

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 54th Legislature (2014)

4 HOUSE BILL 3368

 By: Echols

7 AS INTRODUCED

8 An Act relating to property; creating the Vehicle
9 Condition Disclosure Act; defining terms; providing
10 for written disclaimer statement for seller of
11 vehicle; describing contents of disclaimer statement;
12 providing for written disclosure statement; listing
13 description for disclosure statement; requiring
14 notices to be given in the disclosure statement;
15 requiring seller sign and date statement; prescribing
16 statement time limit; directing Department of Public
17 Safety to develop statement form; requiring
18 Department post form on its website; granting
19 immunity if seller disclosed defect or condition
20 prior to sale; extending immunity for erroneous,
21 inaccurate or omitted information in certain cases;
22 providing civil remedies; permitting recovery of
23 actual damages; prohibiting recovery of consequential
24 or exemplary damages; setting time limitation on
 filing actions; allowing recovery of court costs and
 attorney fees; stating sale is not invalidated by
 failure to comply with the act; stating
 applicability; precluding certain claims; providing
 for codification; and providing an effective date.

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

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 691 of Title 60, unless there is
24 created a duplication in numbering, reads as follows:

1 This act shall be known and may be cited as the "Vehicle
2 Condition Disclosure Act".

3 SECTION 2. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 692 of Title 60, unless there is
5 created a duplication in numbering, reads as follows:

6 As used in the Vehicle Condition Disclosure Act:

7 1. "Defect" means a condition, malfunction or problem that
8 would have a materially adverse effect on the monetary value of the
9 vehicle, or that would impair the health or safety of future owners
10 of the vehicle;

11 2. "Disclaimer statement" means the statement described in
12 paragraph 1 of subsection A of Section 3 of the Vehicle Condition
13 Disclosure Act;

14 3. "Disclosure" means a written declaration provided by the
15 Vehicle Condition Disclosure Act based on actual knowledge of the
16 seller regarding certain physical or mechanical conditions of the
17 vehicle. A disclosure for purposes of the Vehicle Condition
18 Disclosure Act is not a warranty, implied or express, of any kind;

19 4. "Disclosure statement" means the statement described in
20 paragraph 2 of subsection A of Section 3 of the Vehicle Condition
21 Disclosure Act;

22 5. "Person" means an individual, corporation, limited liability
23 company, partnership, association, trust or other legal entity or
24 any combination thereof;

1 6. "Purchaser" means one or more persons who are attempting to
2 acquire a possessory interest in a vehicle;

3 7. "Seller" means one or more persons who are attempting to
4 transfer a possessory interest in a vehicle;

5 8. "Transfer" means a sale or conveyance, exchange or option to
6 purchase of a possessory interest in a vehicle for consideration;
7 and

8 9. "Vehicle" means any device in, upon or by which any person
9 or property is or may be transported, excepting devices used
10 exclusively upon stationary rails or tracks.

11 SECTION 3. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 693 of Title 60, unless there is
13 created a duplication in numbering, reads as follows:

14 A. A seller of a vehicle located in this state may deliver, or
15 cause to be delivered, to the purchaser of the vehicle one of the
16 following:

- 17 1. A written disclaimer statement which states that the seller:
- 18 a. has never utilized or operated the vehicle and makes
19 no disclosures concerning the condition of the
20 vehicle,
 - 21 b. has no actual knowledge of any defect, and
 - 22 c. has acquired the vehicle from a source on a date
23 explicitly provided in the statement and included in
24

1 the statement any additional information given by a
2 previous owner; or

3 2. A written vehicle condition disclosure statement which shall
4 include the information set forth in subsection B of this section.

5 B. 1. The disclosure statement shall include a description of
6 the vehicle and any items and improvements which were performed on
7 the vehicle and whether the items or improvements are in normal
8 working order. The disclosure statement shall also include
9 information of any defects known to the seller.

10 2. The disclosure statement shall include the following notices
11 to the purchaser in bold and conspicuous type:

12 a. "The information and statements contained in this
13 disclosure statement are declarations and
14 representations of the seller and are not the
15 representations of the original manufacturer of the
16 item.",

17 b. "The information contained in this disclosure
18 statement is not intended to be a part of any contract
19 between the purchaser and the seller.", and

20 c. "The declarations and information contained in this
21 disclosure statement are not warranties, express or
22 implied of any kind, and are not a substitute for any
23 inspections or warranties the purchaser may wish to
24 obtain."

1 C. Either the disclaimer statement or the disclosure statement
2 permitted by this section shall be completed, signed and dated by
3 the seller. The date of completion on either statement shall not be
4 more than sixty (60) days prior to the date of receipt of the
5 statement by the purchaser.

6 D. The Department of Public Safety shall develop a form for the
7 disclaimer and disclosure statements permitted by this section and
8 shall post the forms on the Department website for buyers and
9 sellers to use.

10 SECTION 4. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 694 of Title 60, unless there is
12 created a duplication in numbering, reads as follows:

13 A. For a vehicle sold pursuant to the Vehicle Condition
14 Disclosure Act, the seller shall not be liable for a defect or other
15 condition in the vehicle if the existence of the defect or other
16 condition in the vehicle was disclosed in the disclosure statement
17 or any amendment delivered to the purchaser before acceptance of the
18 offer to purchase.

19 B. The seller shall not be liable for any erroneous, inaccurate
20 or omitted information supplied to the purchaser as a disclosure
21 required by the Vehicle Condition Disclosure Act if:

22 1. The error, inaccuracy or omission results from an
23 approximation of information by the seller, provided:

24

- 1 a. accurate information was unknown to the seller at the
2 time the disclosure was made,
3 b. the approximation was clearly identified and was
4 reasonable and based on the best information available
5 to the seller, and
6 c. the approximation was not used to circumvent the
7 disclosure requirements of this act;

8 2. The error, inaccuracy or omission was not within the actual
9 knowledge of the seller; or

10 3. The disclosure was based on information provided by public
11 agencies and the seller reasonably believed the information to be
12 correct.

13 SECTION 5. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 695 of Title 60, unless there is
15 created a duplication in numbering, reads as follows:

16 A. For a vehicle sold pursuant to the Vehicle Condition
17 Disclosure Act, the purchaser may recover in a civil action only in
18 the event of any of the following:

19 1. The failure of the seller to provide to the purchaser a
20 disclaimer statement or a disclosure statement and any amendment
21 prior to acceptance of an offer to purchase; or

22 2. The failure of the seller to disclose in the disclosure
23 statement or any amendment provided to the purchaser a defect which
24

1 was actually known to the seller prior to acceptance of an offer to
2 purchase.

3 B. The sole and exclusive civil remedy at common law or
4 otherwise for a failure under subsection A of this section by the
5 seller shall be an action for actual damages, including the cost of
6 repairing the defect, suffered by the purchaser as a result of a
7 defect existing in the vehicle as of the date of acceptance by the
8 seller of an offer to purchase and shall not include the remedy of
9 consequential or exemplary damages.

10 C. Any action brought under the Vehicle Condition Disclosure
11 Act shall be commenced within two (2) years after the date of
12 transfer of a vehicle covered by the act.

13 D. In any civil action brought under the Vehicle Condition
14 Disclosure Act, the prevailing party shall be allowed court costs
15 and a reasonable attorney fee to be set by the court and to be
16 collected as costs.

17 E. A transfer of a possessory interest in a vehicle subject to
18 the Vehicle Condition Disclosure Act may not be invalidated solely
19 because of the failure of any person to comply with this act.

20 F. The Vehicle Condition Disclosure Act applies to, regulates
21 and determines rights, duties, obligations and remedies at common
22 law or otherwise of the seller and the purchaser with respect to
23 disclosure of defects in a vehicle and supplants and abrogates all
24

1 common law liability, rights, duties, obligations and remedies
2 therefor.

3 G. The Vehicle Condition Disclosure Act specifically precludes
4 claims for fraud.

5 SECTION 6. This act shall become effective November 1, 2014.

6
7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/26/2014 - DO
8 PASS.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24