a method of appointment that provides for  
11 representation from all geographical portions of the state as  
12 practicable as possible. All members shall be residents of this  
13 state.

14 D. The Committee shall meet at least annually. At the initial  
15 meeting of the Committee, members shall elect a chair. The chair  
16 shall represent the Committee at all meetings of the Commission. A  
17 majority of the members of the Committee constitutes a quorum.

18 E. Each member of the Committee shall not receive compensation  
19 for their duties, but shall be reimbursed for their reasonable and  
20 necessary expenses as provided for in the State Travel Reimbursement  
21 Act.

22 SECTION 8. This act shall become effective November 1, 2009.

23 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY & HOMELAND SECURITY,  
24 dated 2-17-09 - DO PASS, As Amended and Coauthored.