

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 SENATE BILL 979

By: Brown

4  
5  
6 AS INTRODUCED

7 An Act relating to public health and safety; amending  
8 63 O.S. 2001, Sections 4033, 4034, 4037.1, 4037.2,  
9 4041, and 4044, which relate to the Oklahoma Vessel  
10 and Motor Registration Act; modifying entity  
11 responsible for registration of dealers; creating the  
12 Marine Vessel Advisory Committee; providing  
13 responsibility of Committee; providing membership and  
14 terms; authorizing the Oklahoma Used Motor Vehicle  
15 and Parts Commission to appoint members; providing  
16 meeting procedures; providing for reimbursement;  
17 providing for codification; and providing an  
18 effective date.

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

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

22 Section 4033. A. It shall be unlawful for any person to engage  
23 in the business of selling, or to serve in the capacity of, or act  
24 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

1 required to obtain and hold a current license for each such  
2 location.

3 B. 1. Dealer licenses issued pursuant to this section shall be  
4 issued only to persons that prove to the satisfaction of the  
5 Oklahoma ~~Tax~~ Used Motor Vehicle and Parts Commission that they are  
6 clearly recognizable as bona fide dealers. Proof of bona fide  
7 dealer status shall include, but need not be limited to, the  
8 following:

- 9 a. Maintenance of a display area capable of regularly  
10 displaying at least three vessels or motors, or a  
11 minimum of one thousand two hundred (1,200) square  
12 feet, indoors or outdoors,
- 13 b. Annual sales of substantial numbers of new or used  
14 vessels or motors. "Substantial sales" normally means  
15 sale of five or more vessels or motors unless the  
16 applicant can show unusual circumstances justifying  
17 lesser sales,
- 18 c. Consistent identification of the business as a dealer  
19 or mercantile establishment in advertising, signs,  
20 telephone book listings, and the like. The dealership  
21 must be clearly identifiable as such by any person who  
22 visits or deals with it,
- 23 d. Location of dealership in areas where zoning permits  
24 such sales and commercial operations,

- 1 e. Regular hours of operation from May 1 to September 1,  
2 inclusive, at least five (5) days per week, and  
3 f. a picture, upon application for a new license, of the  
4 business location which includes the selling lot and  
5 the office and business sign.

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

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

- 19 a. the applicant's financial standing,  
20 b. the applicant's business integrity,  
21 c. whether the applicant has an established place of  
22 business and is primarily engaged in the pursuit,  
23 avocation or business for which a license or licenses  
24 have been requested,

1           d.    whether the applicant is able to properly conduct the  
2                business for which a license or licenses have been  
3                requested, and

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

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

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

13          3.    All licenses issued under the provisions of the Oklahoma  
14 Vessel and Motor Registration Act shall expire on December 31  
15 following the date of issue and shall be nontransferable. All  
16 applications for renewal of a license issued pursuant to the  
17 provisions of this section shall be submitted by December 1 of each  
18 year, and such license will be issued by January 1. If applications  
19 have not been made for renewal of licenses by December 31 of each  
20 year it shall be illegal for any person to sell or to serve in the  
21 capacity or act as a dealer. If after January 31 of each year the  
22 license has not been renewed or the renewal paid, then such licensee  
23 shall be required to apply for a license as a new applicant. Motor  
24 vehicle license agents will be notified not to accept such dealers'

1 titles until such time as licenses have been issued by the  
2 Commission. Provided, however, such dealers may transfer titles to  
3 vessels or motors purchased for resale prior to the expiration of  
4 their license. Such dealer shall provide the purchaser with a copy  
5 of the invoice showing purchase of the vessel or motor prior to the  
6 expiration of the dealer's license. Such transfers shall only be  
7 allowed within two (2) years of the license expiration.

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

10 E. The Oklahoma ~~Tax~~ Used Motor Vehicle and Parts Commission may  
11 require every person licensed as a dealer, pursuant to the  
12 provisions of this subsection, to make a report to the Commission  
13 within a period of seven (7) days after the transfer by such person  
14 of the legal ownership of every vessel or motor upon a form  
15 prescribed and furnished by the Commission, showing the name and  
16 address of the purchaser, a description of the vessel or motor,  
17 including but not limited to the make, model, year made, permanent  
18 vessel number or motor number, as the case might be, the date of the  
19 transfer and such other information as the Commission may require,  
20 and containing a certificate signed by the seller that the purchaser  
21 was given notice at the time of the sale or transfer that the  
22 purchaser is required by law to obtain a certificate of title for  
23 such vessel or motor from the Commission within thirty (30) calendar  
24 days after such sale or transfer. The Commission may cancel or

1 suspend, in the manner provided by law, the license of any person  
2 licensed as a dealer pursuant to the provisions of this section who  
3 fails or refuses to comply with the provisions of this section.  
4 Dealers failing to comply with provisions of this section shall be  
5 responsible for all taxes due on such sales or on such vessels or  
6 motors.

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

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

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

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

16 H. Any dealer agreement executed or renewed on and after the  
17 effective date of this act shall comply with the provisions of the  
18 Oklahoma Vessel and Motor Registration Act.

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

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

1           1. For the license issued initially to each dealer of new  
2 vessels or new motors, the fee shall be Two Hundred Dollars  
3 (\$200.00) per location licensed. In addition to the license fee, a  
4 Ten Dollar (\$10.00) fee per dealer agreement for each such vessel or  
5 motor sold at each location licensed shall be charged. The annual  
6 renewal fee shall be One Hundred Dollars (\$100.00) per location per  
7 year. Any changes in the make of vessels or motors sold at any  
8 location licensed shall be specified in the renewal application. A  
9 fee of Ten Dollars (\$10.00) per location shall be charged for such  
10 additional dealer agreement for each such vessel or motor sold; and

11           2. For the license issued initially to each dealer of used  
12 vessels or motors, the fee shall be Fifty Dollars (\$50.00) per each  
13 location licensed with an annual renewal fee of Fifty Dollars  
14 (\$50.00) per location per year.

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

17           Section 4037.1 In the event that a dealer seeks to establish a  
18 new vessel or new motor dealership or relocate an existing vessel or  
19 motor dealership within or into a relevant market area where the  
20 same product line is then represented, the dealer shall notify the  
21 ~~Tax~~ Oklahoma Used Motor Vehicle and Parts Commission and each new  
22 vessel or new motor dealer of such product line in the relevant  
23 market area of the intention to establish or relocate a dealership  
24 within or into that market area. The relevant market area is the

1 area within a radius of fifteen (15) miles of the site of the  
2 proposed new vessel or new motor dealership. Within fifteen (15)  
3 days of receiving such notice such new vessel or new motor dealer  
4 may file with the Commission a protest to the establishing or  
5 relocating of the proposed new vessel or new motor dealership. When  
6 such a protest is filed, the Commission shall inform the dealer that  
7 a timely protest has been filed, and that the dealer shall not  
8 establish or relocate the proposed new vessel or new motor  
9 dealership until the Commission has held a hearing, nor thereafter,  
10 if the Commission has determined that there is good cause for not  
11 permitting such new vessel or new motor dealership. The  
12 manufacturer or factory representative of the same product line may  
13 obtain a waiver of protest from each new vessel or new motor dealer  
14 of the same product line within that relevant market area. If a  
15 waiver of protest from each dealer within the relevant market area  
16 is not attached to the application for the new dealer seeking to  
17 establish, the Commission shall render a final decision no later  
18 than sixty (60) days after the Commission's receipt of the notice of  
19 protest. In any hearing held pursuant to this section on additional  
20 dealerships or relocation of dealerships the new dealer or existing  
21 dealer relocating shall have the burden of proof. For the purposes  
22 of this section, the reopening in a relevant market area of a new  
23 vessel or new motor dealership that has not been in operation for  
24 two (2) years or more shall be deemed the establishment of a new

1 vessel or new motor dealership. For the purpose of this section,  
2 the designation of an additional location in an existing dealership  
3 agreement shall be deemed to be the establishment of a new vessel or  
4 new motor dealership.

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

7 Section 4037.2 In determining whether good cause has been  
8 established for not entering into or relocating an additional  
9 dealership for the same product line, the ~~Tax~~ Oklahoma Used Motor  
10 Vehicle and Parts Commission shall take into consideration the  
11 existing circumstances, including, but not limited to:

- 12 1. Permanency of the investment of the proposed dealership;
- 13 2. Effect on the retail new vessel or new motor business and  
14 the consuming public in the relevant market area;
- 15 3. Whether it is injurious to the public welfare for an  
16 additional new vessel or new motor dealership to be established;
- 17 4. Whether the new vessel or new motor dealers of the same  
18 line-make in that relevant market area are providing adequate  
19 competition and convenient consumer care for the new vessel or new  
20 motor and service facilities, equipment, supply of new vessel or new  
21 motor parts, and qualified service personnel; and
- 22 5. Whether the establishment of an additional new vessel or new  
23 motor dealership would increase competition, and therefore be in the  
24 public interest.

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

3 Section 4041. The Oklahoma ~~Tax~~ Used Motor Vehicle and Parts  
4 Commission may deny an application for a license, or revoke or  
5 suspend a license or impose a fine not to exceed Five Hundred  
6 Dollars (\$500.00) against a dealer for each day that any provision  
7 of this section or Sections 4033 through 4040 of this title is  
8 violated or for any of the following reasons:

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

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

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

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

21 5. Being a dealer who:

22 a. has required a purchaser of a new vessel or motor, as  
23 a condition of sale and delivery thereof, to also  
24 purchase special features, appliances, accessories or

1 equipment not desired or requested by the purchaser  
2 and installed by the dealer,

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

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

7 d. has failed or refused to perform any written agreement  
8 with any retail buyer involving the sale of a vessel  
9 or motor,

10 e. has been convicted of a crime involving moral  
11 turpitude,

12 f. has committed a fraudulent act in selling, purchasing,  
13 or otherwise dealing in vessels or motors or has  
14 misrepresented the terms and conditions of a sale,  
15 purchase, or contract for sale or purchase of a vessel  
16 or motor or any interest therein including an option  
17 to purchase such vessel or motor, or

18 g. has failed to meet or maintain the conditions and  
19 requirements necessary to qualify for the issuance of  
20 a license;

21 6. Being a dealer who does not have an established place of  
22 business;

23 7. Being a new vessel or new motor dealer who:  
24

1 a. does not provide for a suitable repair shop separate  
2 from the display room with ample space to repair or  
3 recondition one or more vessels or motors at the same  
4 time, and which is equipped with such parts, tools and  
5 equipment as may be requisite for the servicing of  
6 vessels or motors in such a manner as to make them  
7 comply with the safety laws of this state and to  
8 properly fulfill the dealer's or manufacturer's  
9 warranty obligation. Provided that the provisions of  
10 this subparagraph shall not apply to:

11 (1) mercantile establishments engaged in the selling  
12 of vessels and motors if:

- 13 (a) such vessel and motor business does not  
14 constitute more than ten percent (10%) of  
15 the business of such establishment,  
16 (b) the vessels sold at such establishment are  
17 under fourteen (14) feet in length, and  
18 (c) the outboard motors sold at such  
19 establishment are under ten (10) horsepower,  
20 or

21 (2) dealers which are engaged solely in the business  
22 of selling canoes. For the purposes of this  
23 subsection, "canoe" shall mean a vessel that is  
24 long relative to its width, that has curved sides

1 and is tapered to two (2) pointed ends, or is  
2 tapered to one (1) pointed end and blunt on the  
3 other end, and is generally of traditional shape,

4 b. does not hold a dealer agreement in effect with a  
5 manufacturer or distributor of new vessels or motors  
6 for the sale of the same and is not authorized by the  
7 manufacturer or distributor to render predelivery  
8 preparation of such vessels or motors sold to  
9 purchasers and to perform any authorized post-sale  
10 work pursuant to the manufacturer's or distributor's  
11 warranty, or

12 c. does not properly service a new vessel or motor before  
13 delivery of same to the original purchaser thereof.

14 SECTION 6. AMENDATORY 63 O.S. 2001, Section 4044, is  
15 amended to read as follows:

16 Section 4044. The Oklahoma ~~Tax~~ Used Motor Vehicle and Parts  
17 Commission shall issue permits for displays and sales of new vessels  
18 or motors which are held off the premises of a licensed dealer  
19 thereof as follows:

20 1. A promotion by an individual new vessel or motor dealer  
21 which is held off the premises of such dealer and at which sales  
22 activities are conducted may be held only under the following  
23 conditions:  
24

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

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

4 a. that location of the dealership making the sale, and

5 b. that other dealers may not be willing to do repair or  
6 warranty work on vessels not purchased at their  
7 dealership.

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

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

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

19 B. The Committee shall be composed of four appointed members,  
20 who are licensed new and used vessel dealers pursuant to Sections  
21 4033 et seq. of Title 63. A fifth member shall be an ex officio  
22 member of the Commission designated from their membership. Two  
23 members shall serve initial terms until September 1, 2010. One  
24 member shall serve an initial term until September 1, 2011. One

1 member shall serve an initial term until September 1, 2012. All  
2 terms thereafter shall be for a period of three (3) years for each  
3 successive appointment. All vacancies shall be appointed in the  
4 same manner as the initial appointment.

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

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

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

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

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