

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3289

By: Taylor

7
8 COMMITTEE SUBSTITUTE

9
10 An Act relating to professions and occupations;
11 amending Section 6, Chapter 230, O.S.L. 2013, as
12 renumbered by Section 11, Chapter 18, O.S.L. 2014 (2
13 O.S. Supp. 2019, Section 11-98), which relates to the
14 Oklahoma Scrap Metal Dealers Act; modifying
15 application for license; defining terms; amending
16 Section 58, Chapter 366, O.S.L. 2016, as last amended
17 by Section 2, Chapter 424, O.S.L. 2019 (37A O.S.
18 Supp. 2019, Section 2-146), which relates to the
19 Oklahoma Alcoholic Beverage Control Act; modifying
20 disqualifying factors for licensure; amending 47 O.S.
21 2011, Section 565, as last amended by Section 2,
22 Chapter 79, O.S.L. 2019 (47 O.S. Supp. 2019, Section
23 565), which relates to motor vehicle dealers;
24 modifying application for license; defining terms;
 amending 47 O.S. 2011, Section 584, as last amended
 by Section 6, Chapter 79, O.S.L. 2019 (47 O.S. Supp.
 2019, Section 584), which relates to used motor
 vehicle dealers; modifying basis for denial,
 revocation or suspension of license; defining terms;
 amending 63 O.S. 2011, Section 1-1454, which relates
 to the Oklahoma Medical Micropigmentation Regulation
 Act; modifying qualifications for certification;
 defining terms; and providing an effective date.

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

2 SECTION 1. AMENDATORY Section 6, Chapter 230, O.S.L.
3 2013, as renumbered by Section 11, Chapter 18, O.S.L. 2014 (2 O.S.
4 Supp. 2019, Section 11-98), is amended to read as follows:

5 Section 11-98. A. An applicant for a license to engage in
6 business as a scrap metal dealer shall provide all of the following
7 information on the license application:

8 1. If the applicant is an individual, the full name and place
9 of residence of the applicant;

10 2. If the applicant is a firm, corporation or other legal
11 entity, the full name, place of residence, and the position of the
12 individual filing the application on behalf of the entity;

13 3. The business address of the location where the scrap metal
14 dealer conducts business or will conduct business as a scrap metal
15 dealer;

16 4. Legal proof of ownership, lease agreement or contract for
17 the business location;

18 5. Proof of a dedicated telephone line for the business
19 location;

20 6. Proof of a general liability insurance policy for the
21 business location;

22 7. Proof of a current discharge permit issued pursuant to the
23 provisions of the Oklahoma Pollutant Discharge Elimination System
24 Act; and

1 8. Whether the person has been previously convicted of, or pled
2 guilty or nolo contendere to any felony ~~or to a misdemeanor~~
3 ~~involving moral turpitude or dishonesty;~~ and crime that
4 substantially relates to scrap metal dealing and poses a reasonable
5 threat to public safety

6 ~~9. Any other additional information that will sufficiently~~
7 ~~enable the Oklahoma Department of Agriculture, Food, and Forestry to~~
8 ~~determine if the scrap metal dealer is prohibited from being issued~~
9 ~~a license.~~

10 B. The Department may conduct any reasonable inquiry or
11 investigation relative to the determination of the fitness of the
12 applicant to be licensed or continue to be licensed including, but
13 not limited to, requiring a national criminal history record check
14 as provided in Section 150.9 of Title 74 of the Oklahoma Statutes.

15 C. The Department shall charge an application fee in the amount
16 of One Hundred Dollars (\$100.00) for processing an initial
17 application for a scrap metal dealer license. The Department shall
18 also charge an investigative fee of One Hundred Dollars (\$100.00) to
19 be used for the purpose of conducting an investigation of the
20 applicant. All fees shall be nonrefundable.

21 D. In addition to the application, each applicant shall submit
22 a full set of fingerprints and a photograph with each application
23 for an original license. The fingerprints shall be used for a
24 national criminal history record check as provided for in subsection

1 B of this section. The applicant shall be required to pay for
2 fingerprints, photographs and the national criminal history records
3 check required for licensure and renewals.

4 E. If the results of the investigation of the applicant show no
5 prohibition to granting a license, the Department shall issue the
6 scrap metal dealer license. The scrap metal dealer license shall be
7 valid for a period of one (1) year unless otherwise voluntarily
8 surrendered, suspended or revoked by the Department.

9 F. A scrap metal dealer license issued pursuant to the
10 provisions of this act is valid for the conduct of business as a
11 scrap metal dealer only at the location specified in the
12 application. A separate scrap metal dealer license shall be
13 required for each location specified in the application form and
14 each license shall designate the location to which it applies. The
15 business of the scrap metal dealer shall not be conducted in any
16 place other than that designated by the license. The scrap metal
17 dealer license shall not be transferable.

18 G. The Department shall deny the license when the applicant
19 fails to properly complete the application form or if it is
20 determined that the applicant is not eligible to receive a scrap
21 metal dealer license.

22 H. A scrap metal dealer license may be renewed any time within
23 sixty (60) days prior to the expiration date of the license. To
24 renew a scrap metal dealer license, the licensee must first obtain a

1 renewal form from the Department. The licensee must complete the
2 renewal form and submit a renewal fee in the amount of One Hundred
3 Dollars (\$100.00) to the Department. Upon receipt of the renewal
4 application and fee, the Department shall conduct a national
5 criminal history record check and investigate any other records or
6 information deemed by the Department to be relevant to the renewal
7 of the scrap metal dealer license. If the licensee appears not to
8 have any prohibition to renewing the scrap metal dealer license, the
9 Department shall issue the renewed license for a period of one (1)
10 year.

11 I. The Oklahoma Department of Agriculture, Food, and Forestry
12 shall promulgate rules, procedures and forms governing the
13 application and renewal procedures for scrap metal dealer licenses.

14 J. As used in this section:

15 1. "Substantially relates" means the nature of criminal conduct
16 for which the person was convicted has a direct bearing on the
17 fitness or ability to perform one or more of the duties or
18 responsibilities necessarily related to the occupation; and

19 2. "Poses a reasonable threat" means the nature of criminal
20 conduct for which the person was convicted involved an act or threat
21 of harm against another and has a bearing on the fitness or ability
22 to serve the public or work with others in the occupation.
23
24

1 SECTION 2. AMENDATORY Section 58, Chapter 366, O.S.L.

2 2016, as last amended by Section 2, Chapter 424, O.S.L. 2019 (37A
3 O.S. Supp. 2019, Section 2-146), is amended to read as follows:

4 Section 2-146. A. The ABLE Commission shall refuse to issue a
5 wine and spirits wholesaler, beer distributor, retail spirits,
6 retail wine or retail beer license, either on an original
7 application or a renewal application, if it has reasonable grounds
8 to believe and finds any of the following to be true:

9 1. Except in the case of a beer distributor, that the applicant
10 is not a citizen of the United States or is not a qualified elector
11 in this state, or has not been a continuous resident of this state
12 for the five (5) years next preceding the application for the
13 license;

14 2. That the applicant is under twenty-one (21) years of age;

15 3. That the applicant or any partner, or spouse of the
16 applicant or any partner, has been convicted of a felony;

17 4. That the applicant or any partner, or spouse of the
18 applicant or any partner, has been convicted of a violation of any
19 state or federal law relating to alcoholic beverages, has forfeited
20 a bond while any charge of such violation was pending, nor may any
21 license be granted for any purpose under the Oklahoma Alcoholic
22 Beverage Control Act to an Oklahoma resident, who has held or whose
23 spouse has held a Federal Liquor Stamp in Oklahoma before the
24 adoption of Article XXVIII-A of the Oklahoma Constitution unless the

1 Liquor Stamp was granted for supplying alcoholic beverages to a
2 federal military installation, or was granted under the Oklahoma
3 Alcoholic Beverage Control Act;

4 5. That the applicant or any partner has, within twelve (12)
5 months next preceding the date of the application, violated any
6 provision of the Oklahoma Alcoholic Beverage Control Act or rule of
7 the ABLE Commission promulgated pursuant hereto. Provided, however,
8 that if the ABLE Commission has, during such twelve-month period,
9 suspended any license sought to be renewed, such renewal application
10 may be approved if the term of the suspension has been completed and
11 the applicant has complied with any special conditions imposed in
12 connection with the suspension;

13 6. That the applicant is ~~not of good moral character, or that~~
14 ~~the applicant is~~ in the habit of using alcoholic beverages to
15 excess, or is mentally incapacitated. ~~Provided, that the record in~~
16 ~~any municipal court showing a conviction of violation of any~~
17 ~~municipal ordinances or state statutes involving moral character or~~
18 ~~public nuisance obtained after passage and approval of the Oklahoma~~
19 ~~Alcoholic Beverage Control Act shall be received in evidence by the~~
20 ~~ABLE Commission;~~

21 7. That the applicant does not own or have a written lease for
22 the premises for which a license is sought;

1 8. That the applicant, within twelve (12) months next preceding
2 the date of application, has been the holder of a license revoked
3 for cause;

4 9. That the applicant is not the real party in interest, or
5 intends to carry on the business authorized by the license as the
6 agent of another;

7 10. That the applicant, in the case of an application for
8 renewal of any license, would not be eligible for such license on a
9 first application;

10 11. That the applicant is a person who appoints or is a law
11 enforcement official or is an employee of the ABLE Commission;

12 12. That the proposed location of the licensed premises would
13 violate a valid municipal nondiscriminatory zoning ordinance;

14 13. That, in the case of an application for a wine and spirits
15 wholesaler license or beer distributor license, any brewer or
16 manufacturer, including an officer, director or principal
17 stockholder thereof or any partner, has any financial interest in
18 the business to be conducted under the license, unless otherwise
19 permitted by law;

20 14. That the issuance of the license applied for would result
21 in a violation of any provision of the Oklahoma Alcoholic Beverage
22 Control Act;

23 15. That, in the case of an application for a wine and spirits
24 wholesaler or beer distributor license, the applicant or any

1 partner, or spouse of the applicant or any partner, is the holder or
2 partner of the holder of any other class of license issued under the
3 provisions of the Oklahoma Alcoholic Beverage Control Act, other
4 than an agent or employee license for employment by the applicant,
5 or a storage license, bonded warehouse license, carrier license or
6 private carrier license; provided, nothing shall prohibit a wine and
7 spirits wholesaler, who is otherwise qualified, from maintaining
8 beer distributor licenses in the state, nor a beer distributor, who
9 is otherwise qualified, from maintaining a wine and spirits
10 wholesaler license in the state;

11 16. That, in the case of an application for a retail spirits,
12 retail wine or retail beer license, the applicant or any partner is
13 the holder or partner of the holder, or employee of such holder of
14 any other class of license issued under the provisions of the
15 Oklahoma Alcoholic Beverage Control Act, other than a storage
16 license or an employee license for the proposed licensed premises of
17 the applicant, provided, nothing in this title shall prohibit an
18 applicant for a retail wine and/or retail beer license from
19 maintaining a separate mixed beverage, caterer, mixed
20 beverage/caterer combination license, and/or an on-premise beer and
21 wine license; or

22 17. That the applicant or any partner, spouse, employee or
23 other person affiliated with the applicant is not in compliance with
24

1 the tax laws of this state as required in Article XXVIII-A of the
2 Oklahoma Constitution.

3 B. The provisions of this section shall not operate to prohibit
4 the issuance of a beer distributor license to a corporation or
5 partnership or limited liability company.

6 SECTION 3. AMENDATORY 47 O.S. 2011, Section 565, as last
7 amended by Section 2, Chapter 79, O.S.L. 2019 (47 O.S. Supp. 2019,
8 Section 565), is amended to read as follows:

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

16 1. On satisfactory proof of unfitness of the applicant in any
17 application for any license under the provisions of Section 561 et
18 seq. of this title;

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

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

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

3 5. Being a new motor vehicle dealer who:

4 a. has required a purchaser of a new motor vehicle, as a
5 condition of sale and delivery thereof, to also
6 purchase special features, appliances, accessories or
7 equipment not desired or requested by the purchaser
8 and installed by the dealer,

9 b. uses any false or misleading advertising in connection
10 with business as a new motor vehicle dealer,

11 c. has committed any unlawful act which resulted in the
12 revocation of any similar license in another state,

13 d. has failed or refused to perform any written agreement
14 with any retail buyer involving the sale of a motor
15 vehicle,

16 e. has been convicted of a felony crime ~~involving moral~~
17 ~~turpitude~~ that substantially relates to the occupation
18 of a motor vehicle dealer and poses a reasonable
19 threat to public safety,

20 f. has committed a fraudulent act in selling, purchasing
21 or otherwise dealing in new motor vehicles or has
22 misrepresented the terms and conditions of a sale,
23 purchase or contract for sale or purchase of a new
24

1 motor vehicle or any interest therein including an
2 option to purchase such vehicle,

3 g. has failed to meet or maintain the conditions and
4 requirements necessary to qualify for the issuance of
5 a license, or

6 h. completes any sale or transaction of an extended
7 service contract, extended maintenance plan, or
8 similar product using contract forms that do not
9 conspicuously disclose the identity of the service
10 contract provider;

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

13 7. Being a new motor vehicle dealer who:

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

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

23 c. does not hold a franchise in effect with a
24 manufacturer or distributor of new or unused motor

1 vehicles for the sale of the same and is not
2 authorized by the manufacturer or distributor to
3 render predelivery preparation of such vehicles sold
4 to purchasers and to perform any authorized post-sale
5 work pursuant to the manufacturer's or distributor's
6 warranty,

7 d. employs or utilizes the services of used motor vehicle
8 lots or dealers or other unlicensed persons in
9 connection with the sale of new motor vehicles,

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

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

18 8. Being a factory that has:

19 a. either induced or attempted to induce by means of
20 coercion or intimidation, any new motor vehicle
21 dealer:

22 (1) to accept delivery of any motor vehicle or
23 vehicles, parts or accessories therefor, or any
24 other commodities including advertising material

1 which shall not have been ordered by the new
2 motor vehicle dealer,

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

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

11 b. induced under threat or discrimination by the
12 withholding from delivery to a motor vehicle dealer
13 certain models of motor vehicles, changing or amending
14 unilaterally the dealer's allotment of motor vehicles
15 and/or withholding and delaying delivery of such
16 vehicles out of the ordinary course of business, in
17 order to induce by such coercion any such dealer to
18 participate or contribute to any local or national
19 advertising fund controlled directly or indirectly by
20 the factory or for any other purposes such as contest,
21 "give-aways" or other so-called sales promotional
22 devices and/or change of quotas in any sales contest;
23 or has required motor vehicle dealers, as a condition
24 to receiving their vehicle allotment, to order a

1 certain percentage of the vehicles with optional
2 equipment not specified by the new motor vehicle
3 dealer; however, nothing in this section shall
4 prohibit a factory from supporting an advertising
5 association which is open to all dealers on the same
6 basis;

7 9. Being a factory that:

- 8 a. has attempted to coerce or has coerced any new motor
9 vehicle dealer to enter into any agreement or to
10 cancel any agreement, or fails to act in good faith
11 and in a fair, equitable and nondiscriminatory manner;
12 or has directly or indirectly coerced, intimidated,
13 threatened or restrained any motor vehicle dealer; or
14 has acted dishonestly, or has failed to act in
15 accordance with the reasonable standards of fair
16 dealing,
- 17 b. has failed to compensate its dealers for the work and
18 services they are required to perform in connection
19 with the dealer's delivery and preparation obligations
20 according to the agreements on file with the
21 Commission which must be found by the Commission to be
22 reasonable, or fail to adequately and fairly
23 compensate its dealers for labor, parts and other
24 expenses incurred by such dealer to perform under and

1 comply with manufacturer's warranty agreements.

2 Adequate and fair compensation for parts shall be

3 established by the dealer submitting to the

4 manufacturer or distributor one hundred sequential

5 nonwarranty customer-paid service repair orders which

6 contain warranty-like parts, or ninety (90)

7 consecutive days of nonwarranty customer-paid service

8 repair orders which contain warranty-like parts,

9 whichever is less, covering repairs made no more than

10 one hundred eighty (180) days before the submission

11 and declaring the average percentage markup. Adequate

12 and fair compensation for labor shall be established

13 by the dealer submitting to the manufacturer or

14 distributor one hundred sequential customer-paid

15 service repair orders which contain labor charges, or

16 ninety (90) consecutive days of customer-paid service

17 repair orders which contain labor charges, whichever

18 is less. When submitting repair orders to calculate a

19 labor rate, a dealer need not include repair orders

20 for routine maintenance. A manufacturer or

21 distributor may, not later than thirty (30) days after

22 submission, rebut that declared rate in writing by

23 reasonably substantiating that the rate is inaccurate

24 or unreasonable in light of the practices of all other

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

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

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

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

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

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

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

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

1 the enforcement of a voluntary agreement between the
2 factory and the new motor vehicle dealer where
3 separate and valuable consideration has been offered
4 and accepted;

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

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

23 12. a. Being a factory which directly or indirectly:
24

- 1 (1) owns any ownership interest or has any financial
2 interest in a new motor vehicle dealer or any
3 person who sells products or services to the
4 public,
5 (2) operates or controls a new motor vehicle dealer,
6 or
7 (3) acts in the capacity of a new motor vehicle
8 dealer.

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

- 21 (2) This paragraph does not prohibit a factory from
22 owning, operating, controlling or acting in the
23 capacity of a motor vehicle dealer for a period
24 not to exceed twelve (12) months during the

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

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

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

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

- 1 (b) all of the franchise agreements of the
2 manufacturer confer rights on the dealer of
3 the line-make to develop and operate, within
4 a defined geographic territory or area, as
5 many dealership facilities as the dealer and
6 manufacturer shall agree are appropriate,
- 7 (c) at the time the manufacturer first acquires
8 an ownership interest or assumes operation,
9 the distance between any dealership thus
10 owned or operated and the nearest
11 unaffiliated motor vehicle dealership
12 trading in the same line-make is not less
13 than seventy (70) miles,
- 14 (d) during any period in which the manufacturer
15 has such an ownership interest, the
16 manufacturer has no more than three
17 franchise agreements with new motor vehicle
18 dealers licensed by the Oklahoma Motor
19 Vehicle Commission to do business within the
20 state, and
- 21 (e) prior to January 1, 2000, the factory shall
22 have furnished or made available to
23 prospective motor vehicle dealers an
24 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
7 contract, extended maintenance plan or similar product, such as gap
8 products offered, endorsed or sponsored by the factory by the
9 following 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

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

3 D. As used in this section:

4 1. "Substantially relates" means the nature of criminal conduct
5 for which the person was convicted has a direct bearing on the
6 fitness or ability to perform one or more of the duties or
7 responsibilities necessarily related to the occupation; and

8 2. "Poses a reasonable threat" means the nature of criminal
9 conduct for which the person was convicted involved an act or threat
10 of harm against another and has a bearing on the fitness or ability
11 to serve the public or work with others in the occupation.

12 SECTION 4. AMENDATORY 47 O.S. 2011, Section 584, as last
13 amended by Section 6, Chapter 79, O.S.L. 2019 (47 O.S. Supp. 2019,
14 Section 584), is amended to read as follows:

15 Section 584. A. The Oklahoma Used Motor Vehicle and Parts
16 Commission may deny an application for a license, impose a fine not
17 to exceed One Thousand Dollars (\$1,000.00) per occurrence and/or
18 revoke or suspend a license after it has been granted, when any
19 provision of Sections 581 through 588 of this title is violated or
20 for any of the following reasons:

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

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

4 3. For any willful failure to comply with any provision of
5 Section 581 et seq. of this title or with any rule promulgated by
6 the Commission under authority vested in it by Sections 581 through
7 588 of this title;

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

10 5. Continued or flagrant violation of any of the rules of the
11 Commission;

12 6. Being a used motor vehicle dealer, a wholesale used motor
13 vehicle dealer, or a manufactured home dealer, a restricted
14 manufactured home park dealer, a manufactured home installer or a
15 manufactured home manufacturer who:

16 a. resorts to or uses any false or misleading advertising
17 in connection with business as a used motor vehicle
18 dealer, wholesale used motor vehicle dealer or a
19 restricted manufactured home park dealer or
20 manufactured home dealer, installer or manufacturer,

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

23 c. has been convicted of a felony crime ~~involving moral~~
24 ~~turpitude~~ that substantially relates to the occupation

1 of a used motor vehicle dealer, a wholesale used motor
2 vehicle dealer, or a manufactured home dealer, a
3 restricted manufactured home park dealer, a
4 manufactured home installer or a manufactured home
5 manufacturer and poses a reasonable threat to public
6 safety,

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

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

18 f. has failed to meet or maintain the conditions and
19 requirements necessary to qualify for the issuance of
20 a license,

21 g. has failed or refused to furnish and keep in force any
22 bond required under Sections 581 through 588 of this
23 title,

1 h. has installed or attempted to install a manufactured
2 home in an unworkmanlike manner, or

3 i. employs unlicensed persons in connection with the sale
4 of manufactured homes;

5 7. Being a used motor vehicle dealer who:

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

7 b. employs unlicensed persons in connection with the sale
8 of used vehicles,

9 c. fails or refuses to furnish or keep in force single
10 limit liability insurance on any vehicle offered for
11 sale and otherwise required under the financial
12 responsibility laws of this state, or

13 d. is not operating from the address shown on the license
14 if this change has not been reported to the
15 Commission; or

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

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

19 b. fails or refuses to furnish or keep in force garage
20 liability and completed operations insurance, or

21 c. is not operating from the address shown on the license
22 if this change has not been reported to the
23 Commission.

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

- 5 a. a display area for manufactured homes which is easily
6 accessible, with sufficient parking for the public,
- 7 b. an office for conducting business where the books,
8 records, and files are kept, with access to a restroom
9 for the public,
- 10 c. a place of business which meets all zoning occupancy
11 and other requirements of the appropriate local
12 government and regular occupancy by a person, firm, or
13 corporation engaged in the business of selling
14 manufactured homes, and
- 15 d. a place of business which is separate and apart from
16 any other dealer's location.

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

- 21 a. only mobile or manufactured homes that are "ready for
22 occupancy" are sold or offered for sale,

- 1 b. maintains an office for conducting business where the
2 books, records, and files are kept, with access to a
3 restroom for the public,
4 c. maintains a place of business which meets all zoning,
5 occupancy and other requirements of the appropriate
6 local government and regular occupancy by a person,
7 firm or corporation engaged in the business of selling
8 manufactured homes inside a park, and
9 d. maintains a place of business which is separate and
10 apart from any other dealer's location.

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

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

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

20 D. The Commission shall deny an application for a license, or
21 revoke or suspend a license after it has been granted, if a
22 manufactured home manufacturer violates or fails to comply with any
23 applicable rule as promulgated by the Commission concerning
24 manufactured home manufacturers.

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

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

22 G. Each of the aforementioned grounds for suspension,
23 revocation, or denial of issuance or renewal of license shall also
24 constitute a violation of Sections 581 through 588 of this title,

1 unless the person involved has been tried and acquitted of the
2 offense constituting such grounds.

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

8 H. As used in this section:

9 1. "Substantially relates" means the nature of criminal conduct
10 for which the person was convicted has a direct bearing on the
11 fitness or ability to perform one or more of the duties or
12 responsibilities necessarily related to the occupation; and

13 2. "Poses a reasonable threat" means the nature of criminal
14 conduct for which the person was convicted involved an act or threat
15 of harm against another and has a bearing on the fitness or ability
16 to serve the public or work with others in the occupation.

17 SECTION 5. AMENDATORY 63 O.S. 2011, Section 1-1454, is
18 amended to read as follows:

19 Section 1-1454. A. On and after May 1, 2002, except for a
20 physician, any person intending to perform medical micropigmentation
21 in this state shall first be certified by the State Department of
22 Health.

23

24

1 B. The State Commissioner of Health shall not issue a
2 certificate or renew a certificate to perform medical
3 micropigmentation to a person who has:

4 1. Been convicted of or pled guilty or nolo contendere to a
5 felony ~~or a misdemeanor involving moral turpitude in any federal,~~
6 ~~state, territory, or District of Columbia court~~ crime that
7 substantially relates to the practice of medical micropigmentation
8 and poses a reasonable threat to public safety;

9 2. Been determined to have engaged in unprofessional conduct as
10 defined by the rules promulgated by the State Board of Health;

11 3. Made a materially false or fraudulent statement in an
12 application or other document relating to certification pursuant to
13 the provisions of the Oklahoma Medical Micropigmentation Regulation
14 Act; or

15 4. Had a health-related license, certificate, or permit
16 suspended, revoked or not renewed or had any other disciplinary
17 action taken, or had an application for a health-related license,
18 certificate, or permit refused by a federal, state, territory, or
19 District of Columbia regulatory authority for intentionally
20 falsifying information.

21 C. In order to qualify for certification, an applicant shall:

22 1. Have received a high school diploma or its equivalent;

23 2. Be at least twenty-one (21) years of age; and
24

1 3. Have submitted a completed application to the Department in
2 such form as required by the Department which shall include a
3 notarized copy of:

- 4 a. the certificate of birth of the applicant,
- 5 b. the applicant's driver license or other similar form
6 of identification,
- 7 c. other professional credentials, if applicable, and
- 8 d. proof, in such form as the Department determines
9 appropriate, of the satisfactory completion of a
10 program of training and testing approved by the
11 Department as specified in Section ~~6~~ 1-1455 of this
12 ~~act~~ title.

13 D. Upon meeting the requirements of the Oklahoma Medical
14 Micropigmentation Regulation Act and rules promulgated pursuant
15 thereto, the State Commissioner of Health shall issue a certificate
16 to perform medical micropigmentation to the applicant.

17 E. As used in this section:

18 1. "Substantially relates" means the nature of criminal conduct
19 for which the person was convicted has a direct bearing on the
20 fitness or ability to perform one or more of the duties or
21 responsibilities necessarily related to the occupation; and

22 2. "Poses a reasonable threat" means the nature of criminal
23 conduct for which the person was convicted involved an act or threat
24

1 of harm against another and has a bearing on the fitness or ability
2 to serve the public or work with others in the occupation.

3 SECTION 6. This act shall become effective November 1, 2020.
4

5 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE, dated
6 02/27/2020 - DO PASS, As Amended.
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