HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

HOUSE BILL 1078 By: Sanders of the House

and

Marlatt of the Senate

AS INTRODUCED

An Act relating to motor vehicles; amending 47 O.S. 2011, Section 583, which relates to used motor vehicle dealer licenses; prohibiting manufactured home manufacturing facilities from conducting certain transactions; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 47 O.S. 2011, 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, manufactured home salesperson, 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.

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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, manufactured home salesperson, 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

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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

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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

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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, Three Hundred Dollars ($300.00). If a used motor vehicle dealer or a wholesale used motor vehicle dealer has once been licensed by the Commission in the

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classification for which he or she applies for a renewal of the license, the fee for each subsequent renewal shall be One Hundred Fifty Dollars ($150.00); 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 One Hundred Dollars ($100.00). 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 Two Hundred Dollars ($200.00). For the reinstatement of a used motor vehicle dealer's license after revocation for cancellation or expiration of insurance pursuant to subsection F of this section, the fee shall be One Hundred Dollars ($100.00);

2. For a used motor vehicle dealer's license, for each place of business in addition to the principal place of business, One Hundred Dollars ($100.00);

3. For each used motor vehicle salesperson's license and renewal, Twenty-five Dollars ($25.00), and for a transfer, Twenty-five Dollars ($25.00);

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

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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, Three Hundred Dollars ($300.00), 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 Fifty Dollars ($150.00);

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);

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); and

8. For each manufactured home salesperson's license or renewal thereof, Twenty-five Dollars ($25.00), and for each transfer, Twenty-five Dollars ($25.00).

D. 1. The license issued to each used motor vehicle dealer, each wholesale used motor vehicle dealer and each manufactured home

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dealer 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. The fee for a change of location shall be One Hundred Dollars ($100.00), and the fee for a change of name, Twenty-five Dollars ($25.00). The license of each licensee shall be posted in a conspicuous place in the place or places of business of the licensee.

2. The license issued to 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.

3. 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.

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4. 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

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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. Any used motor vehicle dealer who, for the purpose of being a rebuilder, applies for a rebuilder certificate, as provided in Section 591.5 of this title, whether as a new application or renewal, shall procure and file with the Commission a good and sufficient bond in the amount of Fifteen Thousand Dollars ($15,000.00), in addition to any other bonds required.

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e. 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).

f. 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. <u>A manufacturer may not sell, exchange, or lease-purchase a manufactured home to a person in this state who is not a licensed manufactured home dealer.</u>

g. 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

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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

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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 2. This act shall become effective July 1, 2013.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

COMMITTEE REPORT BY: COMMITTEE ON TRANSPORTATION, dated 02/13/2013 - DO PASS, As Coauthored.

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