

Regular Session, 2010

HOUSE BILL NO. 1189

BY REPRESENTATIVE WADDELL

MOTOR VEHICLES: Provides relative to the La. Used Motor Vehicle Commission

1 AN ACT

2 To amend and reenact R.S. 32:781(13)(a)(i), 783(F)(3) and (6) and (G), 784(A)(4),  
3 791(A)(1), (B)(1) and (4)(a), (G)(1), and (J), 792(A)(introductory paragraph) and  
4 (B)(introductory paragraph), and 802(D), (F), and (G) and to enact R.S. 32:781(17)  
5 and (18), 784(A)(5) and (D), and 794, relative to the Louisiana Used Motor Vehicle  
6 Commission; to define "used motor vehicle dealer"; to define "public or retail motor  
7 vehicle auction"; to define "wholesale motor vehicle auction"; to provide for the sale  
8 of a used motor vehicle "as is"; to provide for the commission's power to hold  
9 hearings; to establish a license for rental motor vehicle dealers; to authorize off-  
10 premises permits; to provide for the Louisiana Used Motor Vehicle Commission  
11 Fund; to provide for application procedures; to provide for expiration of licenses; to  
12 provide for a bond requirement; to provide for education requirements; to repeal  
13 expired provisions; to provide for denial of a license; to authorize revocation or  
14 suspension of a license, issuance of a civil fine or penalty, or injunction for certain  
15 acts; to provide for wholesale motor vehicle auction violations; to provide for  
16 suspension, revocation, or refusal of a license or permit for committing an unlawful  
17 action during a wholesale motor vehicle auction; to authorize an injunction or civil  
18 fines and penalties for committing an unlawful action during a wholesale motor  
19 vehicle auction; and to provide for related matters.

20 Be it enacted by the Legislature of Louisiana:

1 Section 1. R.S. 32:781(13)(a)(i), 783(F)(3) and (6) and (G), 784(A)(4), 791(A)(1),  
2 (B)(1) and (4)(a), (G)(1), and (J), 792(A)(introductory paragraph) and (B)(introductory  
3 paragraph), and 802(D), (F), and (G) are hereby amended and reenacted and R.S. 32:781(17)  
4 and (18), 784(A)(5) and (D), and 794 are hereby enacted to read as follows:

5 §781. Definitions

6 As used in this Chapter:

7 \* \* \*

8 (13)(a)(i) "Used motor vehicle dealer" means any person, partnership,  
9 corporation, limited liability company, or other entity who, for a commission or with  
10 intent to make a profit or gain of money or other thing of value, buys, sells, brokers,  
11 exchanges, rents with option to purchase, auctions, offers, or attempts to negotiate  
12 a sale or exchange of an interest in used motor vehicles and who is engaged wholly  
13 or in part in the business of buying and selling used motor vehicles, whether such  
14 motor vehicles are owned by such person and whether the motor vehicles are sold  
15 from a dealership location or via any form of advertising, including but not limited  
16 to the Internet. A person shall be presumed to be engaged in the business of selling  
17 used motor vehicles if he sells five or more used motor vehicles in any twelve-month  
18 period which vehicles are not registered to and insured by members of the  
19 individual's household, immediate family members, or legal entities which the  
20 individual has an ownership interest in or is employed by. An entity shall be  
21 presumed to be engaged in the business of selling used motor vehicles if the entity  
22 sells five or more used motor vehicles which are not registered to and insured by the  
23 entity or by an entity affiliated with the entity receiving anything of value.

24 \* \* \*

25 (17) "Public or retail motor vehicle auction" means the act of any person,  
26 partnership, corporation, limited liability company, or other entity engaging in, for  
27 a commission, compensation, or other consideration, the business of providing  
28 vehicle auction services at an established place of business which is not open  
29 exclusively to motor vehicle dealers, dismantlers, and parts recyclers.





1 §791. Application for license; fee; educational seminar; bond requirements; liability  
2 insurance; salesperson's license; location of business

3 A.(1) It shall be unlawful and shall constitute a misdemeanor for any person,  
4 firm, association, corporation, limited liability company, or trust to engage in  
5 business as, or serve in the capacity of, or act as a used motor vehicle dealer, rental  
6 dealer, or used motor vehicle salesperson in this state without first obtaining a  
7 license therefor as provided in this Section.

8 \* \* \*

9 B.(1) Applications for ~~licenses required under the provisions of this Section~~  
10 licensure as a used motor vehicle dealer shall be ~~verified~~ signed by the ~~oath or~~  
11 ~~affirmation of the~~ applicant, shall be on forms prescribed by the commission and  
12 furnished to such applicants, and shall contain such information as the commission  
13 deems necessary to enable it to fully determine the qualifications and eligibility of  
14 the several applicants to receive the license or licenses.

15 \* \* \*

16 (4)(a) All bonds ~~and licenses issued under the provisions of this Part~~ shall  
17 ~~expire on December thirty-first following the date of issue~~ be for the license period  
18 and shall be nontransferable.

19 \* \* \*

20 G.(1) Every ~~person, firm, or corporation before being licensed hereunder~~  
21 applicant for licensure or renewal of a license as a used motor vehicle dealer shall  
22 show proof of responsibility by depositing with the commission a continuing bond  
23 in the amount required herein:

24 (a) ~~of twenty~~ Twenty thousand dollars if the applicant sold less than one  
25 hundred and twenty vehicles during the twelve month period preceding the licensure  
26 period.

27 (b) Thirty-five thousand dollars if the applicant sold one hundred and twenty  
28 or more vehicles during the twelve month period preceding the licensure period.





1 in the lanes at the auction and fail to maintain those video recordings for at least  
2 thirty days following the sale.

3 (8) Fail to use an industry-recognized damage classification system for all  
4 vehicles sold at auction.

5 (9) Engage in fraudulent activity in the auction process.

6 B. Any violation of this Section shall constitute grounds for suspension,  
7 revocation, or refusal to issue or renew any license or permit issued by the  
8 commission.

9 C. Any licensee who violates any of the provisions of this Section may be  
10 subject to an injunction under R.S. 32:786 and fines and penalties provided in R.S.  
11 32:788.

12 \* \* \*

13 §802. License required; application; fee; duration

14 \* \* \*

15 D.~~(1)~~ In addition to the items required to be submitted by applicants for  
16 licensure pursuant to ~~Subsection C~~ of this Section, ~~such applicants who have not~~  
17 ~~been licensed prior to January 1, 2004,~~ shall also submit such evidence as the  
18 commission shall prescribe, documenting that either the applicant or his general  
19 manager, office manager, title clerk, or other responsible representative of the  
20 applicant has attended a four-hour educational seminar or has registered to attend  
21 such seminar within sixty days after issuance of the license.

22 ~~(2) Every person licensed pursuant to Subsection C of this Section prior to~~  
23 ~~January 1, 2004, shall submit such evidence as the commission shall prescribe,~~  
24 ~~documenting that either the person licensed or his general manager, office manager,~~  
25 ~~title clerk, or other responsible representative of the person licensed has attended a~~  
26 ~~four-hour educational seminar prior to August 15, 2004.~~

27 \* \* \*



1 F. All ~~bonds and~~ licenses issued under the provisions of this Part shall expire  
2 on ~~December thirty-first of each year~~ the date indicated on the license and shall be  
3 nontransferable.

4 G. All applications for renewal of licenses hereunder shall be submitted on  
5 or before sixty days prior to ~~December thirty-first of each year~~ the expiration date  
6 indicated on the license. If application has not been made for renewal of licenses,  
7 such licenses shall expire on ~~December thirty-first of the following year~~ the  
8 expiration date indicated on the license, and it shall be a violation of this Part for any  
9 person to represent himself and act thereafter in the capacity and business for which  
10 he was formerly licensed hereunder.

11 \* \* \*

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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Waddell

HB No. 1189

**Abstract:** Authorizes the sale of a used motor vehicle "as is". Amends the procedure and requirements for licensure by the La. Used Motor Vehicle Commission. Provides for a rental dealer license. Provides for unlawful actions during a wholesale motor vehicle auction.

Present law defines "used motor vehicle dealer" as any person who, for a commission or with intent to make a profit or gain of money or other thing of value, buys, sells, brokers, exchanges, rents with option to purchase, auctions, offers, or attempts to negotiate a sale or exchange of an interest in used motor vehicles and who is engaged wholly or in part in the business of buying and selling used motor vehicles, whether such motor vehicles are owned by such person and whether the motor vehicles are sold from a dealership location or via any form of advertising, including but not limited to the Internet.

Proposed law defines "used motor vehicle dealer" as any person, partnership, corporation, limited liability company, or other entity who, for a commission or with intent to make a profit or gain of money or other thing of value, buys, sells, brokers, exchanges, rents with option to purchase, auctions, offers, or attempts to negotiate a sale or exchange of an interest in used motor vehicles and who is engaged wholly or in part in the business of buying and selling used motor vehicles, whether such motor vehicles are owned by such person and whether the motor vehicles are sold from a dealership location or via any form of advertising, including but not limited to the Internet.

Present law provides that a person shall be presumed to be engaged in the business of selling used motor vehicles if he sells five or more used motor vehicles in any 12-month period.

Proposed law provides that a person shall be presumed to be engaged in the business of selling used motor vehicles if he sells five or more used motor vehicles in any 12-month

period which vehicles are not registered to and insured by members of the individual's household, immediate family members, or legal entities which the individual has an ownership interest in or is employed by. An entity shall be presumed to be engaged in the business of selling used motor vehicles if the entity sells five or more used motor vehicles which are not registered to and insured by the entity or by an entity affiliated with the entity receiving anything of value.

Proposed law defines "public or retail motor vehicle auction" as the act of any person, partnership, corporation, limited liability company, or other entity engaging in, for a commission, compensation, or other consideration, the business of providing vehicle auction services at an established place of business which is not open exclusively to motor vehicle dealers, dismantlers, and parts recyclers.

Proposed law defines "wholesale motor vehicle auction" as the act of any person, partnership, corporation, limited liability company, or other entity engaging in, for a commission, compensation, or other consideration, the business of providing wholesale vehicle auction services at an established place of business which is open exclusively to licensed motor vehicle dealers, dismantlers, and parts recyclers.

Present law provides that the La. Used Motor Vehicle Commission's duties include requiring all dealer sales to have a condition of sale, such as warranty disclaimer, implied or written warranty, or a service contract approved by the commission.

Proposed law removes the requirement that the condition of sale be approved by the commission.

Proposed law provides that, if a sale of a used motor vehicle is "as-is" and with a waiver of all warranties, the bill of sale shall include a notice which clearly and unambiguously states that the terms of the sale are "as-is" and with a waiver of all warranties, including any claim for redhibition or reduction of or return of the purchase price.

Proposed law requires the customer to acknowledge the terms of the sale. Proposed law further provides that an acknowledgment of the terms of the sale via acceptance of an electronic notice at any time prior to or as part of the transaction shall constitute compliance with proposed law.

Proposed law provides that, if a used motor vehicle dealer complies with the provisions of proposed law, the purchaser shall not be entitled to a return of the purchase price, a reduction in the purchase price or a repair of the vehicle without payment of the cost of the repair.

Present law provides that the commission's powers include holding and conducting hearings on violations of present law, areas of responsibility disputes, mandatory repurchase disputes, imposing civil penalties, cease and desist orders, and revocation or suspension of licenses.

Proposed law removes the commission's power to hold and conduct hearings on areas of responsibility disputes.

Present law requires all fees and charges under the provisions of present law shall be collected and received by the executive director of the commission and deposited by him in a special fund with the state treasury to be known as the La. Used Motor Vehicle and Parts Commission Fund.

Proposed law removes the requirement that the special fund be with the state treasury and changes the name of the special fund to the La. Used Motor Vehicle Commission Fund.

Proposed law provides that no person, partnership, corporation, limited liability company, or other entity licensed by the La. Used Motor Vehicle Commission shall display any used motor vehicle at any place other than at a facility licensed by the commission, unless an off-

premises permit authorizing the display of such used motor vehicle at the location has been issued by the commission. The commission may issue one off-premises permit to a dealer in any 90-day period authorizing the display of up to five vehicles at an event within 35 miles of the dealer's place of business for a period of up to three days.

Present law provides that it shall be unlawful and shall constitute a misdemeanor for any person, firm, association, corporation, limited liability company, or trust to engage in business as, or serve in the capacity of, or act as a used motor vehicle dealer or used motor vehicle salesperson in this state without first obtaining a license.

Proposed law retains present law but changes used motor vehicle auctions to public or retail motor vehicle auctions and adds whole sale motor vehicle auctions and rental dealer to the list of licensees.

Present law provides that applications for licenses shall be verified by the oath or affirmation of the applicant, shall be on forms prescribed by the commission and furnished to such 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.

Proposed law provides that applications for licensure as a used motor vehicle dealer shall be signed by the applicant, shall be on forms prescribed by the commission and furnished to such 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.

Present law provides that all bonds and licenses for used motor vehicle dealers issued under present law shall expire on Dec. 31 following the date of issue and shall be nontransferable.

Proposed law provides that all bonds shall be for the license period and shall be nontransferable.

Present law provides that every person, firm, or corporation before being licensed as a used motor vehicle dealer shall show proof of responsibility by depositing with the commission a continuing bond in the amount of \$20,000 with a surety authorized to do business in the state, which bond shall be approved by the commission, payable to the state of La. through the commission, and shall be conditioned upon faithful observance of all laws regulated by the commission, including but not limited to laws relating to penalties and hearing costs and to the proper disposition of licenses, tags, or titles, and shall also indemnify any person who suffers any loss by reason of a failure to observe the provisions of the law relating to sales tax, licenses, tags, or titles and shall also indemnify any person who suffers any loss, damages, and expenses by reason of a failure to deliver title and for the proper disposition of all taxes, licenses, and registration fees.

Proposed law provides that every applicant for licensure or renewal of a license as a used motor vehicle dealer shall show proof of responsibility by depositing with the commission a continuing bond in the amount required as follows:

- (1) \$20,000 if the applicant sold less than 120 vehicles during the 12-month period preceding the licensure period.
- (2) \$35,000 if the applicant sold 120 or more vehicles during the 12-month period preceding the licensure period.
- (3) All bonds shall be with a commercial surety authorized to do business in the state, which bond shall be approved by the commission, payable to the state of La. through the commission, and shall be conditioned upon faithful observance of all laws regulated by the commission, including but not limited to laws relating to penalties

and hearing costs and to the proper disposition of licenses, tags, or titles, and shall also indemnify any person who suffers any loss by reason of a failure to observe the provisions of the law relating to sales tax, licenses, tags, or titles and shall also indemnify any person who suffers any loss, damages, and expenses by reason of a failure to deliver title and for the proper disposition of all taxes, licenses, and registration fees.

Present law requires that any new applicants for a license, other than a used motor vehicle dealer's license, who have not been previously licensed prior to Jan. 1, 2004, to submit such evidence as the commission shall prescribe, documenting that either the applicant or his general manager, office manager, title clerk, or other responsible representative of the applicant has attended a four-hour educational seminar or has registered to attend such seminar within 60 days after issuance of the license.

Proposed law removes the required condition that applicants have not been previously licensed prior to Jan. 1, 2004.

Present law requires that every person licensed prior to Jan. 1, 2004, to submit such evidence as the commission shall prescribe, documenting that either the person licensed or his general manager, office manager, title clerk, or other responsible representative of the person licensed has attended a four-hour educational seminar prior to Aug. 15, 2004.

Proposed law repeals present law.

Present law authorizes the commission to deny an application for a license as a used motor vehicle dealer or salesperson for any of the following reasons:

- (1) On satisfactory proof of unfitness of the applicant under the standards established present law or in rules or regulations adopted and promulgated by the commission.
- (2) Being convicted of a felony crime.
- (3) Any material false statement made by the applicant on any application for licensure.
- (4) Where the applicant has, under a previous license, committed a violation of any law or rule or regulation adopted and promulgated by the commission.

Proposed law adds dealer in used parts or used accessories of motor vehicles, used motor vehicle auctioneer, or salesperson to the licenses that may be denied by the commission for any of the enumerated reasons.

Present law authorizes the commission to revoke or suspend a license, issue a fine or penalty, or enjoin a used motor vehicle dealer or salesperson for any of the following conduct:

- (1) A change of condition after the license has been granted resulting in failure to maintain the qualifications for licensure, including but not limited to:
  - (a) Failure to keep an established place of business.
  - (b) Failure to furnish or keep in force garage liability insurance on any vehicle, except for trailers, offered for sale and otherwise required under the financial responsibility laws of this state.
  - (c) Failure to furnish or keep in force any bond required under present law.
  - (d) Use of false, misleading, or unsubstantiated advertising in connection with his business.

- (2) Committing a fraudulent act in selling, purchasing, or dealing in used motor vehicles or misrepresenting the terms and conditions of a sale, purchase, or contract for sale or purchase of a used motor vehicle or any interest including an option to purchase.
- (3) Engaging in his business in such a manner as to cause injury to the public or those with whom he is dealing.
- (4) Knowingly engaging in tampering with, adjusting, altering, changing, setting back, disconnecting, or failing to connect the odometer of any motor vehicle, or causing any of the foregoing to occur to an odometer of a used motor vehicle, so as to reflect a lower mileage than the true mileage driven by the used motor vehicle.
- (5) Employing unlicensed salespersons or other unlicensed persons in connection with the sale of used motor vehicles.
- (6) Not operating from the address shown on his license if this change has not been reported to the commission in either an application for an additional location, or not restricting the location of the display of motor vehicles exclusively to the address shown on his license, except pursuant to a permit for an approved off-site display.
- (7) Parking vehicles on any public roadway or right-of-way for the purpose of displaying vehicles for sale.
- (8) Engaging in a practice of failing to deliver certificates of title to a consumer within the time limitations prescribed in present law.
- (9) Engaging in a practice of failing to submit monthly sales reports to Motor Vehicle Audit by the 20th day of the following month.
- (10) Engaging in a practice of failing to remit sales tax where the tax has been collected by the dealer.
- (11) Engaging in a practice of leaving the certificate of title open or unassigned to the dealer.
- (12) Engaging in a practice of issuing temporary license plates or temporary dealer's plates in violation of the law.
- (13) Failing to maintain records for a period of up to three years.
- (14) Repossessing a vehicle in any manner other than what is allowed by law.
- (15) Requiring consumers to sign and execute a voluntary surrender or other similar document at the time of the sale of a used motor vehicle.

Proposed law adds dealer in used parts or used accessories of motor vehicles, used motor vehicle auctioneer, or salesperson to the licenses that may be revoked or suspended, issued a fine or penalty, or enjoined by the commission for any of the enumerated reasons.

Proposed law provides that it shall be unlawful and constitute a violation for any wholesale motor vehicle auction to:

- (1) Fail to comply with the licensing requirements.
- (2) Fail to comply with any provision relating to the proper disposition of license tags or registrations, transfers of title, or payment of sales taxes connection with the purchase or sale of any new or used motor vehicle, or with any rule or regulation adopted and promulgated by the commission.

- (3) Permit any person other than a licensed dealer or a salesperson who holds a current authorization to bid for a licensed dealer, to bid, offer to bid, participate in the bid process, purchase or offer to purchase a used motor vehicle placed up for bid at the auction.
- (4) Accept cash for a sale from anyone other than a licensed dealer or his agent.
- (5) Permit any person other than a mechanic or technical expert to accompany a licensed dealer to inspect used motor vehicles prior to the vehicle being placed up for bid at the auction.
- (6) Fail to disclose that a sale took place off the block or out of the auction ring by providing red-stamped verification on the auction bill of sale or invoice, with the lettering on the stamp to be no less than half-inch print size.
- (7) Fail to implement, within six months, following the effective date of proposed law, an audio video recording system which will properly verify sales occurring in the lanes at the auction and fail to maintain those video recordings for at least 30 days following the sale.
- (8) Fail to use an industry-recognized damage classification system for all vehicles sold at auction.
- (9) Engage in fraudulent activity in the auction process.

Proposed law provides that any violation of proposed law shall constitute grounds for suspension, revocation, or refusal to issue or renew any license or permit issued by the commission.

Proposed law provides that any licensee who violates any of the provisions proposed law may be subject to an injunction and civil penalties.

Present law provides that applicants who have not been licensed as an automotive dismantler and parts recycler, automotive dismantler and parts recycler salesperson, or motor vehicle crusher prior to Jan. 1, 2004, shall also submit such evidence as the commission shall prescribe, documenting that either the applicant or his general manager, office manager, title clerk, or other responsible representative of the applicant has attended a four-hour educational seminar or has registered to attend such seminar within 60 days after issuance of the license.

Proposed law removes the required condition that applicants have not been previously licensed prior to Jan. 1, 2004.

Present law requires every person licensed as an automotive dismantler and parts recycler, automotive dismantler and parts recycler salesperson, or motor vehicle crusher prior to Jan. 1, 2004, shall submit such evidence as the commission shall prescribe, documenting that either the person licensed or his general manager, office manager, title clerk, or other responsible representative of the person licensed has attended a four-hour educational seminar prior to Aug. 15, 2004.

Proposed law repeals present law.

Present law provides that all bonds and licenses issued under the provisions of present law shall expire on Dec. 31 of each year and shall be nontransferable.

Proposed law provides that all licenses issued under the provisions of proposed law shall expire on the date indicated on the license and shall be nontransferable.

Present law provides that all applications for renewal of licenses for dismantlers and parts recyclers shall be submitted on or before 60 days prior to Dec. 31 of each year. If application has not been made for renewal of licenses, such licenses shall expire on Dec. 31 of the following year and it shall be a violation of present law for any person to represent himself and act thereafter in the capacity and business for which he was formerly licensed.

Proposed law provides that all applications for renewal of licenses shall be submitted on or before 60 days prior to the expiration date indicated on the license. If application has not been made for renewal of licenses, such licenses shall expire on the expiration date indicated on the license, and it shall be a violation of proposed law for any person to represent himself and act thereafter in the capacity and business for which he was formerly licensed.

(Amends R.S. 32:781(13)(a)(i), 783(F)(3) and (6) and (G), 791(A)(1), (B)(1) and (4)(a), (G)(1), and (J), 792(A)(intro. para.) and (B)(intro. para.), and 802(D), (F), and (G); Adds R.S. 32:781(17) and (18), 784(A)(5) and (D), and 794)

#### Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Changed "used motor vehicle auction" to "wholesale motor vehicle auction".
2. Added a definition for "public or retail motor vehicle auction".
3. Added a definition for "wholesale motor vehicle auction".
4. Changed the requirement that the salesperson explain the terms of the sale and obtain the customer's written acknowledgment to a requirement that the customer acknowledge the terms of the sale.
5. Added a provision allowing acknowledgment of the terms of the sale via acceptance of an electronic notice at any time prior to or as part of the transaction.
6. Added rental dealer as a category of licensure.
7. Added a provision to allow the La. Used Motor Vehicle Commission to issue off-premises permits for up to five vehicles at an event within 35 miles of the dealer's place of business for a period of up to three days.
8. Added a provision to change the expiration date of licenses for dismantlers and parts recyclers from Dec. 31 to the expiration date indicated on the license.

#### House Floor Amendments to the engrossed bill.

1. Made technical corrections.
2. Clarified that "public or retail motor vehicle auction" is the act of engaging in the business of providing vehicle auction services.
3. Clarified that "wholesale motor vehicle auction" is the act of engaging in the business of providing vehicle auction services.
4. Clarified that dealers, dismantlers, and auctions are to be licensed.
5. Added a provision that no person shall engage in public or retail motor vehicle auctions, wholesale motor vehicle auctions, or salvage pools that deal in used

motor vehicles without a license issued by the La. Used Motor Vehicle Commission.

6. Limited the number of off-premises permits that may be authorized by the La. Used Motor Vehicle Commission to one permit per dealer in any 90-day period.