

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

HOUSE BILL 1094

By: Osburn

AS INTRODUCED

An Act relating to motor vehicles; amending 47 O.S. 2011, Sections 564, as amended by Section 2, Chapter 191, O.S.L. 2013, 565, as amended by Section 1, Chapter 402, O.S.L. 2014, 581, as last amended by Section 1, Chapter 223, O.S.L. 2015, 582, as amended by Section 179, Chapter 304, O.S.L. 2012, 583, as last amended by Section 1, Chapter 386, O.S.L. 2015 and 584, as amended by Section 3, Chapter 145, O.S.L. 2013 (47 O.S. Supp. 2018, Sections 564, 565, 581, 582, 583 and 584), which relate to motor vehicle and manufactured home sales licensing; deleting requirement for motor vehicles and manufactured homes salesperson licenses; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 2011, Section 564, as amended by Section 2, Chapter 191, O.S.L. 2013 (47 O.S. Supp. 2018, Section 564), is amended to read as follows:

Section 564. A. It shall be unlawful for any person, firm, association, corporation or trust to engage in business as, or serve in the capacity of, or act as a motor vehicle dealer, ~~or motor vehicle salesperson,~~ or manufacturer or distributor of new motor

1 vehicles, or factory branch, distributor branch or factory
2 representative or distributor representative, as such, in this state
3 without first obtaining a license therefor as provided for by law.
4 Any person, firm, association, corporation or trust engaging in more
5 than one of such capacities or having more than one place where such
6 business is carried on or conducted shall be required to obtain and
7 hold a current license for each thereof. Provided that, a new motor
8 vehicle dealer's license shall authorize one person to sell ~~without~~
9 ~~a salesperson's license~~ in the event such person shall be the owner
10 of a proprietorship, or the person designated as principal in the
11 dealer's franchise or the managing officer or one partner if no
12 principal person is named in the franchise.

13 B. Applications for licenses required to be obtained under
14 provisions of Section 561 et seq. of this title shall be verified by
15 the oath or affirmation of the applicant and shall be on forms
16 prescribed by the Oklahoma Motor Vehicle Commission and furnished to
17 such applicants, and shall contain such information as the
18 Commission deems necessary to enable it to fully determine the
19 qualifications and eligibility of the several applicants to receive
20 the license or licenses applied for. The Commission shall require
21 in such application, or otherwise, information relating to the
22 applicant's financial standing, the applicant's business integrity,
23 whether the applicant has an established place of business and is
24 primarily engaged in the pursuit, avocation or business for which a

1 license, or licenses, are applied for, and whether the applicant is
2 able to properly conduct the business for which a license, or
3 licenses, are applied for, and such other pertinent information
4 consistent with the safeguarding of the public interest and the
5 public welfare. All such applications for license or licenses shall
6 be accompanied by the appropriate fee or fees therefor in accordance
7 with the schedule thereof hereinafter set out. In the event any
8 such application is denied and the license applied for is not
9 issued, the entire license fee shall be returned to the applicant.
10 All licenses issued under the provisions of Section 561 et seq. of
11 this title shall expire on June 30, following the date of issue and
12 shall be nontransferable. All applications for renewal of a license
13 for a new motor vehicle dealer, ~~salesperson~~, manufacturer,
14 distributor or manufacturer's or distributor's representative shall
15 be submitted by June 1 of each year, and such license or licenses
16 will be issued by July 1. If applications have not been made for
17 renewal of licenses at the times described in this subsection, it
18 shall be illegal for any person to represent himself or herself and
19 act as a dealer, ~~salesperson~~, manufacturer, distributor or
20 manufacturer's or distributor's representative. Motor license
21 agents will be notified not to accept such dealers' titles until
22 such time as licenses have been issued by the Commission.
23 ~~Dealers' payrolls and other evidence will be checked to~~
24 ~~ascertain that all salespersons for such dealers are licensed.~~

1 C. The schedule of license fees to be charged and received by
2 the Commission for the licenses issued hereunder shall be as
3 follows:

4 1. For each factory branch or distributor branch, Four Hundred
5 Dollars (\$400.00) initial fee with annual renewal fee of Three
6 Hundred Dollars (\$300.00);

7 2. For each manufacturer or distributor of new motor vehicles,
8 Four Hundred Dollars (\$400.00) initial fee with annual renewal fee
9 of Three Hundred Dollars (\$300.00);

10 3. For each factory representative or distributor
11 representative, One Hundred Dollars (\$100.00) annually;

12 4. For each new motor vehicle dealer, except powersports
13 vehicle dealers, initial fee of Three Hundred Dollars (\$300.00) per
14 franchise sold at each location licensed, with an annual renewal fee
15 of One Hundred Dollars (\$100.00) per franchise sold at each location
16 per year; and

17 5. For each powersports vehicle dealer, initial fee of Three
18 Hundred Dollars (\$300.00) per manufacturer represented by the dealer
19 at each location licensed, with an annual renewal fee of One Hundred
20 Dollars (\$100.00) per manufacturer represented by the dealer at each
21 location licensed per year; ~~and~~

22 ~~6. For each salesperson, Twenty-five Dollars (\$25.00) renewed~~
23 ~~annually.~~
24

1 D. The licenses issued to each new motor vehicle dealer,
2 manufacturer, distributor, factory branch, distributor branch or
3 representative, if a corporation, shall specify the location of the
4 factory, office or branch thereof. In case such location is
5 changed, the Commission may endorse the change of location on the
6 license without charge unless the change of address triggers a
7 relocation of a new motor vehicle dealer pursuant to the provisions
8 of Section 578.1 of this title. The license of each dealer shall be
9 posted in a conspicuous place in the dealer's place or places of
10 business.

11 Every motor vehicle ~~salesperson~~, factory representative or
12 distributor representative if an individual shall physically possess
13 the license when engaged in business, and shall display same upon
14 request. The name of the employer of such ~~salesperson~~, factory
15 representative or distributor representative shall be stated on the
16 license and, in case of a change of employer, the holder of such
17 license shall immediately mail same to the Commission for its
18 endorsement of such change thereon. The Commission shall endorse
19 each such change of employer on licenses for a fee of Ten Dollars
20 (\$10.00).

21 E. The powersports dealer license shall only allow the sale of
22 the specific types of powersports vehicles authorized by the
23 manufacturer and agreed to by the powersports dealer.
24

1 SECTION 2. AMENDATORY 47 O.S. 2011, Section 565, as
2 amended by Section 1, Chapter 402, O.S.L. 2014 (47 O.S. Supp. 2018,
3 Section 565), is amended to read as follows:

4 Section 565. A. The Oklahoma Motor Vehicle Commission may deny
5 an application for a license, or revoke or suspend a license or
6 impose a fine not to exceed Ten Thousand Dollars (\$10,000.00)
7 against a manufacturer or distributor or a fine not to exceed One
8 Thousand Dollars (\$1,000.00) against a dealer per occurrence that
9 any provision of Sections 561 through 567, 572, 578.1, 579 and 579.1
10 of this title is violated or for any of the following reasons:

11 1. On satisfactory proof of unfitness of the applicant in any
12 application for any license under the provisions of Section 561 et
13 seq. of this title;

14 2. For any material misstatement made by an applicant in any
15 application for any license under the provisions of Section 561 et
16 seq. of this title;

17 3. For any failure to comply with any provision of Section 561
18 et seq. of this title or any rule promulgated by the Commission
19 under authority vested in it by Section 561 et seq. of this title;

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

22 5. Being a new motor vehicle dealer ~~or new motor vehicle~~
23 ~~salesperson~~ who:
24

- a. has required a purchaser of a new motor vehicle, as a condition of sale and delivery thereof, to also purchase special features, appliances, accessories or equipment not desired or requested by the purchaser and installed by the dealer,
- b. uses any false or misleading advertising in connection with business as a new motor vehicle dealer ~~or vehicle salesperson~~,
salesperson,
- c. has committed any unlawful act which resulted in the revocation of any similar license in another state,
- d. has failed or refused to perform any written agreement with any retail buyer involving the sale of a motor vehicle,
- e. has been convicted of a crime involving moral turpitude,
- f. has committed a fraudulent act in selling, purchasing or otherwise dealing in new motor vehicles or has misrepresented the terms and conditions of a sale, purchase or contract for sale or purchase of a new motor vehicle or any interest therein including an option to purchase such vehicle,
- g. has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license ~~+~~L or

1 h. completes any sale or transaction of an extended
2 service contract, extended maintenance plan, or
3 similar product using contract forms that do not
4 conspicuously disclose the identity of the service
5 contract provider;

6 6. Being a new motor vehicle salesperson who is not employed as
7 such by a licensed new motor vehicle dealer;

8 7. Being a new motor vehicle dealer who:

9 a. does not have an established place of business,

10 b. does not provide for a suitable repair shop separate
11 from the display room with ample space to repair or
12 recondition one or more vehicles at the same time, and
13 which is equipped with such parts, tools and equipment
14 as may be requisite for the servicing of motor
15 vehicles in such a manner as to make them comply with
16 the safety laws of this state and to properly fulfill
17 the dealer's or manufacturer's warranty obligation,

18 c. does not hold a franchise in effect with a
19 manufacturer or distributor of new or unused motor
20 vehicles for the sale of the same and is not
21 authorized by the manufacturer or distributor to
22 render predelivery preparation of such vehicles sold
23 to purchasers and to perform any authorized post-sale
24

1 work pursuant to the manufacturer's or distributor's
2 warranty,

3 d. ~~employs unlicensed salespersons, or~~ employs or
4 utilizes the services of used motor vehicle lots or
5 dealers or other unlicensed persons in connection with
6 the sale of new motor vehicles,

7 e. does not properly service a new motor vehicle before
8 delivery of same to the original purchaser thereof, or

9 f. fails to order and stock a reasonable number of new
10 motor vehicles necessary to meet customer demand for
11 each of the new motor vehicles included in the new
12 motor vehicle dealer's franchise agreement, unless the
13 new motor vehicles are not readily available from the
14 manufacturer or distributor due to limited production;

15 8. Being a factory that has:

16 a. either induced or attempted to induce by means of
17 coercion or intimidation, any new motor vehicle
18 dealer:

19 (1) to accept delivery of any motor vehicle or
20 vehicles, parts or accessories therefor, or any
21 other commodities including advertising material
22 which shall not have been ordered by the new
23 motor vehicle dealer,

24

1 (2) to order or accept delivery of any motor vehicle
2 with special features, appliances, accessories or
3 equipment not included in the list price of the
4 motor vehicles as publicly advertised by the
5 manufacturer thereof, or

6 (3) to order or accept delivery of any parts,
7 accessories, equipment, machinery, tools,
8 appliances or any commodity whatsoever, or

9 b. induced under threat or discrimination by the
10 withholding from delivery to a motor vehicle dealer
11 certain models of motor vehicles, changing or amending
12 unilaterally the dealer's allotment of motor vehicles
13 and/or withholding and delaying delivery of such
14 vehicles out of the ordinary course of business, in
15 order to induce by such coercion any such dealer to
16 participate or contribute to any local or national
17 advertising fund controlled directly or indirectly by
18 the factory or for any other purposes such as contest,
19 "give-aways" or other so-called sales promotional
20 devices and/or change of quotas in any sales contest;
21 or has required motor vehicle dealers, as a condition
22 to receiving their vehicle allotment, to order a
23 certain percentage of the vehicles with optional
24 equipment not specified by the new motor vehicle

1 dealer; however, nothing in this section shall
2 prohibit a factory from supporting an advertising
3 association which is open to all dealers on the same
4 basis;

5 9. Being a factory that:

6 a. has attempted to coerce or has coerced any new motor
7 vehicle dealer to enter into any agreement or to
8 cancel any agreement, or fails to act in good faith
9 and in a fair, equitable and nondiscriminatory manner;
10 or has directly or indirectly coerced, intimidated,
11 threatened or restrained any motor vehicle dealer; or
12 has acted dishonestly, or has failed to act in
13 accordance with the reasonable standards of fair
14 dealing,

15 b. has failed to compensate its dealers for the work and
16 services they are required to perform in connection
17 with the dealer's delivery and preparation obligations
18 according to the agreements on file with the
19 Commission which must be found by the Commission to be
20 reasonable, or fail to adequately and fairly
21 compensate its dealers for labor, parts and other
22 expenses incurred by such dealer to perform under and
23 comply with manufacturer's warranty agreements.
24 Adequate and fair compensation for parts shall be

1 established by the dealer submitting to the
2 manufacturer or distributor one hundred sequential
3 nonwarranty customer-paid service repair orders which
4 contain warranty-like parts, or ninety (90)
5 consecutive days of nonwarranty customer-paid service
6 repair orders which contain warranty-like parts,
7 whichever is less, covering repairs made no more than
8 one hundred eighty (180) days before the submission
9 and declaring the average percentage markup. Adequate
10 and fair compensation for labor shall be established
11 by the dealer submitting to the manufacturer or
12 distributor one hundred sequential customer-paid
13 service repair orders which contain labor charges, or
14 ninety (90) consecutive days of customer-paid service
15 repair orders which contain labor charges, whichever
16 is less. When submitting repair orders to calculate a
17 labor rate, a dealer need not include repair orders
18 for routine maintenance. A manufacturer or
19 distributor may, not later than thirty (30) days after
20 submission, rebut that declared rate in writing by
21 reasonably substantiating that the rate is inaccurate
22 or unreasonable in light of the practices of all other
23 franchised motor vehicle dealers in an economically
24 similar part of the state offering the same line-make

1 vehicles. The retail rate shall go into effect thirty
2 (30) days following the approval by the manufacturer,
3 subject to audit of the submitted repair orders by the
4 franchisor and a rebuttal of the declared rate as
5 described above. If the declared rate is rebutted,
6 the manufacturer or distributor shall propose an
7 adjustment in writing of the average percentage markup
8 based on that rebuttal not later than thirty (30) days
9 after submission. If the dealer does not agree with
10 the proposed average percentage markup, the dealer may
11 file a protest with the Commission not later than
12 thirty (30) days after receipt of that proposal by the
13 manufacturer or distributor. In the event a protest
14 is filed, the manufacturer or distributor shall
15 have the burden of proof to establish the new motor
16 vehicle dealer's submitted rate was inaccurate or
17 unreasonable in light of the practices of all other
18 franchised motor vehicle dealers in an economically
19 similar part of the state. A manufacturer or
20 distributor may not retaliate against any new
21 motor vehicle dealer seeking to exercise its
22 rights under this provision. A manufacturer or
23 distributor may require a dealer to submit repair
24 orders in accordance with this section in order to

1 validate a dealer's retail rate for parts or labor
2 not more often than once every twelve (12) months.
3 All claims made by dealers for compensation for
4 delivery, preparation and warranty work shall be paid
5 within thirty (30) days after approval and shall be
6 approved or disapproved within thirty (30) days after
7 receipt. When any claim is disapproved, the dealer
8 shall be notified in writing of the grounds for
9 disapproval. The dealer's delivery, preparation and
10 warranty obligations as filed with the Commission
11 shall constitute the dealer's sole responsibility for
12 product liability as between the dealer and
13 manufacturer. A factory may reasonably and
14 periodically audit a new motor vehicle dealer to
15 determine the validity of paid claims for dealer
16 compensation or any charge-backs for warranty parts or
17 service compensation. Except in cases of suspected
18 fraud, audits of warranty payments shall only be for
19 the one-year period immediately following the date of
20 the payment. A manufacturer shall reserve the right
21 to reasonable, periodic audits to determine the
22 validity of paid claims for dealer compensation or any
23 charge-backs for consumer or dealer incentives.
24 Except in cases of suspected fraud, audits of

1 incentive payments shall only be for a one-year period
2 immediately following the date of the payment. A
3 factory shall not deny a claim or charge a new motor
4 vehicle dealer back subsequent to the payment of the
5 claim unless the factory can show that the claim was
6 false or fraudulent or that the new motor vehicle
7 dealer failed to reasonably substantiate the claim by
8 the written reasonable procedures of the factory. The
9 factory shall provide written notice to a dealer
10 of a proposed charge-back that is the result of an
11 audit along with the specific audit results and
12 proposed charge-back amount. A dealer that
13 receives notice of a proposed charge-back pursuant
14 to a factory's audit has the right to file a protest
15 with the Commission within thirty (30) days after
16 receipt of the notice of the charge-back or audit
17 results, whichever is later. The factory is
18 prohibited from implementing the charge-back or
19 debiting the dealer's account until either the time
20 frame for filing a protest has passed or a final
21 adjudication is rendered by the Commission,
22 whichever is later, unless the dealer has agreed
23 to the charge-back or charge-backs,
24

- 1 c. unreasonably fails or refuses to offer to its same
2 line-make franchised dealers all models manufactured
3 for that line-make, or unreasonably requires a dealer
4 to pay any extra fee, purchase unreasonable
5 advertising displays or other materials, or remodel,
6 renovate, or recondition the dealer's existing
7 facilities as a prerequisite to receiving a model or
8 series of vehicles. The failure to deliver any such
9 new motor vehicle shall not be considered a violation
10 of the section if the failure is not arbitrary or is
11 due to lack of manufacturing capacity or to a strike
12 or labor difficulty, a shortage of materials, a
13 freight embargo or other cause over which the
14 manufacturer has no control. However, this
15 subparagraph shall not apply to recreational vehicles
16 or limited production model vehicles,
- 17 d. except as necessary to comply with a health or
18 safety law, or to comply with a technology
19 requirement which is necessary to sell or service
20 a motor vehicle that the franchised motor vehicle
21 dealer is authorized or licensed by the franchisor
22 to sell or service, requires a new motor vehicle
23 dealer to construct a new facility or
24 substantially renovate the new motor vehicle

1 dealer's existing facility unless the facility
2 construction or renovation is justified by the
3 economic conditions existing at the time, as well
4 as the reasonably foreseeable projections, in the
5 automotive industry. However, this subparagraph
6 shall not apply if the factory provides money,
7 credit, allowance, reimbursement, or additional
8 vehicle allocation to a dealer to compensate the
9 dealer for the cost of, or a portion of the cost
10 of, the facility construction or renovation,

11 e. requires a new motor vehicle dealer to establish
12 an exclusive facility, unless supported by
13 reasonable business, market and economic
14 considerations; provided, that this provision
15 shall not restrict the terms of any agreement for
16 such exclusive facility voluntarily entered into
17 and supported by valuable consideration separate
18 from the new motor vehicle dealer's right to sell
19 and service motor vehicles for the franchisor,

20 f. requires a new motor vehicle dealer to enter into
21 a site-control agreement covering any or all of
22 the new motor vehicle dealer's facilities or
23 premises; provided, that this provision shall not
24 restrict the terms of any site-control agreement

1 voluntarily entered into and supported by valuable
2 consideration separate from the new motor vehicle
3 dealer's right to sell and service motor vehicles
4 for the franchisor. Notwithstanding the foregoing or
5 the terms of any site-control agreement, a site-
6 control agreement automatically extinguishes if all of
7 the factory's franchises that operated from the
8 location that are the subject of the site-control
9 agreement are terminated by the factory as part of the
10 discontinuance of a product line, or

11 g. requires a new motor vehicle dealer to purchase
12 goods or services for the construction,
13 renovation, or improvement of the dealer's
14 facility from a vendor chosen by the factory if
15 goods or services available from other sources are
16 of substantially similar quality and design and
17 comply with all applicable laws; provided,
18 however, that such goods are not subject to the
19 factory's intellectual property or trademark
20 rights and the new motor vehicle dealer has
21 received the factory's approval, which approval
22 may not be unreasonably withheld. Nothing in this
23 subparagraph may be construed to allow a new motor
24 vehicle dealer to impair or eliminate a factory's

1 intellectual property, trademark rights or trade
2 dress usage guidelines. Nothing in this section
3 prohibits the enforcement of a voluntary agreement
4 between the factory and the new motor vehicle
5 dealer where separate and valuable consideration
6 has been offered and accepted;

7 10. Being a factory that establishes a system of motor vehicle
8 allocation or distribution which is unfair, inequitable or
9 unreasonably discriminatory. Upon the request of any dealer
10 franchised by it, a factory shall disclose in writing to the dealer
11 the basis upon which new motor vehicles are allocated, scheduled and
12 delivered among the dealers of the same line-make for that factory;

13 11. Being a factory that sells directly or indirectly new motor
14 vehicles to any retail consumer in the state except through a new
15 motor vehicle dealer holding a franchise for the line-make that
16 includes the new motor vehicle. This paragraph does not apply to
17 factory sales of new motor vehicles to its employees, family members
18 of employees, retirees and family members of retirees, not-for-
19 profit organizations or the federal, state or local governments.
20 The provisions of this paragraph shall not preclude a factory from
21 providing information to a consumer for the purpose of marketing or
22 facilitating a sale of a new motor vehicle or from establishing a
23 program to sell or offer to sell new motor vehicles through
24 participating dealers;

1 12. a. Being a factory which directly or indirectly:

2 (1) owns any ownership interest or has any financial
3 interest in a new motor vehicle dealer or any
4 person who sells products or services to the
5 public,

6 (2) operates or controls a new motor vehicle dealer,
7 or

8 (3) acts in the capacity of a new motor vehicle
9 dealer.

10 b. (1) This paragraph does not prohibit a factory from
11 owning or controlling a new motor vehicle dealer
12 while in a bona fide relationship with a dealer
13 development candidate who has made a substantial
14 initial investment in the franchise and whose
15 initial investment is subject to potential loss.
16 The dealer development candidate can reasonably
17 expect to acquire full ownership of a new motor
18 vehicle dealer within a reasonable period of time
19 not to exceed ten (10) years and on reasonable
20 terms and conditions. The ten-year acquisition
21 period may be expanded for good cause shown.

22 (2) This paragraph does not prohibit a factory from
23 owning, operating, controlling or acting in the
24 capacity of a motor vehicle dealer for a period

1 not to exceed twelve (12) months during the
2 transition from one dealer to another dealer if
3 the dealership is for sale at a reasonable price
4 and on reasonable terms and conditions to an
5 independent qualified buyer. On showing by a
6 factory of good cause, the Oklahoma Motor Vehicle
7 Commission may extend the time limit set forth
8 above; extensions may be granted for periods not
9 to exceed twelve (12) months.

10 (3) This paragraph does not prohibit a factory from
11 owning, operating or controlling or acting in the
12 capacity of a motor vehicle dealer which was in
13 operation prior to January 1, 2000.

14 (4) This paragraph does not prohibit a factory from
15 owning, directly or indirectly, a minority
16 interest in an entity that owns, operates or
17 controls motor vehicle dealerships of the same
18 line-make franchised by the manufacturer,
19 provided that each of the following conditions
20 are met:

21 (a) all of the motor vehicle dealerships selling
22 the motor vehicles of that manufacturer in
23 this state trade exclusively in the line-
24 make of that manufacturer,

- (b) all of the franchise agreements of the manufacturer confer rights on the dealer of the line-make to develop and operate, within a defined geographic territory or area, as many dealership facilities as the dealer and manufacturer shall agree are appropriate,
- (c) at the time the manufacturer first acquires an ownership interest or assumes operation, the distance between any dealership thus owned or operated and the nearest unaffiliated motor vehicle dealership trading in the same line-make is not less than seventy (70) miles,
- (d) during any period in which the manufacturer has such an ownership interest, the manufacturer has no more than three franchise agreements with new motor vehicle dealers licensed by the Oklahoma Motor Vehicle Commission to do business within the state, and
- (e) prior to January 1, 2000, the factory shall have furnished or made available to prospective motor vehicle dealers an offering-circular in accordance with the

Trade Regulation Rule on Franchising of the
Federal Trade Commission, and any guidelines
and exemptions issued thereunder, which
disclose the possibility that the factory
may from time to time seek to own or
acquire, directly or indirectly, ownership
interests in retail dealerships;

13. Being a factory which directly or indirectly makes
available for public disclosure any proprietary information provided
to the factory by a new motor vehicle dealer, other than in
composite form to dealers in the same line-make or in response to a
subpoena or order of the Commission or a court. Proprietary
information includes, but is not limited to, information based on:

- a. any information derived from monthly financial
statements provided to the factory, and
- b. any information regarding any aspect of the
profitability of a particular new motor vehicle
dealer;

14. Being a factory which does not provide or direct leads in a
fair, equitable and timely manner. Nothing in this paragraph shall
be construed to require a factory to disregard the preference of a
consumer in providing or directing a lead;

15. Being a factory which used the customer list of a new motor
vehicle dealer for the purpose of unfairly competing with dealers;

1 16. Being a factory which prohibits a new motor vehicle dealer
2 from relocating after a written request by such new motor vehicle
3 dealer if:

- 4 a. the facility and the proposed new location satisfies
5 or meets the written reasonable guidelines of the
6 factory. Reasonable guidelines do not include site
7 control unless agreed to as set forth in subparagraphs
8 e and f of paragraph 9 of this subsection,
- 9 b. the proposed new location is within the area of
10 responsibility of the new motor vehicle dealer
11 pursuant to Section 578.1 of this title, and
- 12 c. the factory has sixty (60) days from receipt of the
13 new motor vehicle dealer's relocation request to
14 approve or deny the request. The failure to approve
15 or deny the request within the sixty-day time frame
16 shall constitute approval of the request;

17 17. Being a factory which prohibits a new motor vehicle dealer
18 from adding additional line-makes to its existing facility, if,
19 after adding the additional line-makes, the facility satisfies the
20 written reasonable capitalization standards and facility guidelines
21 of each factory. Reasonable facility guidelines do not include a
22 requirement to maintain site control unless agreed to by the dealer
23 as set forth in subparagraphs e and f of paragraph 9 of this
24 subsection;

1 18. Being a factory that increases prices of new motor vehicles
2 which the new motor vehicle dealer had ordered for retail consumers
3 and notified the factory prior to the dealer's receipt of the
4 written official price increase notification. A sales contract
5 signed by a retail consumer accompanied with proof of order
6 submission to the factory shall constitute evidence of each such
7 order, provided that the vehicle is in fact delivered to the
8 customer. Price differences applicable to new models or series
9 motor vehicles at the time of the introduction of new models or
10 series shall not be considered a price increase for purposes of this
11 paragraph. Price changes caused by any of the following shall not
12 be subject to the provisions of this paragraph:

- 13 a. the addition to a motor vehicle of required or
- 14 optional equipment pursuant to state or federal law,
- 15 b. revaluation of the United States dollar in the case of
- 16 foreign-made vehicles or components, or
- 17 c. an increase in transportation charges due to increased
- 18 rates imposed by common or contract carriers;

19 19. Being a factory that requires a new motor vehicle dealer to
20 participate monetarily in an advertising campaign or contest, or
21 purchase any promotional materials, showroom or other display
22 decoration or materials at the expense of the new motor vehicle
23 dealer without consent of the dealer, which consent shall not be
24 unreasonably withheld;

1 20. Being a factory that denies any new motor vehicle dealer
2 the right of free association with any other new motor vehicle
3 dealer for any lawful purpose, unless otherwise permitted by this
4 chapter; or

5 21. Being a factory that requires a new motor vehicle dealer to
6 sell, offer to sell or sell exclusively an extended service contact,
7 extended maintenance plan or similar product, such as gap products
8 offered, endorsed or sponsored by the factory by the following
9 means:

- 10 a. by an act or statement from the factory that will in
11 any manner adversely impact the dealer,
- 12 b. by measuring the dealer's performance under the
13 franchise based on the sale of extended service
14 contracts, extended maintenance plans or similar
15 products offered, endorsed or sponsored by the
16 manufacturer or distributor.

17 B. Notwithstanding the terms of any franchise agreement, in the
18 event of a proposed sale or transfer of a dealership, the
19 manufacturer or distributor shall be permitted to exercise a right
20 of first refusal to acquire the assets or ownership interest of the
21 dealer of the new vehicle dealership, if such sale or transfer is
22 conditioned upon the manufacturer or dealer entering into a dealer
23 agreement with the proposed new owner or transferee, only if all the
24 following requirements are met:

1 1. To exercise its right of first refusal, the factory must
2 notify the dealer in writing within sixty (60) days of receipt of
3 the completed proposal for the proposed sale transfer;

4 2. The exercise of the right of first refusal will result in
5 the dealer and the owner of the dealership receiving the same or
6 greater consideration as they have contracted to receive in
7 connection with the proposed change of ownership or transfer;

8 3. The proposed sale or transfer of the assets of the
9 dealership does not involve the transfer or sale to a member or
10 members of the family of one or more dealer owners, or to a
11 qualified manager or a partnership or corporation controlled by such
12 persons; and

13 4. The factory agrees to pay the reasonable expenses, including
14 attorney fees which do not exceed the usual, customary and
15 reasonable fees charged for similar work done for other clients
16 incurred by the proposed new owner and transferee prior to the
17 exercise by the factory of its right of first refusal in negotiating
18 and implementing the contract for the proposed sale or transfer of
19 the dealership or dealership assets. Notwithstanding the foregoing,
20 no payment of expenses and attorney fees shall be required if the
21 proposed new dealer or transferee has not submitted or caused to be
22 submitted an accounting of those expenses within thirty (30) days of
23 receipt of the written request of the factory for such an
24

1 accounting. The accounting may be requested by a factory before
2 exercising its right of first refusal.

3 C. Nothing in this section shall prohibit, limit, restrict or
4 impose conditions on:

5 1. Business activities, including without limitation the
6 dealings with motor vehicle manufacturers and the representatives
7 and affiliates of motor vehicle manufacturers, of any person that is
8 primarily engaged in the business of short-term, not to exceed
9 twelve (12) months, rental of motor vehicles and industrial and
10 construction equipment and activities incidental to that business,
11 provided that:

12 a. any motor vehicle sold by that person is limited to
13 used motor vehicles that have been previously used
14 exclusively and regularly by that person in the
15 conduct of business and used motor vehicles traded in
16 on motor vehicles sold by that person,

17 b. warranty repairs performed by that person on motor
18 vehicles are limited to those motor vehicles that it
19 owns, previously owned or takes in trade, and

20 c. motor vehicle financing provided by that person to
21 retail consumers for motor vehicles is limited to used
22 vehicles sold by that person in the conduct of
23 business; or
24

2. The direct or indirect ownership, affiliation or control of a person described in paragraph 1 of this subsection.

SECTION 3. AMENDATORY 47 O.S. 2011, Section 581, as last amended by Section 1, Chapter 223, O.S.L. 2015 (47 O.S. Supp. 2018, 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

1 money or other thing of value, sells, offers to sell,
2 or attempts to negotiate a sale or exchange of
3 interest in, new or used manufactured homes, or that
4 is engaged wholly or in part in the business of
5 selling any new and unused, or used, or both new and
6 used manufactured homes. A valid franchise letter as
7 proof of authorization to sell any new manufactured
8 home product line or lines shall be attached to the
9 application for a dealer license to sell manufactured
10 homes. "Manufactured home dealer" shall include a
11 manufactured home auction. A manufactured home
12 auction shall mean any person selling more than
13 twenty-five manufactured homes in an auction or
14 liquidation format. Only licensed manufactured home
15 dealers shall be authorized to purchase manufactured
16 homes at such auctions.

- 17 b. "Manufactured home dealer" shall not include any
18 person who sells or contracts for the sale of a
19 personally titled manufactured home or homes, or
20 any person acting as an auctioneer who has been
21 engaged by a seller to direct, conduct, control,
22 or be responsible for the sale of manufactured
23 homes as a part of an auction or liquidation of
24 an estate, or any Oklahoma licensed real estate

1 broker or sales associate when buying or selling
2 used mobile homes as a part of a real estate
3 business. No person shall be considered a
4 manufactured home dealer as to any manufactured
5 home purchased or acquired by the person for
6 purposes other than resale; provided, that the
7 restriction set forth in this sentence shall not
8 prevent an otherwise qualified person from
9 utilizing a single manufactured home as a sales
10 office.

11 c. A holder of a lien on a manufactured home may
12 sell, exchange, or transfer by lease-purchase the
13 repossessed manufactured home and shall not be
14 required to be licensed pursuant to this chapter.
15 If the lienholder contracts with a person or
16 company to sell the repossessed manufactured home
17 and the person or company is not an employee,
18 officer or principal of the lienholder, such
19 person or company shall be licensed pursuant to
20 this chapter.

21 d. "Manufactured home dealer" shall not include any
22 person who sells mobile or manufactured homes
23 located in a mobile or manufactured home park or
24 community;

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

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

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

14 10. "Mobile home" means a residential dwelling fabricated in an
15 off-site manufacturing facility, designed to be a permanent
16 residence, but which is still transportable, that was built prior to
17 the enacting of the National Manufactured Housing Construction and
18 Safety Standards Act of 1974, 42 U.S.C., Section 5401 et seq.;

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

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

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

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

18 15. "Retail implement dealer" means a business engaged
19 primarily in the sale of farm tractors as defined in Section 1-
20 118 of this title or implements of husbandry as defined in
21 Section 1-125 of this title or a combination thereof;

22 16. "Sale" or "sell" means the act of selling, brokering,
23 exchanging, exchanging of an interest in, or renting with the
24

1 option of purchasing, a new or used manufactured home for
2 commission, profit, or gain of money or other thing of value;

3 17. "Used motor vehicle" means any motor vehicle, as that term
4 is defined in the Oklahoma Vehicle License and Registration Act, but
5 not including any all-terrain vehicles, utility vehicles, and
6 motorcycles used exclusively for off-road use which are sold by a
7 retail implement dealer, which has been sold, bargained, exchanged,
8 given away or the title thereto transferred from the person who
9 first took title from the manufacturer, importer, or dealer or agent
10 of the manufacturer or importer, or so used as to have become what
11 is commonly known as a "secondhand motor vehicle". In the event of
12 transfer, on the statement of origin, from the original franchised
13 dealer to any other dealer or individual other than a franchised
14 dealer of the same make of vehicle, the vehicle shall be considered
15 a used motor vehicle and must be titled in the new owner's name;

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

21 19. a. "Used motor vehicle dealer" means any person who, for
22 a commission or with intent to make a profit or gain
23 of money or other thing of value, sells, brokers,
24 exchanges, rents with option to purchase, or offers or

1 attempts to negotiate a sale or exchange of an
2 interest in used motor vehicles, or who is engaged
3 wholly or in part in the business of selling used
4 motor vehicles, whether or not such motor vehicles are
5 owned by the person.

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

7 (1) receivers, trustees, administrators, executors,
8 guardians, or other persons appointed by or
9 acting pursuant to the judgment or order of any
10 court,

11 (2) public officers while performing their official
12 duties,

13 (3) employees of persons enumerated in the definition
14 of "used motor vehicle dealer" when engaged in
15 the specific performance of their duties as such
16 employees,

17 (4) mortgagees or secured parties as to sales of
18 motor vehicles constituting collateral on a
19 mortgage or security agreement, if the mortgagees
20 or secured parties shall not realize for their
21 own account from such sales any monies in excess
22 of the outstanding balance secured by such
23 mortgage or security agreement, plus the costs of
24 collection,

1 (5) any person acting as an auctioneer who has been
2 engaged by a seller to direct, conduct, control,
3 or be responsible for the sale of used motor
4 vehicles as part of an estate auction or
5 liquidation,

6 (6) any person, firm, corporation, or other legal
7 entity who sells, or contracts for the sale of,
8 the vehicles of the person, firm, corporation, or
9 other legal entity when such vehicles are sold in
10 liquidation, and any person, firm, corporation,
11 or other legal entity who serves as an agent in
12 such sale. The exclusion provided in this
13 paragraph shall not extend to any person, firm,
14 corporation, or other legal entity whose business
15 is the purchase, sale, or rental with option to
16 purchase, of motor vehicles, or to a location
17 used for such purposes,

18 (7) any person acting as an auctioneer who has been
19 engaged by a seller to direct, conduct, control,
20 or be responsible for the sale of used motor
21 vehicles as part of an auction held at a licensed
22 used motor vehicle dealer location. The
23 exclusion provided in this division shall not
24 extend to a person who auctions five or more used

1 motor vehicles in a nonliquidation sale held at a
2 licensed used motor vehicle dealer location which
3 is not regularly used as a vehicle auction, or
4 (8) any retail implement dealer that sells all-
5 terrain vehicles, utility vehicles, and
6 motorcycles used exclusively for off-road
7 use;

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

- 13 a. uses the person's own funds for such
14 transactions, or
- 15 b. operates independently as a used motor vehicle
16 dealer using a licensed used motor vehicle
17 dealer's license number, ~~or~~
- 18 c. ~~is licensed by the Oklahoma Motor Vehicle~~
19 ~~Commission to sell new or unused motor vehicles~~
20 ~~who also sells used motor vehicles for the dealer~~
21 ~~at the motor vehicle dealer's licensed franchise~~
22 ~~location; provided, such a person shall only be~~
23 ~~authorized to sell used motor vehicles for the~~
24 ~~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~~

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 4. AMENDATORY 47 O.S. 2011, Section 582, as amended by Section 179, Chapter 304, O.S.L. 2012 (47 O.S. Supp. 2018, Section 582), is amended to read as follows:

Section 582. A. There is hereby created the Oklahoma Used Motor Vehicle and Parts Commission, to be composed of ten (10) members who shall be selected as follows:

1. One member shall be appointed from each congressional district and any remaining members, including the chair, shall be appointed from the state at large. However, when congressional districts are redrawn, each member appointed prior to July 1 of the year in which such modification becomes effective shall complete the current term of office and appointments made after July 1 of the

1 year in which such modification becomes effective shall be based on
2 the redrawn districts. Appointments made after July 1 of the year
3 in which such modification becomes effective shall be from any
4 redrawn districts which are not represented by a board member until
5 such time as each of the modified congressional districts are
6 represented by a board member; provided, the chair shall be
7 appointed at large without regard to congressional district
8 representation on the board;

9 2. All members shall be appointed by the Governor, by and with
10 the advice and consent of the Senate;

11 3. a. each of the members appointed from a congressional
12 district shall, at the time of appointment, be a
13 resident in good faith of the congressional district
14 from which appointed, and

15 b. each of the members appointed from the state at large
16 shall, at the time of appointment and during the
17 period of service, be residents in good faith of the
18 state;

19 4. Each member shall be of good moral character and, for the
20 ten-year period immediately preceding appointment, each of the used
21 motor vehicle dealer representatives shall have been licensed for
22 and actually engaged in the distribution or sale of used motor
23 vehicles; each of the dismantler representatives shall have actually
24 been licensed for and engaged in the principal business of

1 dismantling or disassembling motor vehicles for the purpose of
2 selling the parts thereof; and the manufactured housing
3 representative shall have been licensed for and actually engaged in
4 the principal business of selling manufactured homes; and

5 5. Eight members plus the chair shall be engaged in the used
6 motor vehicle industry or the automotive dismantler industry. There
7 shall not be fewer than five members engaged in the principal
8 business of the sale of used motor vehicles and there shall not be
9 fewer than two members engaged in the principal business of
10 dismantling or disassembling motor vehicles for the purpose of
11 selling the parts thereof. One of the at-large members shall be
12 engaged in the principal business of selling manufactured homes as a
13 licensed manufactured home dealer. Being engaged in one or more of
14 such pursuits shall not disqualify a person otherwise qualified from
15 serving on the Commission.

16 B. 1. The term of the chair shall be coterminous with that of
17 the Governor making the appointment, and until a successor is
18 appointed and is qualified.

19 2. The terms of office of each member of the Commission shall
20 be subject to the following:

21 a. the Commission shall determine and certify the trade
22 associations of manufactured home dealers that
23 represent ten percent (10%) or more of the number of
24 licensed manufactured home dealers in the state and

1 shall certify each such association to the Governor.

2 The Governor shall request a minimum of ten names from
3 each such association and shall select one member from
4 the manufactured home industry from the names
5 provided,

6 b. each member actively serving July 1, 2000, who was
7 appointed on or before June 30, 2000, shall remain and
8 fulfill the term of his or her membership as set forth
9 at the appointment,

10 c. except for the chair, the term of office of each
11 member of the Commission shall be for six (6) years,

12 d. except for the chair and the at-large members, the
13 term of office of any member will automatically expire
14 if the member moves out of the congressional district
15 from which appointed; however, if the congressional
16 districts are modified each member shall complete the
17 current term of office as provided in this section,

18 e. in event of death, resignation, or removal of any
19 person serving on the Commission, the vacancy shall be
20 filled by appointment as aforesaid for the unexpired
21 portion of the term,

22 f. except for the chair, when the term of a member
23 automatically expires, the vacancy shall be filled by
24 appointment of a qualified successor for a term of six

1 (6) years as aforesaid, except that the member shall
2 serve until a successor is appointed and qualified.

3 3. The chair and each member of the Commission shall take and
4 subscribe to the oath of office required of public officers.

5 C. The chair and members of the Commission shall receive Thirty
6 Dollars (\$30.00) for each and every day actually and necessarily
7 spent in attending the meetings of the Commission, and shall be
8 reimbursed for subsistence and traveling expenses incurred in the
9 performance of their duties hereunder as provided by the State
10 Travel Reimbursement Act; provided that such meeting payments shall
11 not exceed the sum of Six Hundred Dollars (\$600.00) per annum to any
12 one person.

13 D. 1. a. The Commission shall appoint a qualified person to
14 serve as Executive Director who shall have had
15 sufficient management and organizational experience in
16 the automotive industry to direct the functions of the
17 Commission.

18 b. The Executive Director shall be appointed for a term
19 of six (6) years, and shall not be subject to
20 dismissal or removal without cause.

21 c. The Commission shall fix the salary and define and
22 prescribe the duties of the Executive Director.

23 d. The Executive Director shall be in charge of the
24 Commission's office, shall devote such time as

1 necessary to fulfill the duties thereof, and, before
2 entering upon these duties, shall take and subscribe
3 to the oath of office.

4 2. The Commission may employ such clerical, technical, legal
5 and other help and incur such expenses as may be necessary for the
6 proper discharge of its duties under Section 581 et seq. of this
7 title.

8 3. The Commission shall maintain its office and transact its
9 business in Oklahoma City, and is authorized to adopt and use a
10 seal.

11 E. 1. a. The Commission is hereby vested with the powers and
12 duties necessary and proper to enable it to fully and
13 effectively carry out the provisions and objectives of
14 Section 581 et seq. of this title, and is hereby
15 authorized and empowered, pursuant to the
16 Administrative Procedures Act, to make and enforce all
17 reasonable rules and to adopt and prescribe all forms
18 necessary to accomplish said purpose.

19 b. The Commission shall promulgate rules for the
20 licensing of manufactured home installers and the
21 installation, which is the blocking, anchoring and
22 leveling of mobile and manufactured homes that meet
23 the standards of the manufacturer's manual or the
24 Commission.

1 c. The Commission shall promulgate rules to prescribe the
2 contents of manufactured home sales agreements and to
3 require that each manufactured home manufacturer issue
4 with each new manufactured home a warranty comparable
5 to warranties generally in use in the industry
6 warranting the manufactured home to be free from
7 material defects.

8 d. The enumeration of any power or authority herein shall
9 not be construed to deny, impair, disparage or limit
10 any others necessary to the attainment thereof.

11 e. A copy of all rules adopted by the Commission shall be
12 filed and recorded in the office of the Secretary of
13 State and the State Librarian and Archivist, and same
14 may be amended, modified or repealed from time to
15 time.

16 2. The Commission's powers and duties shall include, but not be
17 limited to, the following:

- 18 a. to license used motor vehicle dealers, ~~used motor~~
19 ~~vehicle salespersons~~, wholesale used motor vehicle
20 dealers, dismantlers, manufactured home dealers,
21 manufactured home manufacturers, and manufactured home
22 installers,
- 23 b. to inspect used motor vehicle dealer, dismantler and
24 manufactured home dealer locations, and manufactured

1 home manufacturers' factories or assembly sites to
2 ensure that they are in an approved location, meet
3 local zoning or other municipal requirements, and have
4 sufficient facilities which shall include, but not be
5 limited to, for retail businesses, a business sign, a
6 listed and usable telephone number, a restroom, and a
7 sales office,

8 c. to inspect wholesale used motor vehicle dealer
9 locations to ensure that they are in an approved
10 location, meet local zoning or other municipal
11 requirements, and have sufficient facilities which
12 shall include, but not be limited to, a listed and
13 usable telephone number in the dealer's name and a
14 business office where records of the business are
15 kept,

16 d. to require all dealer sales to have a condition of
17 sale such as a warranty disclaimer, implied or written
18 warranty or a service contract approved by the
19 Commission,

20 e. to work with consumers and dealers to hear complaints
21 on used vehicles and manufactured homes, including
22 installation, and

23 f. to serve as a dispute resolution panel for binding
24 arbitration in accordance with Section 801 et seq. of

1 Title 15 of the Oklahoma Statutes in contract
2 controversies between licensed used motor vehicle
3 dealers, dismantlers and manufactured housing dealers,
4 manufactured home dealers, installers, and
5 manufacturers and their consumers when, by mutual
6 written agreement executed after the dispute between
7 the parties has arisen, both parties have agreed to
8 use the Commission as their arbitration panel for
9 contract disputes.

10 F. 1. All fees and charges collected under the provisions of
11 Section 581 et seq. of this title shall be deposited by the
12 Executive Director in the State Treasury in accordance with the
13 depository laws of this state in a special fund to be known as the
14 "Oklahoma Used Motor Vehicle and Parts Commission Fund", which fund
15 is hereby created. Except as hereinafter provided, the monies in
16 the fund shall be used by the Commission for the purpose of carrying
17 out and enforcing the provisions of Section 581 et seq. of this
18 title. Expenditures from the fund shall be warrants issued by the
19 State Treasurer against claims submitted by the Commission to the
20 Director of the Office of Management and Enterprise Services for
21 approval.

22 2. At the close of each fiscal year, the Commission shall file
23 with the Governor and the State Auditor and Inspector a true and
24 correct report of all fees and charges collected and received by it

1 during the preceding fiscal year and shall at the same time pay into
2 the General Revenue Fund of the state a sum equal to ten percent
3 (10%) of the gross fees and charges so collected and received.

4 3. All expenses incurred by the Commission in carrying out the
5 provisions of Section 581 et seq. of this title including, but not
6 limited to, per diem, wages, salaries, rent, postage, advertising,
7 supplies, bond premiums, travel and subsistence for the
8 Commissioners, the Executive Director, employees, and legal counsel,
9 and printing and utilities, shall be a proper charge against the
10 fund, exclusive of the portion thereof to be paid into the General
11 Revenue Fund as above set out; provided, that in no event shall
12 liability ever accrue hereunder against the state in any sum
13 whatsoever, or against the Oklahoma Used Motor Vehicle and Parts
14 Commission Fund, in excess of the ninety percent (90%) of the fees
15 and charges deposited therein.

16 SECTION 5. AMENDATORY 47 O.S. 2011, Section 583, as last
17 amended by Section 1, Chapter 386, O.S.L. 2015 (47 O.S. Supp. 2018,
18 Section 583), is amended to read as follows:

19 Section 583. A. 1. It shall be unlawful and constitute a
20 misdemeanor for any person to engage in business as, or serve in the
21 capacity of, or act as a used motor vehicle dealer, ~~used motor~~
22 ~~vehicle salesperson~~, wholesale used motor vehicle dealer,
23 manufactured home dealer, restricted manufactured home park dealer,
24 ~~manufactured home salesperson~~, manufactured home installer, or

1 manufactured home manufacturer selling directly to a licensed
2 manufactured home dealer in this state without first obtaining a
3 license or following other requirements therefor as provided in this
4 section.

5 2. a. Any person engaging, acting, or serving in the
6 capacity of a used motor vehicle dealer ~~and/or a used~~
7 ~~motor vehicle salesperson,~~ a manufactured home dealer,
8 restricted manufactured home park dealer, ~~manufactured~~
9 ~~home salesperson,~~ a manufactured home installer, or a
10 manufactured home manufacturer, or having more than
11 one place where any such business, or combination of
12 businesses, is carried on or conducted shall be
13 required to obtain and hold a current license for each
14 such business, in which engaged.

15 b. ~~A used motor vehicle dealer's license shall authorize~~
16 ~~one person to sell without a salesperson's license in~~
17 ~~the event such person shall be the owner of a~~
18 ~~proprietorship, or the person designated as principal~~
19 ~~in the dealer's franchise or the managing officer or~~
20 ~~one partner if no principal person is named in the~~
21 ~~franchise.~~

22 c. If after a hearing in accordance with the provisions
23 of Section 585 of this title, the Oklahoma Used Motor
24 Vehicle and Parts Commission shall find any person

1 installing a mobile or manufactured home to be in
2 violation of any of the provisions of this act, such
3 person may be subject to an administrative fine of not
4 more than Five Hundred Dollars (\$500.00) for each
5 violation. Each day a person is in violation of this
6 act may constitute a separate violation. All
7 administrative fines collected pursuant to the
8 provisions of this subparagraph shall be deposited in
9 the fund established in Section 582 of this title.
10 Administrative fines imposed pursuant to this
11 subparagraph may be enforceable in the district courts
12 of this state.

13 ~~d. A salesperson's license may not be issued under a~~
14 ~~wholesale used motor vehicle dealer's license.~~

15 3. Any person except persons penalized by administrative fine
16 violating the provisions of this section shall, upon conviction, be
17 fined not to exceed Five Hundred Dollars (\$500.00). A second or
18 subsequent conviction shall be punished by a fine not to exceed One
19 Thousand Dollars (\$1,000.00); provided that each day such unlicensed
20 person violates this section shall constitute a separate offense,
21 and any vehicle involved in a violation of this subsection shall be
22 considered a separate offense.

23 B. 1. Applications for licenses required to be obtained under
24 the provisions of 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 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.

1 3. All bonds and licenses issued under the provisions of this
2 act shall expire on December 31, following the date of issue and
3 shall be nontransferable. All applications for renewal of licenses
4 shall be submitted by November 1 of each year of expiration, and
5 licenses for completed renewals received by November 1 shall be
6 issued by January 10. If applications have not been made for
7 renewal of licenses, such licenses shall expire on December 31 and
8 it shall be illegal for any person to represent himself or herself
9 and act as a dealer thereafter. Tag agents shall be notified not to
10 accept dealers' titles until such time as licenses have been issued.
11 Beginning January 1, 2016, all licenses shall be issued for a period
12 of two (2) years and the appropriate fees shall be assessed. The
13 Commission shall adopt rules necessary to implement the two-year
14 licensing provisions.

15 ~~4. A used motor vehicle salesperson's license shall permit the~~
16 ~~licensee to engage in the activities of a used motor vehicle~~
17 ~~salesperson. Salespersons shall not be allowed to sell vehicles~~
18 ~~unless applications and fees are on file with the Commission and the~~
19 ~~motor vehicle salesperson's or temporary salesperson's license~~
20 ~~issued. A temporary salesperson's license, salesperson's renewal or~~
21 ~~reissue of salesperson's license shall be deemed to have been issued~~
22 ~~when the appropriate application and fee have been properly~~
23 ~~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, Six Hundred Dollars (\$600.00). If a used motor vehicle dealer or a wholesale used motor vehicle dealer has once been licensed by the Commission in the classification for which he or she applies for a renewal of the license, the fee for each subsequent renewal shall be Three Hundred Dollars (\$300.00); 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 Two Hundred Dollars (\$200.00) and the renewal fee shall be Two Hundred Dollars (\$200.00). 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 Four Hundred Dollars (\$400.00). 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 Two Hundred Dollars (\$200.00);

1 2. For a used motor vehicle dealer's license, for each place of
2 business in addition to the principal place of business, Two Hundred
3 Dollars (\$200.00);

4 ~~3. For each used motor vehicle salesperson's license and~~
5 ~~renewal, Fifty Dollars (\$50.00), and for a transfer, Fifty Dollars~~
6 ~~(\$50.00);~~

7 ~~4.~~ For each holder who possesses a valid new motor vehicle
8 dealer's license from the Oklahoma Motor Vehicle Commission, Two
9 Hundred Dollars (\$200.00) shall be the initial fee for a used motor
10 vehicle license and the fee for each subsequent renewal shall be Two
11 Hundred Dollars (\$200.00);

12 ~~5.~~

13 4. a. For each manufactured home dealer's license or a
14 restricted manufactured home park dealer's license,
15 Six Hundred Dollars (\$600.00), and for each place of
16 business in addition to the principal place of
17 business, Four Hundred Dollars (\$400.00), and

18 b. For each renewal of a manufactured home dealer's
19 license or a restricted manufactured home park
20 dealer's license, and renewal for each place of
21 business in addition to the principal place of
22 business, Three Hundred Dollars (\$300.00);

23 ~~6.~~

1 7. a. For each manufactured home installer's license, Four
2 Hundred Dollars (\$400.00), and

3 b. For each renewal of a manufactured home installer's
4 license, Four Hundred Dollars (\$400.00); and

5 ~~7.~~

6 8. a. For each manufactured home manufacturer selling
7 directly to a licensed manufactured home dealer in
8 this state, One Thousand Five Hundred Dollars
9 (\$1,500.00), and

10 b. For each renewal of a manufactured home manufacturer's
11 license, One Thousand Five Hundred Dollars
12 (\$1,500.00); ~~and~~

13 ~~8. For each manufactured home salesperson's license or renewal~~
14 ~~thereof, Fifty Dollars (\$50.00), and for each transfer, Fifty~~
15 ~~Dollars (\$50.00).~~

16 D. 1. The license issued to each used motor vehicle dealer,
17 each wholesale used motor vehicle dealer, each restricted
18 manufactured home park dealer and each manufactured home dealer
19 shall specify the location of the place of business. If the
20 business location is changed, the Oklahoma Used Motor Vehicle and
21 Parts Commission shall be notified immediately of the change and the
22 Commission may endorse the change of location on the license. The
23 fee for a change of location shall be One Hundred Dollars (\$100.00),
24 and the fee for a change of name, Twenty-five Dollars (\$25.00). The

1 license of each licensee shall be posted in a conspicuous place in
2 the place or places of business of the licensee.

3 2. The license issued to each manufactured home installer, and
4 each manufactured home manufacturer shall specify the location of
5 the place of business. If the business location is changed, the
6 Oklahoma Used Motor Vehicle and Parts Commission shall be notified
7 immediately of the change and the Commission may endorse the change
8 of location on the license without charge. The license of each
9 licensee shall be posted in a conspicuous place in the place or
10 places of business of the licensee.

11 ~~3. Every used motor vehicle salesperson shall have the license~~
12 ~~upon his or her person when engaged in business, and shall display~~
13 ~~same upon request. The name of the employer of the salesperson~~
14 ~~shall be stated on the license and if there is a change of employer,~~
15 ~~the license holder shall immediately mail the license to the~~
16 ~~Commission for its endorsement of the change thereon. There shall~~
17 ~~be no penalty for not having a license upon his or her person.~~

18 4. Every manufactured home installer shall have the license
19 available for inspection at the primary place of business of the
20 licensee. This license shall be valid for the licensee and all of
21 the employees of the licensee. Any person who is not an employee of
22 the licensee must obtain a separate manufactured home installer
23 license regardless of whether such person is acting in the capacity
24 of a contractor or subcontractor.

1 E. 1. a. Each applicant for a used motor vehicle dealer's
2 license shall procure and file with the Commission a
3 good and sufficient bond in the amount of Twenty-five
4 Thousand Dollars (\$25,000.00). Each new applicant for
5 a used motor vehicle dealer's license for the purpose
6 of conducting a used motor vehicle auction shall
7 procure and file with the Commission a good and
8 sufficient bond in the amount of Fifty Thousand
9 Dollars (\$50,000.00). An applicant who intends to
10 conduct a used motor vehicle auction who provides
11 proof that the applicant has check and title insurance
12 in an amount not less than Fifty Thousand Dollars
13 (\$50,000.00) shall only be required to have a bond in
14 the amount of Twenty-five Thousand Dollars
15 (\$25,000.00).

16 b. Each new applicant for a used motor vehicle dealer
17 license for the purpose of conducting a used motor
18 vehicle business which will consist primarily of non-
19 auction consignment sales which are projected to equal
20 Five Hundred Thousand Dollars (\$500,000.00) or more in
21 gross annual sales shall procure and file with the
22 Commission a good and sufficient bond in the amount of
23 Fifty Thousand Dollars (\$50,000.00). The Commission
24 shall prescribe by rule the method of operation of the

1 non-auction consignment dealer in order to properly
2 protect the interests of all parties to the
3 transaction and to provide sanctions against dealers
4 who fail to comply with the rules.

5 c. Each applicant for a wholesale used motor vehicle
6 dealer's license shall procure and file with the
7 Commission a good and sufficient bond in the amount of
8 Twenty-five Thousand Dollars (\$25,000.00).

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

17 e. Each applicant for a manufactured home dealer's
18 license or a restricted manufactured home park
19 dealer's license shall procure and file with the
20 Commission a good and sufficient bond in the amount of
21 Thirty Thousand Dollars (\$30,000.00).

22 f. Each manufactured home manufacturing facility selling
23 directly to a licensed manufactured home dealer in
24 this state shall procure and file with the Commission

1 a good and sufficient bond in the amount of Thirty
2 Thousand Dollars (\$30,000.00). In addition to all
3 other conditions and requirements set forth herein,
4 the bond shall require the availability of prompt and
5 full warranty service by the manufacturer to comply
6 with all warranties expressed or implied in connection
7 with each manufactured home which is manufactured for
8 resale in this state. A manufacturer may not sell,
9 exchange, or lease-purchase a manufactured home to a
10 person in this state who is not a licensed
11 manufactured home dealer.

12 g. The bond shall be approved as to form by the Attorney
13 General and conditioned that the applicant shall not
14 practice fraud, make any fraudulent representation, or
15 violate any of the provisions of this act in the
16 conduct of the business for which the applicant is
17 licensed. One of the purposes of the bond is to
18 provide reimbursement for any loss or damage suffered
19 by any person by reason of issuance of a certificate
20 of title by a used motor vehicle dealer, a wholesale
21 used motor vehicle dealer, a restricted manufactured
22 home park dealer or a manufactured home dealer.

23 2. The bonds as required by this section shall be maintained
24 throughout the period of licensure. Should the bond be canceled for

1 any reason, the license shall be revoked as of the date of
2 cancellation unless a new bond is furnished prior to such date.

3 F. Any used motor vehicle dealer or wholesale used motor
4 vehicle dealer is required to furnish and keep in force a minimum of
5 Twenty-five Thousand Dollars (\$25,000.00) of single liability
6 insurance coverage on all vehicles offered for sale or used in any
7 other capacity in demonstrating or utilizing the streets and
8 roadways in accordance with the financial responsibility laws of
9 this state.

10 G. Any manufactured home dealer or restricted manufactured home
11 park dealer is required to furnish and keep in force a minimum of
12 One Hundred Thousand Dollars (\$100,000.00) of garage liability or
13 general liability with products and completed operations insurance
14 coverage.

15 H. Any manufactured home installer is required to furnish and
16 keep in force a minimum of Twenty-five Thousand Dollars (\$25,000.00)
17 of general liability with products and completed operations
18 insurance coverage.

19 SECTION 6. AMENDATORY 47 O.S. 2011, Section 584, as
20 amended by Section 3, Chapter 145, O.S.L. 2013 (47 O.S. Supp. 2018,
21 Section 584), is amended to read as follows:

22 Section 584. A. The Oklahoma Used Motor Vehicle and Parts
23 Commission may deny an application for a license, impose a fine not
24 to exceed One Thousand Dollars (\$1,000.00) per occurrence and/or

1 revoke or suspend a license after it has been granted, when any
2 provision of Sections 581 through 588 of this title is violated or
3 for any of the following reasons:

4 1. On satisfactory proof of unfitness of the applicant or the
5 licensee, as the case may be, under the standards established by
6 Sections 581 through 588 of this title;

7 2. For fraud practices or any material misstatement made by an
8 applicant in any application for license under the provisions of
9 Sections 581 through 588 of this title;

10 3. For any willful failure to comply with any provision of
11 Section 581 et seq. of this title or with any rule promulgated by
12 the Commission under authority vested in it by Sections 581 through
13 588 of this title;

14 4. Change of condition after license is granted resulting in
15 failure to maintain the qualifications for license;

16 5. Continued or flagrant violation of any of the rules of the
17 Commission;

18 6. Being a used motor vehicle dealer, ~~used motor vehicle~~
19 ~~salesperson~~, a wholesale used motor vehicle dealer, or a
20 manufactured home dealer, a restricted manufactured home park
21 dealer, a manufactured home installer, or a manufactured home
22 manufacturer, ~~or manufactured home salesperson~~ who:

23 a. resorts to or uses any false or misleading advertising
24 in connection with business as a used motor vehicle

1 dealer ~~or salesperson~~, wholesale used motor vehicle
2 dealer or a restricted manufactured home park dealer
3 or manufactured home dealer, installer or
4 manufacturer,

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

7 c. has been convicted of a crime involving moral
8 turpitude,

9 d. has committed a fraudulent act in selling, purchasing
10 or otherwise dealing in motor vehicles or manufactured
11 homes or has misrepresented the terms and conditions
12 of a sale, purchase or contract for sale or purchase
13 of a motor vehicle or manufactured home or any
14 interest therein including an option to purchase such
15 motor vehicles or manufactured homes,

16 e. has engaged in business under a past or present
17 license issued pursuant to Sections 581 through 588 of
18 this title, in such a manner as to cause injury to the
19 public or to those with whom the licensee is dealing,

20 f. has failed to meet or maintain the conditions and
21 requirements necessary to qualify for the issuance of
22 a license,
23
24

- g. has failed or refused to furnish and keep in force any bond required under Sections 581 through 588 of this title,
- h. has installed or attempted to install a manufactured home in an unworkmanlike manner, or
- i. employs ~~unlicensed salesperson or other~~ unlicensed persons in connection with the sale of manufactured homes;

7. Being a used motor vehicle dealer who:

- a. does not have an established place of business,
- b. employs ~~unlicensed salespersons or other~~ unlicensed persons in connection with the sale of used vehicles,
- c. fails or refuses to furnish or keep in force single limit liability insurance on any vehicle offered for sale and otherwise required under the financial responsibility laws of this state, or
- d. is not operating from the address shown on the license if this change has not been reported to the Commission; or

8. Being a manufactured home dealer or a restricted manufactured home park dealer who:

- a. does not have an established place of business,
- b. fails or refuses to furnish or keep in force garage liability and completed operations insurance, or

1 c. is not operating from the address shown on the license
2 if this change has not been reported to the
3 Commission.

4 B. 1. The Commission shall deny an application for a license,
5 or revoke or suspend a license after it has been granted, if a
6 manufactured home dealer does not meet the following guidelines and
7 restrictions:

8 a. a display area for manufactured homes which is easily
9 accessible, with sufficient parking for the public,

10 b. an office for conducting business where the books,
11 records, and files are kept, with access to a restroom
12 for the public,

13 c. a place of business which meets all zoning occupancy
14 and other requirements of the appropriate local
15 government and regular occupancy by a person, firm, or
16 corporation engaged in the business of selling
17 manufactured homes, and

18 d. a place of business which is separate and apart from
19 any other dealer's location.

20 2. The Commission shall deny an application for a restricted
21 manufactured home park dealer license, or revoke or suspend a
22 license after it has been granted, if a manufactured home park
23 dealer does not satisfy the following guidelines and restrictions:
24

- a. only mobile or manufactured homes that are "ready for occupancy" are sold or offered for sale,
- b. maintains an office for conducting business where the books, records, and files are kept, with access to a restroom for the public,
- c. maintains a place of business which meets all zoning, occupancy and other requirements of the appropriate local government and regular occupancy by a person, firm or corporation engaged in the business of selling manufactured homes inside a park, and
- d. maintains a place of business which is separate and apart from any other dealer's location.

C. The Commission shall deny an application for a license, or revoke or suspend a license after it has been granted, if a manufactured home installer:

1. Installs or attempts to install a manufactured home in a manner that is not in compliance with installation standards as set by the Commission pursuant to rule; or

2. Violates or fails to comply with any applicable rule as promulgated by the Commission concerning manufactured home installers.

D. The Commission shall deny an application for a license, or revoke or suspend a license after it has been granted, if a manufactured home manufacturer violates or fails to comply with any

1 applicable rule as promulgated by the Commission concerning
2 manufactured home manufacturers.

3 E. The Commission shall deny an application for a license by a
4 motor vehicle manufacturer or factory if the application is for the
5 purpose of selling used motor vehicles to any retail consumer in the
6 state, other than through its retail franchised dealers, or acting
7 as a broker between a seller and a retail buyer. This subsection
8 does not prohibit a manufacturer from selling used motor vehicles
9 where the retail customer is a nonprofit organization or a federal,
10 state, or local government or agency. This subsection does not
11 prohibit a manufacturer from providing information to a consumer for
12 the purpose of marketing or facilitating the sale of used motor
13 vehicles or from establishing a program to sell or offer to sell
14 used motor vehicles through the manufacturer's retail franchised
15 dealers as provided for in Sections 561 through 580.2 of this title.
16 This subsection shall not prevent a factory from obtaining a
17 wholesale used motor vehicle dealer's license or the factory's
18 financing subsidiary from obtaining a wholesale used motor vehicle
19 dealer's license.

20 F. If the Commission denies issuance of a license the
21 Commission shall provide the grounds for the action to the applicant
22 in writing and allow the applicant sixty (60) days to resolve any
23 issues that are the grounds for the action.

1 G. Each of the aforementioned grounds for suspension,
2 revocation, or denial of issuance or renewal of license shall also
3 constitute a violation of Sections 581 through 588 of this title,
4 unless the person involved has been tried and acquitted of the
5 offense constituting such grounds.

6 The suspension, revocation or refusal to issue or renew a
7 license or the imposition of any other penalty by the Commission
8 shall be in addition to any penalty which might be imposed upon any
9 licensee upon a conviction at law for any violation of Sections 581
10 through 588 of this title.

11 SECTION 7. This act shall become effective November 1, 2019.

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