

An Act

ENROLLED SENATE
BILL NO. 451

By: Brinkley of the Senate

and

Thomsen of the House

An Act relating to motor vehicles; amending 47 O.S. 2011, Section 581, as last amended by Section 1, Chapter 145, O.S.L. 2013 (47 O.S. Supp. 2014, Section 581), which relates to used motor vehicles; modifying definitions; amending 47 O.S. 2011, Section 1107, which relates to the sale of motor vehicles; modifying certain exception; adding certain dealer to requirement to provide certificate of title; defining term; and providing an effective date.

SUBJECT: Motor vehicles

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

SECTION 1. AMENDATORY 47 O.S. 2011, Section 581, as last amended by Section 1, Chapter 145, O.S.L. 2013 (47 O.S. Supp. 2014, Section 581), is amended to read as follows:

Section 581. As used in Section 581 et seq. of this title:

1. "Commission" means the Oklahoma Used Motor Vehicle and Parts Commission;
2. "Compensation" means anything of value including money, merchandise, rebates on purchases, trading stamps or any other thing of value;

3. "Consignment sale" means the sale of used motor vehicles belonging to another by a used motor vehicle dealer, whether or not title is transferred from the consignor to the used motor vehicle dealer;

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

5. "Manufactured home" means a residential dwelling in one or more sections 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;

6. a. "Manufactured home dealer" means any person who, for a commission or with intent to make a profit or gain of money or other thing of value, sells, offers to sell, or attempts to negotiate a sale or exchange of interest in, new or used manufactured homes, or that is engaged wholly or in part in the business of selling any new and unused, or used, or both new and used manufactured homes. A valid franchise letter as proof of authorization to sell any 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 include a manufactured home auction. A manufactured home auction shall mean any person selling more than twenty-five manufactured homes in an auction or liquidation format. Only licensed manufactured home dealers shall be authorized to purchase manufactured homes at such auctions.

b. "Manufactured home dealer" shall not include any person who sells or contracts for the sale of a personally titled manufactured home or homes, or any person acting as an auctioneer who has been engaged by a seller to direct, conduct, control, or be responsible for the sale of manufactured homes as a part of an auction or liquidation of an estate, or any Oklahoma licensed real estate broker or sales associate when buying or selling used mobile homes as

a part of a real estate business. No person shall be considered a manufactured home dealer as to any manufactured home purchased or acquired by the person for purposes other than resale; provided, that the restriction set forth in this sentence shall not prevent an otherwise qualified person from utilizing a single manufactured home as a sales office.

- c. A holder of a lien on a manufactured home may sell, exchange, or transfer by lease-purchase the repossessed manufactured home and shall not be required to be licensed pursuant to this chapter. If the lienholder contracts with a person or company to sell the repossessed manufactured home and the person or company is not an employee, officer or principal of the lienholder, such person or company shall be licensed pursuant to this chapter.
- d. "Manufactured home dealer" shall not include any person who sells mobile or manufactured homes located in a mobile or manufactured home park or community;

7. "Manufactured home salesperson" means any person who has been engaged by a manufactured home dealer to buy, sell, exchange, negotiate, or act as an agent for the purchase, sale, or exchange of an interest in a manufactured home. A person may not act as a salesperson nor may a manufactured home dealer employ the salesperson without applying for a salesperson's license within thirty (30) days of employment by the manufactured home dealer;

8. "Manufactured home installer" means a person who is engaged in the business of installing or setting up manufactured homes and/or mobile homes as defined herein;

9. "Manufactured home manufacturer" means a person who manufactures, assembles, and sells new manufactured homes to new manufactured home retailers for resale in this state;

10. "Mobile home" means a residential dwelling fabricated in an off-site manufacturing facility, designed to be a permanent residence, but which is still transportable, that was built prior to

the enacting of the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C., Section 5401 et seq.;

11. "Person" means an individual, business, corporation, partnership, association, limited liability corporation, trust, firm, or company or legal entity, but does not include any political subdivision;

12. "Ready for occupancy" means a mobile or manufactured home which is installed and anchored properly and has utilities connected to service;

13. "Rebuilder" means a used motor vehicle dealer who is engaged in the business of rebuilding repairable motor vehicles and who has paid the fee for and been issued a rebuilder certificate as provided by Section 591.5 of this title;

14. "Restricted manufactured home park dealer" means any person operating a mobile or manufactured home park who, for a commission or with intent to make a profit or gain of money or other thing of value, sells, offers to sell, or attempts to negotiate a sale or exchange of interest in, new or used manufactured homes, or that is engaged wholly or in part in the business of selling any new and unused, or used, or both new and used manufactured homes; provided, every mobile or manufactured home sold pursuant to a restricted manufactured home park dealer license shall be located in the licensed mobile or manufactured home park and ready for occupancy;

15. "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;

16. "Sale" or "sell" means the act of selling, brokering, exchanging, exchanging of an interest in, or renting with the option of purchasing, a new or used manufactured home for commission, profit, or gain of money or other thing of value;

~~16.~~ 17. "Used motor vehicle" means any motor vehicle, as that term is defined in the Oklahoma Vehicle License and Registration Act, but not including any all-terrain vehicles, utility vehicles, and motorcycles used exclusively for off-road use which are sold by

a retail implement dealer, which has been sold, bargained, exchanged, given away or the title thereto transferred from the person who first took title from the manufacturer, importer, or dealer or agent of the manufacturer or importer, or so used as to have become what is commonly known as a "secondhand motor vehicle". In the event of transfer, on the statement of origin, from the original franchised dealer to any other dealer or individual other than a franchised dealer of the same make of vehicle, the vehicle shall be considered a used motor vehicle and must be titled in the new owner's name;

~~17.~~ 18. "Used motor vehicle auction" means any business other than salvage pools which regularly engages in the sale or trade, or negotiates the sale or trade, of used motor vehicles by auction, whether by open or closed bid or by sale to or purchase by used motor vehicle dealers or individuals;

~~18.~~

19. a. "Used motor vehicle dealer" means any person who, for a commission or with intent to make a profit or gain of money or other thing of value, sells, brokers, exchanges, rents with option to purchase, or offers or attempts to negotiate a sale or exchange of an interest in used motor vehicles, or who is engaged wholly or in part in the business of selling used motor vehicles, whether or not such motor vehicles are owned by the person.

b. "Used motor vehicle dealer" shall not include:

- (1) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting pursuant to the judgment or order of any court,
- (2) public officers while performing their official duties,
- (3) employees of persons enumerated in the definition of "used motor vehicle dealer" when engaged in

the specific performance of their duties as such employees,

- (4) mortgagees or secured parties as to sales of motor vehicles constituting collateral on a mortgage or security agreement, if the mortgagees or secured parties shall not realize for their own account from such sales any monies in excess of the outstanding balance secured by such mortgage or security agreement, plus the costs of collection,
- (5) any person acting as an auctioneer who has been engaged by a seller to direct, conduct, control, or be responsible for the sale of used motor vehicles as part of an estate auction or liquidation,
- (6) any person, firm, corporation, or other legal entity who sells, or contracts for the sale of, the vehicles of the person, firm, corporation, or other legal entity when such vehicles are sold in liquidation, and any person, firm, corporation, or other legal entity who serves as an agent in such sale. The exclusion provided in this paragraph shall not extend to any person, firm, corporation, or other legal entity whose business is the purchase, sale, or rental with option to purchase, of motor vehicles, or to a location used for such purposes, ~~or~~
- (7) any person acting as an auctioneer who has been engaged by a seller to direct, conduct, control, or be responsible for the sale of used motor vehicles as part of an auction held at a licensed used motor vehicle dealer location. The exclusion provided in this division shall not extend to a person who auctions five or more used motor vehicles in a nonliquidation sale held at a licensed used motor vehicle dealer location which is not regularly used as a vehicle auction, or

(8) any retail implement dealer that sells all-terrain vehicles, utility vehicles, and motorcycles used exclusively for off-road use;

~~19.~~ 20. "Used motor vehicle salesperson" means a person employed by a licensed used motor vehicle dealer to sell, broker, exchange, or negotiate a purchase, sale, or rental with option to purchase, used motor vehicles or an interest in used motor vehicles. The term "used motor vehicle salesperson" shall not include any person who:

- a. uses the person's own funds for such transactions,
- b. operates independently as a used motor vehicle dealer using a licensed used motor vehicle dealer's license number, or
- c. is licensed by the Oklahoma Motor Vehicle Commission to sell new or unused motor vehicles who also sells used motor vehicles for the dealer at the motor vehicle dealer's licensed franchise location; provided, such a person shall only be authorized to sell used motor vehicles for the dealer at the motor vehicle dealer's licensed franchise location and to represent the motor vehicle dealer at used motor vehicle auctions without obtaining a separate used motor vehicle salesperson's license; and

~~20.~~ 21. "Wholesale used motor vehicle dealer" means any person who, for a commission or with intent to make a profit or gain of money or other thing of value, sells, brokers, exchanges, rents with option to purchase, or offers or attempts to negotiate a sale or exchange of interest in used motor vehicles exclusively to used motor vehicle dealers, or who is engaged in the business of selling used motor vehicles exclusively to used motor vehicle dealers, whether or not such motor vehicles are owned by the person.

SECTION 2. AMENDATORY 47 O.S. 2011, Section 1107, is amended to read as follows:

Section 1107. A. In the event of the sale or transfer of the ownership of a vehicle for which a certificate of title has been issued as provided by Section 1105 of this title, the holder of such certificate shall endorse on the back of same a complete assignment thereof with warranty of title in form printed thereon with a statement of all liens or encumbrances on the vehicle, sworn to before a notary public or some other person authorized by law to take acknowledgments, and deliver same to the purchaser or transferee at the time of delivery to the purchaser or transferee of the vehicle. The purchaser or transferee, unless such person is a bona fide used motor vehicle dealer licensed by this state, a retail implement dealer in connection with the purchase or transfer of off-road vehicles or a charitable organization shall, within thirty (30) days from the time of delivery to the purchaser or transferee of the vehicle, present the assigned certificate of title and the insurance security verification to the vehicle to the Oklahoma Tax Commission, or one of its motor license agents, accompanied by a fee of Eleven Dollars (\$11.00), together with any motor vehicle excise tax or license fee that may be due, whereupon a new certificate of title, shall be issued to the assignee. One Dollar (\$1.00) of each fee shall be deposited in the Oklahoma Tax Commission Reimbursement Fund. Any charitable organization utilizing the exemption authorized by this subsection shall receive training as prescribed by the Oklahoma Used Motor Vehicle and Parts Commission.

B. A licensed dealer, a retail implement dealer in connection with the sale or disposal of off-road vehicles or a charitable organization shall, on selling or otherwise disposing of a vehicle, execute and deliver to the purchaser thereof the certificate of title properly and completely reassigned. Thereupon, the purchaser of the vehicle shall present the reassigned certificate to the Commission, or a motor license agent, accompanied by a fee of Eleven Dollars (\$11.00), and any motor vehicle excise tax or license fee that may be due, whereupon a new certificate of title will be issued to the purchaser. One Dollar (\$1.00) of each fee shall be deposited in the Oklahoma Tax Commission Reimbursement Fund. The certificate, when so assigned and returned to the Commission, together with any subsequent assignment or reissue thereof, shall be appropriately filed and indexed so that at all times it will be possible to trace title to the vehicle designated therein. Provided, when the ownership of any motor vehicle shall pass by operation of law, the person owning the vehicle may, upon furnishing satisfactory proof to

the Commission of ownership, procure a title to the motor vehicle, regardless of whether a certificate of title has ever been issued. The dealer shall execute and deliver to the purchaser bills of sale on forms prescribed by the Commission for all new vehicles sold by the dealer. On presentation of a bill of sale executed on forms prescribed by the Commission, by a manufacturer or dealer for a new vehicle sold in this state, accompanied by remittance in the sum of Eleven Dollars (\$11.00), together with any motor vehicle excise tax or license fee that may be due, a certificate of title shall be issued in accordance with the provisions of the Oklahoma Vehicle License and Registration Act. One Dollar (\$1.00) of each fee shall be deposited in the Oklahoma Tax Commission Reimbursement Fund. For purposes of this subsection, "charitable organization" shall mean any organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3) and which is registered as a charitable organization with the Oklahoma Secretary of State and the Oklahoma Attorney General's office; "off-road vehicles" means all-terrain vehicles, utility vehicles, and motorcycles used exclusively for off-road use; "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.

C. Any person violating the provisions of this section shall be guilty of a misdemeanor and upon the first conviction thereof shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00), with impoundment of the vehicle until all taxes and fees are paid. A second or subsequent conviction shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00), with impoundment of the vehicle until all taxes and fees are paid. If a vehicle is impounded pursuant to the provisions of this section, the vehicle shall not be released to the owner until the owner provides proof of security or an affidavit that the vehicle will not be used on public highways or public streets, as required pursuant to Section 7-600 et seq. of this title. Each vehicle involved in a violation of this section shall be considered a separate offense.

SECTION 3. This act shall become effective November 1, 2015.

Passed the Senate the 11th day of March, 2015.

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of April, 2015.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____