STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 1222 By: McCullough of the House

and

Sykes of the Senate

COMMITTEE SUBSTITUTE

[motor vehicles - powersports - dealer license - codification - effective date]

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 564.2 of Title 47, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Motor Vehicle Commission shall provide a new motor vehicle dealer license for powersports vehicle dealers. The Commission shall allow powersports vehicle dealers to sell powersports vehicles of the same manufacturer pursuant to one new motor vehicle dealer license per manufacturer at each location licensed.

B. A powersports vehicle dealer license shall not require a powersports vehicle dealer to sell every type of powersports vehicle for each manufacturer licensed. Each powersports vehicle dealer

license shall only allow the sale of the specific types of powersports vehicles of the same manufacturer which a powersports vehicle dealer has requested.

C. Powersports vehicle dealers licensed pursuant to this section shall be required to comply with all other new motor vehicle dealer standards pursuant to this title.

SECTION 2. AMENDATORY 47 O.S. 2011, Section 562, is amended to read as follows:

Section 562. The following words, terms and phrases, when used in Sections 561 through 567, 572, 578.1, 579 and 579.1 of this title, shall have the meanings respectively ascribed to them in this section, except where the context clearly indicates a different meaning:

1. "Motor vehicle" means any motor-driven vehicle required to be registered under the Oklahoma Vehicle License and Registration Act, except recreational vehicles, as defined in the Recreational Vehicle Franchise Act, all-terrain vehicles, utility vehicles, ~~and~~ motorcycles used exclusively for off-road use, and vehicles sold by a retail implement dealer;

2. "New motor vehicle dealer" means any person, firm, association, corporation or trust not excluded by this paragraph who sells, offers for sale, advertises to sell, leases or displays new motor vehicles and holds a bona fide contract or franchise in effect with a manufacturer or distributor authorized by the manufacturer to

make predelivery preparation of such vehicles sold to purchasers and to perform post-sale work pursuant to the manufacturer's or distributor's warranty. As used herein, "authorized predelivery preparation" means the rendition by the dealer of services and safety adjustments on each new motor vehicle in accordance with the procedure and safety standards required by the manufacturer of the vehicle to be made before its delivery to the purchaser. "Performance of authorized post-sale work pursuant to the warranty", as used herein, means the rendition of services which are required by the terms of the warranty that stands extended to the vehicle at the time of its sale and are to be made in accordance with the safety standards prescribed by the manufacturer. The term includes premises or facilities at which a person engages only in the repair of motor vehicles if repairs are performed pursuant to the terms of a franchise and motor vehicle manufacturer's warranty. However, the term shall not include premises or facilities at which a new motor vehicle dealer or dealers within the area of responsibility of such dealer or dealers as defined in the manufacturer's franchise agreement of such dealer or dealers performs motor vehicle repairs pursuant to the terms of a franchise and motor vehicle manufacturer's warranty. For the purpose of Sections 561 through 567, 572, 578.1, 579 and 579.1 of this title, the terms "new motor vehicle dealer" and "new motor vehicle dealership" shall be synonymous. The term "new motor vehicle dealer" does not include:

a. receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment or order of any court,

b. public officers while performing or in operation of their duties, or

c. employees of persons, corporations or associations enumerated in subparagraph a of this paragraph when engaged in the specific performance of their duties as such employees;

3. "Motor vehicle salesperson" means any person who, for gain or compensation of any kind, either directly or indirectly, regularly or occasionally, by any form of agreement or arrangement, sells or negotiates for the sale of any new motor vehicle for any new motor vehicle dealer to any one or more third parties;

4. "Commission" means the Oklahoma Motor Vehicle Commission;

5. "Manufacturer" means any person, firm, association, corporation or trust, resident or nonresident, who manufactures or assembles new and unused motor vehicles or who engages in the fabrication or assembly of motorized vehicles of a type required to be registered in the State of Oklahoma;

6. "Distributor" means any person, firm, association, corporation or trust, resident or nonresident, who, being authorized by the original manufacturer, in whole or in part sells or

distributes new and unused motor vehicles to motor vehicle dealers, or who maintains distributor representatives;

7. "Factory branch" means any branch office maintained by a person, firm, association, corporation or trust who manufactures or assembles motor vehicles for the sale of motor vehicles to distributors, or for the sale of motor vehicles to motor vehicle dealers, or for directing or supervising, in whole or in part, its representatives;

8. "Distributor branch" means any branch office similarly maintained by a distributor for the same purposes a factory branch is maintained;

9. "Factory representative" means any officer or agent engaged as a representative of a manufacturer of motor vehicles or by a factory branch, for the purpose of making or promoting the sale of its motor vehicles, or for supervising or contacting its dealers or prospective dealers;

10. "Distributor representative" means any person, firm, association, corporation or trust and each officer and employee thereof engaged as a representative of a distributor or distributor branch of motor vehicles, for the purpose of making or promoting the sale of its motor vehicles, or for supervising or contacting its dealers or prospective dealers;

11. "Franchise" means any contract or agreement between a motor vehicle dealer and a manufacturer of a new motor vehicle or its

distributor or factory branch by which the dealer is authorized to engage in the business of selling any specified make or makes of new motor vehicles;

12. "New or unused motor vehicle" means a vehicle which is in the possession of the manufacturer or distributor or has been sold only to the holder of a valid selling agreement, franchise or contract, granted by the manufacturer or distributor for the sale of that make of new vehicle so long as the manufacturer's statement of origin has not been assigned to anyone other than a licensed franchised new motor vehicle dealer of the same line-make;

13. "Area of responsibility" means the geographical area, as designated by the manufacturer, factory branch, factory representative, distributor, distributor branch or distributor representative, in which the new motor vehicle dealer is held responsible for the promotion and development of sales and rendering of service for the make of motor vehicle for which the motor vehicle dealer holds a franchise or selling agreement;

14. "Off premises" means at a location other than the address designated on the new motor vehicle dealer's license;

15. "Sponsoring entity" means any person, firm, association, corporation or trust which has control, either permanently or temporarily, over the real property upon which the off-premise sale or display is conducted;

16. "Product" means new motor vehicles and new motor vehicle parts;

17. "Service" means motor vehicle warranty repairs including both parts and labor;

18. "Lead" means a consumer contact in response to a factory program designed to generate interest in purchasing or leasing a new motor vehicle;

19. "Sell or sale" means to sell or lease; ~~and~~

20. "Factory" means a manufacturer, distributor, factory branch, distributor branch, factory representative or distributor representative, which manufactures or distributes vehicle products;

21. "Powersports vehicle" means motorcycles, scooters, mopeds, all-terrain vehicles, and utility vehicles;

22. "Powersports vehicle dealer" means any person, firm, or corporation who is in the business of selling any new and unused or used, or both new and used, powersports vehicles, except for retail implement dealers; and

23. "Retail implement dealer" means a business engaged primarily in the sale of farm tractors as defined in Section 1-118 of this title or implements of husbandry as defined in Section 1-125 of this title or a combination thereof.

SECTION 3. AMENDATORY 47 O.S. 2011, Section 1102, is amended to read as follows:

Section 1102. As used in the Oklahoma Vehicle License and Registration Act:

1. "All-terrain vehicle" means a vehicle manufactured and used exclusively for off-highway use traveling on four or more non-highway tires, and having a seat designed to be straddled by the operator and handlebars for steering;

2. "Carrying capacity" means the carrying capacity of a vehicle as determined or declared in tons of cargo or payload by the owner; provided, that such declared capacity shall not be less than the minimum tonnage capacity fixed, listed or advertised by the manufacturer of any vehicle;

3. "Certificate of title" means a document which is proof of legal ownership of a motor vehicle as described and provided for in Section 1105 of this title;

4. "Chips and oil" or the term "road oil and crushed rock" means, with respect to materials authorized for use in the surfacing of roads or highways in this title or in any equivalent statute pertaining to road or highway surfacing in the State of Oklahoma, any asphaltic materials. Wherever chips and oil or road oil and crushed rock are authorized for use in the surfacing of roads or highways in this state, whether by the Department of Transportation, or by the county commissioners, or other road building authority subject to the Oklahoma Vehicle License and Registration Act,

asphaltic materials are also authorized for use in such surfacing and construction;

5. "Combined laden weight" means the weight of a truck or station wagon and its cargo or payload transported thereon, or the weight of a truck or truck-tractor plus the weight of any trailers or semitrailers together with the cargo or payload transported thereon;

6. "Commercial trailer" means any trailer, as defined in Section 1-180 of this title, or semitrailer, as defined in Section 1-162 of this title, when such trailer or semitrailer is used primarily for business or commercial purposes;

7. "Commercial trailer dealer" means any person, firm or corporation engaged in the business of selling any new and unused, or used, or both new and used commercial trailers;

8. "Commercial vehicle" means any vehicle over eight thousand (8,000) pounds combined laden weight used primarily for business or commercial purposes. Each motor vehicle being registered pursuant to the provisions of this section shall have the name of the commercial establishment or the words "Commercial Vehicle" permanently and prominently displayed upon the outside of the vehicle in letters not less than two (2) inches high. Such letters shall be in sharp contrast to the background and shall be of sufficient shape and color as to be readily legible during daylight

hours, from a distance of fifty (50) feet while the vehicle is not in motion;

9. "Commission" or "Tax Commission" means the Oklahoma Tax Commission;

10. "Dealer" means any person, firm, association, corporation or trust who sells, solicits or advertises the sale of new and unused motor vehicles and holds a bona fide contract or franchise in effect with a manufacturer or distributor of a particular make of new or unused motor vehicle or vehicles for the sale of same;

11. "Mini-truck" means a foreign-manufactured import or domestic-manufactured vehicle powered by an internal combustion engine with a piston or rotor displacement of one thousand cubic centimeters (1,000 cu cm) or less, which is sixty-seven (67) inches or less in width, with an unladen dry weight of three thousand four hundred (3,400) pounds or less, traveling on four or more tires, having a top speed of approximately fifty-five (55) miles per hour, equipped with a bed or compartment for hauling, and having an enclosed passenger cab;

12. "Interstate commerce" means any commerce moving between any place in a state and any place in another state or between places in the same state through another state;

13. "Laden weight" means the combined weight of a vehicle when fully equipped for use and the cargo or payload transported thereon; provided, that in no event shall the laden weight be less than the

unladen weight of the vehicle fully equipped for use, plus the manufacturer's rated carrying capacity;

14. "Local authorities" means every county, municipality or local board or body having authority to adopt police regulations under the Constitution and laws of this state;

15. "Low-speed electrical vehicle" means any four-wheeled electrical vehicle that is powered by an electric motor that draws current from rechargeable storage batteries or other sources of electrical current and whose top speed is greater than twenty (20) miles per hour but not greater than twenty-five (25) miles per hour and is manufactured in compliance with the National Highway Traffic Safety Administration standards for low-speed vehicles in 49 C.F.R. 571.500;

16. "Manufactured home" means a residential dwelling 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 and the rules promulgated by the Oklahoma Used Motor Vehicle and Parts Commission pursuant to Section 582 of this title;

17. "Manufactured home dealer" means any person, firm or corporation engaged in the business of selling any new and unused, or used, or both new and used manufactured homes. Such information and a valid franchise letter as proof of authorization to sell any such 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 not include any person, firm or corporation who sells or contracts for the sale of the dealer's own personally titled manufactured home or homes. No person, firm or corporation shall be considered a manufactured home dealer as to any manufactured home purchased or acquired by such person, firm or corporation for purposes other than resale; provided, that the restriction set forth in this sentence shall not prevent an otherwise qualified person, firm or corporation from utilizing a single manufactured home as a sales office;

18. "Medium-speed electrical vehicle" means any self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one (1) mile is more than thirty (30) miles per hour but not greater than thirty-five (35) miles per hour;

19. "Motor license agent" means any person appointed, designated or authorized by the Oklahoma Tax Commission to collect the fees and to enforce the provisions provided for in the Oklahoma Vehicle License and Registration Act;

20. "New vehicle" or "unused vehicle" means a vehicle which has been in the possession of the manufacturer, distributor or wholesaler or has been sold only by the manufacturer, distributor or wholesaler to a dealer;

21. "Nonresident" means any person who is not a resident of this state;

22. "Off-road motorcycle" means any motorcycle, as defined in Section 1-135 of this title, when such motorcycle has been manufactured for and used exclusively off roads, highways and any other paved surfaces;

23. "Owner" means any person owning, operating or possessing any vehicle herein defined;

24. "Person" means any individual, copartner, joint venture, association, corporation, limited liability company, estate, trust, business trust, syndicate, the State of Oklahoma, or any county, city, municipality, school district or other political subdivision thereof, or any group or combination acting as a unit, or any receiver appointed by the state or federal court;

25. ~~"Powersports vehicle" means motorcycles, scooters, mopeds, all-terrain vehicles, and utility vehicles;~~

~~26. "Powersports vehicle dealer" means any person, firm, or corporation who is in the business of selling any new and unused or used, or both new and used powersports vehicles except for those dealers engaged principally in agricultural or farm implement sales;~~

~~27.~~ "Rebodied vehicle" means a vehicle:

a. which has been assembled using a new body or new major component which is of the identical type as the original vehicle and is licensed by the manufacturer

of the original vehicle and other original, new or reconditioned parts. For purposes of this paragraph, "new body or new major component" means a new body, cab, frame, front end clip or rear end clip, and

b. which is not a salvage, rebuilt, or junked vehicle as defined by paragraph 1, 2, or 5 of subsection A of Section 1105 of this title, and

c. for which the Tax Commission has assigned or will assign a new identifying number;

~~28.~~ 26. "Recreational off-highway vehicle" means a vehicle manufactured and used exclusively for off-highway use, traveling on four or more non-highway tires, having non-straddle seating and which is steered by a steering wheel;

~~29.~~ 27. "Recreational vehicle" means every vehicle which is built on or permanently attached to a self-propelled motor chassis or chassis cab which becomes an integral part of the completed vehicle and is capable of being operated on the highways. In order to qualify as a recreational vehicle pursuant to this paragraph such vehicle shall be permanently constructed and equipped for human habitation, having its own sleeping and kitchen facilities, including permanently affixed cooking facilities, water tanks and holding tank with permanent toilet facilities. Recreational vehicle shall not include manufactured homes or any vehicle with portable

sleeping, toilet and kitchen facilities which are designed to be removed from such vehicle;

~~30.~~ 28. "Remanufactured vehicle" means a vehicle which has been assembled by a vehicle remanufacturer using a new body and which may include original, reconditioned, or remanufactured parts, and which is not a salvage, rebuilt, or junked vehicle as defined by paragraphs 1, 2, and 5, respectively, of subsection A of Section 1105 of this title;

~~31.~~ 29. "Rental trailer" means all small or utility trailers or semitrailers constructed and suitable for towing by a passenger automobile and designed only for carrying property, when the trailers or semitrailers are owned by, or are in the possession of, any person engaged in renting or leasing such trailers or semitrailers for intrastate or interstate use or combined intrastate and interstate use;

~~32.~~ 30. "Special mobilized machinery" means special purpose machines or devices, either self-propelled or drawn as trailers or semitrailers, which derive no revenue from the transportation of persons or property, whose use of the highway is only incidental, and whose useful revenue producing service is performed at destinations in an area away from the traveled surface of an established open highway;

~~33.~~ 31. "State" means the State of Oklahoma;

~~34.~~ 32. "Station wagon" means any passenger vehicle which does not have a separate luggage compartment or trunk and which does not have open beds, and has one or more rear seats readily lifted out or folded, whether same is called a station wagon or ranch wagon;

~~35.~~ 33. "Travel trailer" means any vehicular portable structure built on a chassis, used as a temporary dwelling for travel, recreational or vacational use, and, when factory-equipped for the road, it shall have a body width not exceeding eight (8) feet and an overall length not exceeding forty (40) feet, including the hitch or coupling;

~~36.~~ 34. "Travel trailer dealer" means any person, firm or corporation engaged in the business of selling any new and unused, or used, or both new and used travel trailers. Such information and a valid franchise letter as proof of authorization to sell any such new travel trailer product line or lines shall be attached to the application for a dealer license to sell travel trailers. "Travel trailer dealer" shall not include any person, firm or corporation who sells or contracts for the sale of his or her own personally titled travel trailer or trailers. No person, firm or corporation shall be considered as a travel trailer dealer as to any travel trailer purchased or acquired by such person, firm or corporation for purposes other than resale;

~~37.~~ 35. "Used motor vehicle dealer" means "used motor vehicle dealer" as defined in Section 581 of this title;

~~38.~~ 36. "Used vehicle" means any vehicle which has been sold, bargained, exchanged or given away, or used to the extent that it has become what is commonly known, and generally recognized, as a "secondhand" vehicle. This shall also include any vehicle other than a remanufactured vehicle, regardless of age, owned by any person who is not a dealer;

~~39.~~ 37. "Utility vehicle" means a vehicle powered by an internal combustion engine, manufactured and used exclusively for off-highway use, equipped with seating for two or more people and a steering wheel, traveling on four or more wheels;

~~40.~~ 38. "Vehicle" means any type of conveyance or device in, upon or by which a person or property is or may be transported from one location to another upon the avenues of public access within the state. "Vehicle" does not include bicycles, trailers except travel trailers and rental trailers, or implements of husbandry as defined in Section 1-125 of this title. All implements of husbandry used as conveyances shall be required to display the owner's driver license number or license plate number of any vehicle owned by the owner of the implement of husbandry on the rear of the implement in numbers not less than two (2) inches in height. The use of the owner's social security number on the rear of the implement of husbandry shall not be required; and

~~41.~~ 39. "Vehicle remanufacturer" means a commercial entity which assembles remanufactured vehicles.

SECTION 4. This act shall become effective November 1, 2012.

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