

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 HOUSE BILL 3965

 By: Burns

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6
7 AS INTRODUCED

8 An Act relating to commercial auction and consignment
9 dealers; creating the Oklahoma Commercial Auction and
10 Consignment Dealers Act; defining terms; requiring
11 dealers to record certain information; providing that
12 municipalities or other political subdivisions may
13 designate different methods or formats for recording
14 information; requiring the Oklahoma Department of
15 Agriculture, Food, and Forestry to designate an
16 Internet-based reporting method; providing time for
17 which records must be retained; requiring parental
18 consent for purchases from minors; requiring
19 declaration of ownership; requiring notification to
20 law enforcement agencies upon request; requiring
21 certain information relating to purchases of
22 vehicles, tractors, construction equipment, and
23 trailers; requiring certain proof of ownership;
24 prohibiting cash transactions in excess of certain
 amount; providing requirements for accepting checks
 as payment; stating penalties for violations of act;
 providing for revocation or suspension of license;
 providing for injunction against dealers; requiring
 dealers to obtain sales tax permits; requiring
 Oklahoma Tax Commission to keep list of certain
 permit holders; prohibiting Commission from denying
 permit for certain reason; requiring the Oklahoma
 Department of Agriculture, Food, and Forestry to
 promulgate rules, procedures, and forms governing
 application for, granting of and renewal procedures
 for licenses; providing for codification; and
 providing an effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 11-101 of Title 2, unless there
4 is created a duplication in numbering, reads as follows:

5 This act shall be known and may be cited as the "Oklahoma
6 Commercial Auction and Consignment Dealers Act".

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 11-102 of Title 2, unless there
9 is created a duplication in numbering, reads as follows:

10 As used in this act:

11 1. "Department" means the Oklahoma Department of Agriculture,
12 Food, and Forestry and its employees, officers and divisions;

13 2. "Digital image" means pixels intended for display on a
14 computer monitor or for transformation into another format, such as
15 a printed page. For purposes of this paragraph, "pixels" shall mean
16 raster-based, two-dimensional, rectangular arrays of static data
17 elements;

18 3 "License" means a commercial auction and commercial
19 consignment dealer license;

20 4. "Commercial equipment" means any farm, ranching,
21 agricultural, or construction equipment valued at One Thousand
22 Dollars (\$1,000.00) or more;

23 5. "Commercial auction or commercial consignment dealer" means
24 any person, firm, or corporation being an owner, keeper, or

1 proprietor of a retail or wholesale business which buys, sells, or
2 auctions used commercial equipment regulated by the provisions of
3 the Oklahoma Commercial Auction and Consignment Dealers Act.

4 SECTION 3. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 11-103 of Title 2, unless there
6 is created a duplication in numbering, reads as follows:

7 A. Every commercial auction and commercial consignment dealer
8 shall keep a separate book, record, or other electronic system as
9 authorized by the Oklahoma Commercial Auction and Consignment
10 Dealers Act to record and maintain the following data from any
11 seller of commercial equipment at auction or through consignment
12 sale:

13 1. A legible photocopy of the seller's driver license or
14 government-provided photo identification, issued by the United
15 States government, State of Oklahoma, or any other state of the
16 United States, or any other federally recognized identification that
17 contains his or her name, and date of birth; provided, that if the
18 photo identification does not contain an address, an address shall
19 be provided;

20 2. Vehicle description and license tag number, or vehicle
21 identification number (VIN) if no state license plate is affixed, if
22 the vehicle was used to transport the commercial equipment being
23 sold;

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1 3. Date and place of the transaction and the transaction number
2 as provided by the auction company or consignment dealer;

3 4. Description of the items purchased, which shall include any
4 VIN numbers, serial numbers, or any other identifying marks or
5 numbers;

6 5. The digital image of the items purchased. The digital image
7 shall contain depictions that clearly identify the items purchased
8 and are captured in the common JPEG format. The digital image shall
9 be retained by the purchaser for a minimum of ninety (90) days from
10 the date of purchase.

11 B. Municipalities or other political subdivisions may designate
12 the reporting methods and the format of the information required by
13 subsection A of this section, either written, electronic, or
14 Internet-based. The Oklahoma Department of Agriculture, Food, and
15 Forestry shall designate an Internet-based reporting method that
16 applies to all geographic areas of the state that are not subject to
17 a local designation for Internet reporting.

18 C. Records required by this section shall be retained for no
19 less than two (2) years from the date of transaction and shall be
20 made available at any time to any person authorized by law for such
21 inspection.

22 D. It shall be unlawful for any commercial auction or
23 commercial consignment dealer to purchase any item from a minor
24 under sixteen (16) years of age without having first obtained the

1 consent, in writing, of a parent or guardian of such minor. Such
2 written consent shall be kept with the book, record, or other
3 electronic recording system required by subsection A of this section
4 and, if requested by a law enforcement agency where the purchase was
5 made, shall be transmitted to the law enforcement agency and may be
6 kept as a permanent record and made available for public inspection.

7 E. A commercial auction or commercial consignment dealer shall
8 obtain from each seller of commercial equipment regulated by the
9 Oklahoma Commercial Auction and Consignment Dealers Act, or a parent
10 or guardian on behalf of a minor, a written declaration of ownership
11 containing a legible signature of the seller. The declaration of
12 ownership shall be in the following form and shall appear on the
13 bill of sale or transaction ticket to be completed by the seller in
14 the presence of the purchaser at the time of the transaction:

15 "I hereby affirm that I am the rightful owner of the hereon
16 described merchandise; or I am an authorized representative of the
17 rightful owner and affirm that I have been given authority by the
18 rightful owner to sell the hereon described merchandise.

19 I state under penalty of perjury under the laws of Oklahoma that
20 the foregoing is true and correct.

21 _____
22 Signature Date and Place"

23 F. If requested by a law enforcement agency, a commercial
24 auction or commercial consignment dealer shall report in writing all

1 purchases of commercial equipment as defined by the Oklahoma
2 Commercial Auction and Consignment Dealers Act within forty-eight
3 (48) hours. The report shall contain the information required by
4 this section.

5 G. Prior to the purchase of a used motor vehicle, tractor,
6 construction equipment, or trailer, the commercial auction or
7 commercial consignment dealer shall require one of the following
8 forms of proof of ownership from the seller:

9 1. A certificate of title that matches the vehicle
10 identification number of the vehicle being sold;

11 2. A notarized power of attorney from the individual on the
12 certificate of title authorizing the seller to dispose of the
13 vehicle, tractor, trailer, or other equipment on behalf of the
14 owner; or

15 3. A statement of ownership from the seller stating that the
16 vehicle, tractor, trailer, or other equipment was purchased from the
17 lawful owner, including a statement that there are no outstanding
18 liens on the vehicle, tractor, or equipment.

19 The provisions of this subsection shall not apply to sales,
20 purchases or other transfers of vehicles, tractors, or other
21 equipment between commercial auction and commercial consignment
22 dealers and licensed car dealers.

23 H. A commercial auction or commercial consignment dealer shall
24 not enter into any cash transactions in excess of One Thousand

1 Dollars (\$1,000.00) in payment for the purchase of commercial
2 equipment. Payment by check shall be issued and made payable only
3 to the seller of the commercial equipment whose identification
4 information has been obtained pursuant to the provisions of this
5 section.

6 SECTION 4. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 11-104 of Title 2, unless there
8 is created a duplication in numbering, reads as follows:

9 A. Any person found in violation of any provision of the
10 Oklahoma Commercial Auction and Consignment Dealers Act, with the
11 exceptions as provided by subsection B of this section, shall, upon
12 conviction, be guilty of a misdemeanor and punished by a fine of not
13 more than Two Thousand Five Hundred Dollars (\$2,500.00) per offense.
14 Any person convicted of a second violation of the Oklahoma
15 Commercial Auction and Consignment Dealers Act shall be guilty of a
16 misdemeanor and punished by a fine of not more than Five Thousand
17 Dollars (\$5,000.00) per offense or by imprisonment in the county
18 jail for a period of not more than six (6) months or by both fine
19 and imprisonment. Any person convicted of a third or subsequent
20 violation of the Oklahoma Commercial Auction and Consignment Dealers
21 Act shall be guilty of a felony punishable by a fine of not more
22 than Ten Thousand Dollars (\$10,000.00) per offense or by
23 imprisonment in the custody of the Department of Corrections for a
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1 period of not more than two (2) years, or by both such fine and
2 imprisonment.

3 B. Any person acting as a commercial auction or commercial
4 consignment dealer without a commercial auction and commercial
5 consignment dealer license or a sales tax permit as required by the
6 Oklahoma Commercial Auction and Consignment Dealers Act shall, upon
7 conviction, be guilty of a misdemeanor and punished by a fine of not
8 more than Five Hundred Dollars (\$500.00); provided, that each day of
9 operation in violation of the Oklahoma Commercial Auction and
10 Consignment Dealers Act shall constitute a separate offense.

11 C. Each commercial auction or commercial consignment dealer
12 convicted of a violation of the Oklahoma Commercial Auction and
13 Consignment Dealers Act shall be reported to the Oklahoma Tax
14 Commission by the clerk of the court rendering such verdict.

15 D. The Tax Commission shall revoke the sales tax permit of any
16 person convicted of three separate violations of the Oklahoma
17 Commercial Auction and Consignment Dealers Act. The person shall
18 not be eligible to receive a sales tax permit for such purpose for a
19 period of one (1) year following the revocation. The revocation
20 procedure shall be subject to notice and hearing as required by
21 Section 11-59 of Title 2 of the Oklahoma Statutes.

22 SECTION 5. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 11-105 of Title 2, unless there
24 is created a duplication in numbering, reads as follows:

1 A. Any sales tax permit, issued pursuant to Section 1364 of
2 Title 68 of the Oklahoma Statutes, to any commercial auction or
3 commercial consignment dealer who violates any of the provisions of
4 this act, may be canceled or suspended for a period not to exceed
5 thirty (30) days by the Oklahoma Tax Commission. The Tax Commission
6 may refuse the issuance of or extension or reinstatement of any
7 permit where the applicant or holder of the permit shall have
8 violated any provisions of this act or existing laws. Such
9 cancellation or refusal shall be mandatory as to any commercial
10 auction or commercial consignment dealer having been convicted of
11 three separate violations of this act. However, before the Tax
12 Commission may cancel or suspend any permit or refuse the issuance,
13 reinstatement or extension thereof, the Tax Commission shall give
14 each holder of a permit or applicant ten (10) days' notice of a
15 hearing before the Tax Commission, granting such person an
16 opportunity to show cause why such action should not be taken. Upon
17 notice given to any commercial auction or commercial consignment
18 dealer by the Tax Commission of its intention to cancel or suspend
19 any permit or to refuse the issuance, reinstatement, or extension
20 thereof, the Tax Commission shall have the authority to enter its
21 order suspending such permit or prohibiting the applicant from doing
22 business without a permit pending the final hearing as provided for
23 in this section.

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1 B. 1. After notice of the order of suspension or prohibition
2 from doing business, it shall be unlawful for the commercial auction
3 or commercial consignment dealer to further engage in the business
4 of selling commercial equipment, as defined herein. In the event
5 any such person shall conduct or at any time continue such unlawful
6 operation, after notice of suspension or prohibition from doing
7 business, the Tax Commission may institute or cause to be brought
8 against such person or persons proceedings for injunction in any
9 court of competent jurisdiction to enjoin and restrain such person
10 or persons from doing business pending the order of the Tax
11 Commission.

12 2. Upon cancellation of a permit by the Tax Commission, no new
13 permit shall be issued to such dealer or any firm, corporation, or
14 other legal entity under his or her direct or indirect control or
15 association, for a period of one (1) year from the date of
16 cancellation.

17 3. In all cases where proceedings are brought for injunction
18 under this act, no bond for injunction shall be required and in all
19 such cases, after notice of suspension has been given, no further
20 notice shall be required before the issuance of a temporary
21 restraining order on any proceeding for injunction.

22 C. If an appeal is taken from the order of the Tax Commission
23 issued pursuant to this section, the commercial auction or
24 commercial consignment dealer, in order to conduct business as a

1 commercial auction or commercial consignment dealer pending outcome
2 of the appeal, shall be required to post a bond in the amount of
3 Five Thousand Dollars (\$5,000.00).

4 SECTION 6. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 11-106 of Title 2, unless there
6 is created a duplication in numbering, reads as follows:

7 A. Any person, firm, or corporation desiring to become a
8 commercial auction or commercial consignment dealer shall be
9 required to obtain a sales tax permit as provided by Section 1364 of
10 Title 68 of the Oklahoma Statutes, from the Oklahoma Tax Commission,
11 for each commercial auction or commercial consignment location owned
12 or operated by such person, firm, or corporation.

13 B. The Tax Commission shall maintain a list of commercial
14 auction and commercial consignment dealers to whom sales tax permits
15 have been issued and such list shall be made available for public
16 inspection.

17 C. The Tax Commission shall not deny any person, firm, or
18 corporation desiring a sales tax permit for the purpose of becoming
19 a commercial auction or commercial consignments dealer due to
20 insufficient quantity or dollar value of sales necessary to warrant
21 such permit.

22 D. The Tax Commission is authorized to promulgate any rules
23 necessary to implement the provisions of this act.

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1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 11-107 of Title 2, unless there
3 is created a duplication in numbering, reads as follows:

4 The Oklahoma Department of Agriculture, Food, and Forestry shall
5 promulgate rules, procedures, and forms governing the application,
6 the granting of and renewal procedures for commercial auction and
7 commercial consignment dealer licenses.

8 SECTION 8. This act shall become effective November 1, 2022.

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10 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND COMMERCE, dated
11 02/16/2022 - DO PASS.

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