

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

CONFERENCE COMMITTEE
SUBSTITUTE FOR ENGROSSED
HOUSE BILL NO. 1446

By: Glover of the House

and

Stipe and Williams (Don)
of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to motor vehicles; amending 47 O.S. 1991, Section 1143, 1145 and 1146, which relate to motor license agents; modifying fees out of which certain expenses paid; providing for payment of certain expenses prior to retention of compensation; modifying compensation of motor license agent; clarifying statutory citation; modifying type of expenses of the operation of the motor license agency to be paid; modifying time period for determining operating reserve; modifying due date for operating reserve to be sent to Tax Commission; providing for review of operating reserve at certain time; changing due date for certain report; modifying time period of report; requiring motor license agents to file certain reports; requiring Oklahoma Tax Commission to audit all motor license agents; modifying time period of certain audits; defining term; requiring analysis and review of all motor license agencies; modifying time period of certain review; deleting certain review requirements; providing for motor license agents to obtain and retain certain lease rate documentation; requiring certain summary to be attached to certain financial statement; repealing 47 O.S. 1991, Section 1146.1, which relates to exception to allowable expenses of motor license agency; and providing an effective date.

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

SECTION 1. AMENDATORY 47 O.S. 1991, Section 1143, is amended to read as follows:

Section 1143. A. A motor license agent ~~appointed under the provisions of this title~~, out of the ~~motor license agent taxes and fees~~ ~~so~~ collected and retained pursuant to Section 1141.1 of this title, and after payment of allowable expenses of the motor license agency as defined in subsection C of Section 1146 of this title, shall retain the following as his ~~compensation a maximum~~

~~sum of Thirty Thousand Dollars (\$30,000.00) per year, plus all allowable personal income:~~

1. All amounts remaining from notary and mailing fees received by such agent and all, after payment of all costs of handling and mailing;

2. All profits from any concessions operated in the agent's office; and

3. An additional maximum amount of Thirty Thousand Dollars (\$30,000.00) for the calendar year beginning January 1, 1993. Such additional maximum amount for succeeding calendar years shall be adjusted upward or downward based on the percentage change in the U.S. Consumer Price Index for the immediately preceding calendar year, as determined by the U.S. Bureau of Labor Statistics.

B. A motor license agent shall receive a fee of not more than One Dollar (\$1.00) for each document notarized and a fee of fifty cents (\$0.50) for any documents mailed. All motor license agent fees shall be deposited in the school general fund and shall be distributed after the payment of expenses as provided for in the Oklahoma Vehicle License and Registration Act.

C. The Oklahoma Tax Commission shall initiate a mail order vehicle registration notification program, which shall consist of notification annually to all vehicle owners in this state of such time an owner shall register and license his vehicle as provided for in Section 1101 et seq. of this act title. The notification issued by the Commission shall include a breakdown of all charges to be paid by the owner, other items deemed necessary by the Commission and shall notify the owner that he has the option of paying his registration and receiving his license plate or decal through the mail directly from the Commission or of registering and receiving his license plate or decal from a motor license agent. On the back of such registration notification forms ordered after the effective date of this act there shall be the address of the Oklahoma Tax Commission in large black type and an explanation of the apportionment of all license fees and penalties collected and their disposition. Such explanation shall include

information as to all charges included in the total license fee and any fees or charges incident to the registration of a motor vehicle, to include all fees that a motor license agent is authorized to collect. If the owner chooses the option of receiving these services through the mail, either from the Commission or the motor license agent, he shall then be instructed to pay the final total listed. The costs of mailing shall be One Dollar (\$1.00) for license plates, fifty cents (\$0.50) for decals and fifty cents (\$0.50) for the mailing of any other form, title, decal or device provided for in the Oklahoma Vehicle License and Registration Act. Provided however, the Commission may adjust any mailing costs from time to time as they deem appropriate and as will allow for additional fees the U.S. Postal Service may charge. ~~Any amount retained by the motor license agent to defray costs of handling and mailing that is in excess of the amount needed for such expenses shall be retained by the agent as part of his compensation as herein provided.~~

D. Money received by the Commission for the issuance of any registrations, license plates or otherwise shall be apportioned to the schools in accordance with other laws controlling such distributions.

E. Failure by an owner of a vehicle to receive registration notification as provided for in the Motor Vehicle License and Registration Act shall not in any manner relieve such person from the obligation of proper and timely registration and licensing of such vehicle, and such person shall be subject to any penalties prescribed by the Oklahoma Vehicle License and Registration Act.

F. A motor license agent, out of the taxes and fees collected under the provisions of this title, shall obtain a faithful performance surety bond or cash bond in the amount of Thirty Thousand Dollars (\$30,000.00) or in such additional amount and form required by the Commission or by this act, a blanket surety bond or cash bond covering adequately all office personnel, necessary insurance, necessary office equipment and furniture, and other goods and services essential to the proper operation of the motor license agent office. Provided that the Commission shall

have the authority to lower such required surety bond to an amount that is commensurate with the amount of business conducted by the motor license agent, but in no event shall that amount be less than Five Thousand Dollars (\$5,000.00). Motor license agents shall obtain the surety bond or cash bond required by this section only during their first year of operation. Thereafter, the motor license agents shall be subject to the provisions of Section ~~3~~ 1143.1 of this ~~act~~ title.

SECTION 2. AMENDATORY 47 O.S. 1991, Section 1145, is amended to read as follows:

Section 1145. After the payment of the actual itemized ~~necessary~~ allowable expenses of the operation of the office of a motor license agency ~~has~~ have been determined and paid, including reasonable business losses of whatever nature not resulting from the actual negligence or malfeasance of said agent, there shall be set aside by the motor license agent an operating reserve to provide for the continued operation of a motor license agency at that same location or by the same appointed motor license agent. The amount of such reserve shall be not more than ten percent (10%) of an average of the annual agency fees for the most recent five-year period or of an average of the agency fees for the period in operation if less than five (5) years. The amount of the reserve of each motor license agency shall be determined at the end of each ~~fiscal~~ calendar year and any amount over the ten-percent reserve shall be forwarded to the Oklahoma Tax Commission before ~~September 30~~ April 1 of each year to be distributed in the same manner as provided for other motor license agency monies. The reserve shall be used to pay any ~~necessary expense~~ allowable expenses of the agency. ~~The~~ A review of the operating reserve of any agency shall be audited each year by the auditor responsible for the audit of said agency. Each expense paid from this reserve shall be documented and reported in the audit. The provisions of this section shall apply to any reserve on hand on or after the effective date of this act made whenever such a review of the fees received and expenditures made by the

agency is required by the State Auditor and Inspector pursuant to subsection D of Section 1146 of this title.

SECTION 3. AMENDATORY 47 O.S. 1991, Section 1146, is amended to read as follows:

Section 1146. A. Before ~~October~~ April 1 of each year and as of the last day of operation of an agent, all motor license agents shall ~~forward~~ file with the State Auditor and Inspector and the Oklahoma Tax Commission a complete financial statement and inventory on a form prescribed by the State Auditor and Inspector covering all expenses and disbursements out of all taxes and fees collected by such agents during the ~~last completed fiscal~~ preceding calendar year or during the current ~~fiscal~~ calendar year through the last day of operation of the agent ~~to the State Auditor and Inspector and to the Oklahoma Tax Commission.~~ The Commission shall audit ~~such~~ all motor license agents at least once during each ~~fiscal~~ calendar year and shall have the power to require any changes it deems necessary in the operation of ~~these~~ motor license agents. The Commission shall issue such rules ~~and regulations~~ as it deems necessary for the proper control of all fiscal matters involving ~~these~~ motor license agents.

B. No person employed in the office of a motor license agent performing duties imposed by law upon such office shall receive a salary that exceeds seventy percent (70%) of the maximum annual compensation designated by law for the motor license agent provided, however, any such employee who has been so employed in excess of five (5) years may be compensated by an additional five percent (5%) of such maximum annual compensation for each year in excess of five (5) years employment not exceeding a total of twenty-five percent (25%). The provisions of this ~~section~~ subsection shall not apply to the Commission.

~~For motor license agencies that collect agency fees of less than Seventy-five Thousand Dollars (\$75,000.00) a year, the~~

C. The allowable expenses of a motor license agency shall be the ordinary and necessary expenses allowed small businesses pursuant to the Federal Internal Revenue Code, 26 U.S.C., Section 1 et seq.

D. The State Auditor and Inspector, annually, shall make a review of analyze the financial statements statement and inventory. For motor license agencies that collect agency fees of Seventy-five Thousand Dollars (\$75,000.00) or more a year, filed by each motor license agent pursuant to subsection A of this section. After the analysis, the State Auditor and Inspector may, if deemed necessary or advisable, require a review examination of the fees received and expenditures made by an agency, which review shall be made in accordance with auditing guidelines prepared by the State Auditor and Inspector and the standards established by the American Institute of Certified Public Accounting Accountants by a licensed public accountant or a certified public accountant holding a permit to practice in this state at least once each fiscal year, and as of the end of the day before a newly appointed motor license agent assumes office. A copy of the review examination shall be forwarded to the State Auditor and Inspector and the Tax Commission. The State Auditor and Inspector and the Tax Commission shall evaluate the review examinations reviews and may conduct any further audits or examinations as deemed necessary. Except as otherwise provided by law, the allowable expenses of a motor license agency shall be the ordinary and necessary expenses allowed small businesses pursuant to the Federal Internal Revenue Code, 26 U.S.C., Section 1 et seq. All review examinations required pursuant to this subsection shall be in compliance with all laws affecting the operation of motor license agencies and in accordance with an audit guide established by the State Auditor and Inspector. Any review examination or audit of a motor license agency performed by the Oklahoma Tax Commission or, the State Auditor and Inspector or, a licensed public accountant or a certified public accountant, pursuant to the provisions of Sections 1140 through 1147 of this title shall be an open record and shall be made available for public inspection at the Oklahoma Tax Commission, notwithstanding the provisions of Section 205 of Title 68 of the Oklahoma Statutes.

E. Any motor license agent whose budgeted compensation is the same as the maximum amount as provided for in this act, Section

1101 et seq. of this title, shall hold all real and personal property leased or purchased from the operating expense budget of the agency in trust as the property of the agency for use in the operation of the agency and for no other purpose and, upon the resignation, removal or death of such agent, such property shall be transferred to the successor agent. The Commission shall establish a beginning inventory and maintain records of all real and personal property leased or owned by each motor license agent and shall annually update its records as to any interest, whether partial or whole, held by the motor license agent in such real and personal property. Upon the appointment of a successor agent, the Commission shall have the power to provide for the equitable settlement of any issue arising from any partial interests involved in such real and personal property. Provided however, that the property may be transferred to the Commission to be held or used by the Commission until such time as a successor agent is appointed and qualified as provided in this act.

~~B.~~ F. The following restrictions and requirements shall apply to all motor license agents:

1. All purchases in excess of One Thousand Dollars (\$1,000.00) made by a motor license agent who collects fees in excess of Seventy-five Thousand Dollars (\$75,000.00) per year shall be identified in each review ~~examination~~ and shall be accompanied by at least (3) quotes or bids showing that the purchase was at the lowest price available in the agent's local area;

2. No motor license agent shall enter into a lease or sublease, for use in a motor license agency or in the conduct of agency business for any furniture, equipment, machinery, vehicles or other items from any entity in which the agent or any person related to the agent within the third degree by consanguinity or affinity has a financial interest. Such motor license agent may, however, locate or continue to locate a motor license agency in a building owned by said agent or by a person related to the agent within the third degree by consanguinity or affinity. In such case, the ~~Office of Public Affairs must appraise such office space~~

~~to be leased and approve any leasing agreement~~ motor license agent shall, during each calendar year, obtain documentation of the lease rate for at least three comparable building spaces within a radius of two (2) miles of said motor license agency, shall retain such documentation within the office of said motor license agency for three (3) years, and shall attach a summary of the documentation to his annual financial statement; and

3. Any and all records, files, books or otherwise of a motor license agent relating to the operation of the motor license agency shall be public record which shall be open to public inspection at reasonable times, regardless of their location.

SECTION 4. REPEALER 47 O.S. 1991, Section 1146.1, is hereby repealed.

SECTION 5. This act shall become effective September 1, 1993.

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