O K L A H O M A   S T A T E   S E N A T E
CONFERENCE
COMMITTEE REPORT

May 10, 2021

Mr. President:
Mr. Speaker:
The Conference Committee, to which was referred

SB463

By: Hall of the Senate and Kannady and Manger of the House

Title: Motor license agents; modifying basis for removal of motor license agents; deleting requirement for Tax Commission to remove motor license agent for noncompliance and violation. Effective date

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together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the House recede from all Amendments.

2. By restoring the Enacting Clause.

3. By restoring the title as follows:

"An Act relating to motor license agents; amending 47 O.S. 2011, Sections 1140, as last amended by Section 2, Chapter 195, O.S.L. 2019, 1142 and 1142.1, as last amended by Section 4, Chapter 195, O.S.L. 2019 (47 O.S. Supp. 2020, Section 1140 and 1142.1) which relate to qualifications, requirements and removal; modifying basis for removal of motor license agents; providing for removal hearing under Administrative Procedures Act; providing definition; conforming language; amending 75 O.S. 2011, Section 250.4, as last amended by Section 214, Chapter 408, O.S.L. 2019 (75 O.S. Supp. 2020, Section 250.4) which relates to the Administrative Procedures Act exemptions; removing certain exemption; and providing an effective date."

Respectfully submitted,

SENATE CONFEREES:

Hall | Kirt
Rader | Rosino
Cari Hicks
Hicks | Simpson

HOUSE CONFEREES:

Conference Committee on Public Safety

Senate Action______________Date__________ House Action______________Date__________

SB463 CCR (A)
HOUSE CONFEREES

Gann, Tom	Goodwin, Regina
Hardin, David	Humphrey, Justin
Lowe, Jason	Manger, Robert
May, Stan	Steagall, Jay
Williams, Danny	

ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 463 By: Hall of the Senate

and

Kannady of the House

[motor license agents - removal of motor license agents - noncompliance and violation - effective date]

AUTHOR: Add the following House Coauthor: Manger

AMENDMENT NO. 1. Page 1, Line 10, strike the Enacting Clause

Passed the House of Representatives the 21st day of April, 2021.

____
Presiding Officer of the House of Representatives

Passed the Senate the ____ day of __________, 2021.

____
Presiding Officer of the Senate

ENGROSSED SENATE
BILL NO. 463

By: Hall of the Senate

and

Kannady of the House

[motor license agents - removal of motor license agents - noncompliance and violation - effective date]

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

SECTION 1. AMENDATORY 47 O.S. 2011, Section 1140, as last amended by Section 2, Chapter 195, O.S.L. 2019 (47 O.S. Supp. 2020, Section 1140), is amended to read as follows:

Section 1140. A. The Oklahoma Tax Commission shall adopt rules prescribing minimum qualifications and requirements for locating motor license agencies and for persons applying for appointment as a motor license agent. Such qualifications and requirements shall include, but not be limited to, the following:

1. Necessary job skills and experience;

2. Minimum office hours;

3. Provision for sufficient staffing, equipment, office space and parking to provide maximum efficiency and maximum convenience to the public;

(Floor Amendments Only) Date and Time Filed: ____________

☐ Untimely ☐ Amendment Cycle Extended ☐ Secondary Amendment

4. Obtainment of a faithful performance surety bond as provided for by law;

5. In counties with a population in excess of thirty thousand (30,000) persons according to the latest Federal Decennial Census, a requirement that operation of a motor license agency be the primary source of income for the agent;

6. That the applicant has not been convicted of a felony and that no felony charges are pending against the applicant;

7. That a complete financial statement be submitted by the applicant on forms provided by the Tax Commission;

8. That a report of the applicant's credit history be obtained through the appropriate credit bureau; and

9. That the location specified in the application for appointment as a motor license agent not be owned by a member of the Oklahoma Tax Commission or an employee of the Oklahoma Tax Commission or any person related to a member of the Oklahoma Tax Commission or an employee of the Tax Commission within the third degree by consanguinity or affinity and that the location not be within a three-mile radius of an existing motor license agency unless the applicant is assuming the location of an operating agency. If the applicant is assuming the location of an existing or operating agency, the current agent may submit a letter of resignation contingent upon the appointment of the applicant regardless of the population of the municipality in which the agency

is located. The Tax Commission may, at its discretion, approve the relocation of an existing agency within a three-mile radius of another existing agency only if a naturally intervening geographic barrier within that radius causes the locations to be separated by not less than three (3) miles of roadway by the most direct route.

B. After the necessary information has been forwarded to the Tax Commission, the Tax Commission or its designees may select applicants to be interviewed and each item of information shall be reviewed.

Any person making application to the Tax Commission for the purpose of becoming a motor license agent shall pay when submitting the application, a nonrefundable application fee of One Hundred Dollars ($100.00). All such application fees shall be deposited in the Oklahoma Tax Commission Revolving Fund.

C. Upon application by a person to serve as a motor license agent, in such counties, the Tax Commission is authorized to make a determination whether such person and such location meets the qualifications and requirements prescribed herein and, if such be the case, may appoint such person to serve as a motor license agent.

D. A motor license agent, appointed pursuant to this subsection, shall be permitted to operate a motor license agency at a single location and shall be prohibited from operating subagencies or branch agencies.

Motor license agents appointed pursuant to this section shall be subject to all laws relating to motor license agents and shall be subject to removal ~~at the will of~~ for cause by the Tax Commission. Any action taken by the Tax Commission to remove a motor license agent from his or her position shall be pursuant to and in accordance with the provisions of the Administrative Procedures Act. For the purposes of this section, "for cause" shall be defined as follows:

1. Repeated violations of written rules, regulations and statutes pertaining to motor license agents after written warning by the Tax Commission and an opportunity to correct such violations;

2. Failure of the motor license agent to promptly remit funds owed to the Tax Commission upon written demand;

3. Being charged with a felony crime involving dishonesty or moral turpitude;

4. Failure to timely file state and federal income tax returns; or

5. Any act of official misconduct as set forth in Section 93 of Title 51 of the Oklahoma Statutes.

The Tax Commission shall appoint as many motor license agents as it deems necessary to carry out the provisions of the Motor Vehicle License and Registration Act. Provided, that in counties with a population in excess of twenty-five thousand (25,000) persons, according to the latest Federal Decennial Census, having only one motor license agent serving the county, the Tax Commission shall establish at least one additional agency to serve the county.

E. All motor license agents shall be self-employed independent contractors and shall be under the supervision of the Tax Commission; provided, any agent authorized to issue registrations pursuant to the International Registration Plan shall also be under the supervision of the Corporation Commission, subject to rules promulgated by the Corporation Commission pursuant to the provisions of subsection E of Section 1166 of this title. Any such agent, upon being appointed, shall furnish and file with the Tax Commission a bond in such amount as may be fixed by the Tax Commission. Such agent shall be removable at the will of the Tax Commission. Such agent shall perform all duties and do such things in the administration of the laws of this state as shall be enjoined upon and required by the Tax Commission or the Corporation Commission. Provided, the Tax Commission may operate a motor license agency in any county where a vacancy occurs.

F. In the event of a vacancy existing by reason of resignation, removal, death or otherwise, in the position of any motor license agent, the Tax Commission is hereby empowered and authorized to take any and all actions it deems appropriate in order to provide for the orderly transition and for the maintenance of operations of the motor license agency including but not limited to the designation of one of its regular employees to serve as "acting agent" without bond, and to receive and expend all fees or charges authorized or provided by law and exercise the same powers and authority as a regularly appointed motor license agent. An acting agent may be authorized by the Tax Commission equally as the preceding agent to make disbursements from any balances in the preceding motor license agent's operating account and the agent's operating funds for the payment of expenses of operations and salaries and other overhead. If such funds are insufficient, the Tax Commission is authorized to expend from funds appropriated for the operation of the Tax Commission such amounts as are necessary to maintain and continue the operation of any such motor license agency until a successor agent is appointed and qualified. The Tax Commission may require a blanket fiduciary bond of the agency employees.

G. ~~Any motor license agency operated by a motor license agent who has been charged with a felony shall be closed immediately. The Tax Commission shall determine whether the motor license agency shall be reopened and operated by the motor license agent. The determination shall be effected as soon as possible to prevent additional inconvenience to the public.~~

~~H.~~ When an application for registration is made with the Tax Commission, Corporation Commission or a motor license agent, a registration fee of One Dollar and seventy-five cents ($1.75) shall be collected for each license plate or decal issued. Such fees shall be in addition to the registration fees on motor vehicles and when an application for registration is made to the motor license agent such motor license agent shall retain a fee as provided in Section 1141.1 of this title. When the fee is paid by a person making application directly with the Tax Commission or Corporation Commission, as applicable, the registration fees shall be in the same amount as provided for motor license agents and the fee provided by Section 1141.1 of this title shall be deposited in the Oklahoma Tax Commission Revolving Fund or as provided in Section 1167 of this title, as applicable. The Tax Commission shall prepare schedules of registration fees and charges for titles which shall include the fees for such agents and all fees and charges paid by a person shall be listed separately on the application and registration and totaled on the application and registration. The motor license agents shall charge only such fees as are specifically provided for by law, and all such authorized fees shall be posted in such a manner that any person shall have notice of all fees that are imposed by law.

~~I.~~ H. No person shall be appointed as a motor license agent unless the person has attested under oath that the person is not related by affinity or consanguinity within the third degree to:

1. Any member of the Oklahoma Tax Commission; or

2. Any employee of the Tax Commission.

~~J.~~ I. Any motor license agent appointed under the provisions of this title shall be responsible for all costs incurred by the Tax

Commission when relocating an existing motor license agency. The Tax Commission may waive payment of such costs in case of unforeseen business or emergency conditions beyond the control of the agent.

SECTION 2. AMENDATORY 47 O.S. 2011, Section 1142, is amended to read as follows:

Section 1142. A. There is hereby created as an official depository of the Oklahoma Tax Commission a special agency account. The Tax Commission is hereby authorized and directed to assign an appropriate and distinctive number or designation for the account herein created which shall be designated the Oklahoma Tax Commission Motor License Agent Account. The Tax Commission shall assign an appropriate and distinctive subaccount number or designation for each motor license agent. Every motor license agent appointed under the provisions of the Oklahoma Vehicle License and Registration Act shall safeguard and preserve, in the manner herein required, all monies paid to such agent which the agent is bound to account for and pay over to the Tax Commission.

B. Each motor license agent shall establish, in a bank or banks authorized to do a banking business in the state, such special agency account and at any time that the motor license agent accumulates a total amount of receipts of One Hundred Dollars ($100.00) or more then such motor license agent shall deposit within a period of one (1) banking business day after the close of business, all receipts which the agent is obligated to account for and remit to the Tax Commission in the designated Oklahoma Tax Commission Motor License Agent Account and no such monies shall be deposited in any other banks or other depositories unless the said bank accounts are maintained by the Tax Commission. Provided that, where a motor license agent is doing business in a municipality where there is no bank located, such motor license agent shall have a period of three (3) banking business days after the close of business to make such deposits. Advice of deposit receipts or duplicate deposit receipts, in a form and in an amount prescribed by the Tax Commission, shall be obtained and preserved as directed by the Tax Commission. One shall be retained by the agent, and one shall be immediately forwarded to the Tax Commission. Withdrawals or transfers from such Oklahoma Tax Commission Motor License Agent Account shall be made only by the duly authorized agent of the Tax Commission. That part of the agent's fees to be retained by the agent as the agent's personal compensation shall not be deposited in said Oklahoma Tax Commission Motor License Agent Account.

Each motor license agent shall submit the appropriate reports designated by the Tax Commission to properly account for all funds, regardless of source, received by a motor license agent in the performance of the agent's duties. Reports shall cover a period from the first day of the month to the fifteenth day of the month and from the sixteenth day of the month to the last day of the month. It shall be the responsibility of the motor license agent to mail or deliver such reports and all documents of all transactions to the Tax Commission within a time period to be established by the Tax Commission.

C. Motor license agents shall deposit in such account all monies, taxes and fees collected and received by them as such agents, which they are obligated to account for and remit to the Tax Commission, and it is specifically required that checks or similar instruments accepted or received by such agents for taxes or fees must be deposited in such account, less any amount provided by this act that the agents are entitled to retain as fees.

No motor license agent shall withdraw any funds from the agent's motor license agent account. All checks, drafts, orders and vouchers so deposited shall bear an endorsement to the motor license agent account which endorsement shall include the assigned account number and the agent's subaccount number. Items deposited shall be credited at par and should payment be refused on any such check, draft, order or voucher, or should the same prove otherwise worthless, the amount thereof shall not be charged by the Tax Commission against the individual subaccounts of the agent. The agent shall continue to attempt to require proper payment of all such worthless items, but shall not be personally liable to the Tax Commission for their payment. The Tax Commission or agent shall charge the person issuing the check a fee of Twenty-five Dollars ($25.00) for each check to cover the costs of the processing of each returned check, and all necessary travel expenses of collection, as provided by the State Travel Reimbursement Act; provided, such charge shall not be made unless efforts have been made to present such check, draft, order or voucher for payment a second time. Any motor license agent who collects a dishonored check pursuant to the provisions of Section 1121 of this title shall also collect a fee of Twenty-five Dollars ($25.00) and shall be entitled to retain such fee.

D. Notwithstanding anything to the contrary, the Tax Commission shall continue to have the exclusive authority and standing to collect any taxes or other revenues owed to the State of Oklahoma or any political subdivision thereof pursuant to the provisions of the Motor Vehicle License and Registration Act.

E. It is specifically provided that nothing in this section shall be considered or construed as in any way affecting, relieving or relinquishing the liability of such agent to the Tax Commission for any monies collected by the agent and due the state or the liability of such agent or any surety on or under the agent's bond made to the Tax Commission.

Unless provided otherwise, any motor license agent who fails to comply with any provision of this section shall pay a penalty to be imposed by the Tax Commission. Monies collected for payment of the penalty shall be deposited to the credit of the General Revenue Fund of the State Treasury. Any motor license agent who pays a penalty pursuant to this section shall not allocate his or her payment thereof as a part of his or her operating expenses, but shall use his or her personal funds for payment of the penalty. Such penalty shall be equal to one percent (1%) of the gross amount of the receipts received by the motor license agent for that particular day that the agent fails to deposit all such funds required by this section or one percent (1%) of the gross amount of the receipts received by the motor license agent for the report period that the agent fails to timely mail the required report or remit any excess agent funds as provided in subsection B of this section. Such penalty shall be increased to three percent (3%) of the gross amount of the receipts received for that particular day if the motor license agent fails to fulfill any of said requirements within a period of five (5) days. Provided that such penalty shall be three percent (3%) of the gross amount of the receipts received by the motor license agent for the report period that the agent fails to timely mail the required report or remit any excess agent funds as provided in subsection B of this section if the motor license agent fails to fulfill these requirements within five (5) days.

The Tax Commission may waive the penalty for failing to timely file the accounting report required by this section if the Tax Commission finds that:

1. The funds to which the report applies have been properly deposited;

2. The failure to timely file the report was due to emergency conditions beyond the control of the agent; and

3. The report has been filed within a week of the date on which it was required to be filed.

~~It shall be the duty of the Tax Commission to discharge immediately any motor license agent who fails, neglects or refuses to comply with the provisions of this section.~~

SECTION 3. AMENDATORY 47 O.S. 2011, Section 1142.1, as amended by Section 4, Chapter 195, O.S.L. 2019 (47 O.S. Supp. 2020, Section 1142.1), is amended to read as follows:

Section 1142.1. A. It shall be unlawful for any motor license agent or any employee of such motor license agent to carry on a messenger service, courier service or pick up and delivery service for the recording of a security interest or for the registration of a motor vehicle or boat or a motor, or obtaining license plates and decals, or for the issuance of a certificate of title for any motor vehicle or boat or motor. Provided, nothing in this subsection shall be construed to prevent a motor license agent or any employee of such motor license agent from performing such services for the motor license agent's depository bank, when the motor license agent or his employee goes to the agent's depository bank to deposit tax monies into the agent's designated Oklahoma Tax Commission Motor License Agent Account. After September 1, 1991, the Oklahoma Tax Commission shall not designate or assign a motor license agent more than one active Oklahoma Tax Commission Motor License Agent Account. Accounts designated prior to September 1, 1991, may remain active.

B. It shall be unlawful for any motor license agent to compensate in any manner a messenger service, courier service or pick up and delivery service or any one attempting to provide messenger service, courier service or pick up and delivery service for recording a security interest or for the registration of a motor vehicle or boat or motor, or obtaining license plates and decals, or for the issuance of a certificate of title for any motor vehicle or boat or motor.

C. A motor license agent who violates the provisions of this section shall be subject to a fine of Two Thousand Dollars ($2,000.00) per occurrence ~~and shall be removed immediately by the Oklahoma Tax Commission~~.

SECTION 4. AMENDATORY 75 O.S. 2011, Section 250.4, as last amended by Section 214, Chapter 408, O.S.L. 2019 (75 O.S. Supp. 2020, Section 250.4), is amended to read as follows:

Section 250.4. A. 1. Except as is otherwise specifically provided in this subsection, each agency is required to comply with Article I of the Administrative Procedures Act.

2. The Corporation Commission shall be required to comply with the provisions of Article I of the Administrative Procedures Act except for subsections A, B, C and E of Section 303 of this title and Section 306 of this title. To the extent of any conflict or

inconsistency with Article I of the Administrative Procedures Act, pursuant to Section 35 of Article IX of the Oklahoma Constitution, it is expressly declared that Article I of the Administrative Procedures Act is an amendment to and alteration of Sections 18 through 34 of Article IX of the Oklahoma Constitution.

3. The Oklahoma Military Department shall be exempt from the provisions of Article I of the Administrative Procedures Act to the extent it exercises its responsibility for military affairs. Military publications, as defined in Section 801 of Title 44 of the Oklahoma Statutes, shall be exempt from the provisions of Article I and Article II of the Administrative Procedures Act, except as provided in Section 251 of this title.

4. The Oklahoma Ordnance Works Authority, the Northeast Oklahoma Public Facilities Authority, the Oklahoma Office of Homeland Security and the Board of Trustees of the Oklahoma College Savings Plan shall be exempt from Article I of the Administrative Procedures Act.

5. The Transportation Commission and the Department of Transportation shall be exempt from Article I of the Administrative Procedures Act to the extent they exercise their authority in adopting standard specifications, special provisions, plans, design standards, testing procedures, federally imposed requirements and generally recognized standards, project planning and programming, and the operation and control of the State Highway System.

6. The Oklahoma State Regents for Higher Education shall be exempt from Article I of the Administrative Procedures Act with respect to:

a. prescribing standards of higher education,

b. prescribing functions and courses of study in each institution to conform to the standards,

c. granting of degrees and other forms of academic recognition for completion of the prescribed courses,

d. allocation of state-appropriated funds, and

e. fees within the limits prescribed by the Legislature.

7. Institutional governing boards within The Oklahoma State System of Higher Education shall be exempt from Article I of the Administrative Procedures Act.

8. a. The Commissioner of Public Safety shall be exempt from Sections 303.1, 304, 307.1, 308 and 308.1 of this title insofar as it is necessary to promulgate rules pursuant to the Oklahoma Motor Carrier Safety and Hazardous Materials Transportation Act, to maintain a current incorporation of federal motor carrier safety and hazardous material regulations, or pursuant to Chapter 6 of Title 47 of the Oklahoma Statutes, to maintain a current incorporation of federal commercial driver license regulations, for which the Commissioner has no discretion when the state is mandated to

promulgate rules identical to federal rules and regulations.

b. Such rules may be adopted by the Commissioner and shall be deemed promulgated twenty (20) days after notice of adoption is published in "The Oklahoma Register". Such publication need not set forth the full text of the rule but may incorporate the federal rules and regulations by reference.

c. Such copies of promulgated rules shall be filed with the Secretary as required by Section 251 of this title.

d. For any rules for which the Commissioner has discretion to allow variances, tolerances or modifications from the federal rules and regulations, the Commissioner shall fully comply with Article I of the Administrative Procedures Act.

9. The Council on Judicial Complaints shall be exempt from Section 306 of Article I of the Administrative Procedures Act, with respect to review of the validity or applicability of a rule by an action for declaratory judgment, or any other relief based upon the validity or applicability of a rule, in the district court or by an appellate court. A party aggrieved by the validity or applicability of a rule made by the Council on Judicial Complaints may petition

the Court on the Judiciary to review the rules and issue opinions based upon them.

10. The Department of Corrections, State Board of Corrections, county sheriffs and managers of city jails shall be exempt from Article I of the Administrative Procedures Act with respect to:

a. prescribing internal management procedures for the management of the state prisons, county jails and city jails and for the management, supervision and control of all incarcerated prisoners, and

b. prescribing internal management procedures for the management of the probation and parole unit of the Department of Corrections and for the supervision of probationers and parolees.

11. The State Board of Education shall be exempt from Article I of the Administrative Procedures Act with respect to prescribing subject matter standards as provided for in Section 11-103.6a of Title 70 of the Oklahoma Statutes.

B. As specified, the following agencies or classes of agency activities are not required to comply with the provisions of Article II of the Administrative Procedures Act:

1. The Oklahoma Tax Commission<u>, except as provided in subsection G of Section 1140 of Title 47 of the Oklahoma Statutes</u>;

2. The Commission for Human Services;

3. The Oklahoma Ordnance Works Authority;

4. The Corporation Commission;

5. The Pardon and Parole Board;

6. The Midwestern Oklahoma Development Authority;

7. The Grand River Dam Authority;

8. The Northeast Oklahoma Public Facilities Authority;

9. The Council on Judicial Complaints;

10. The Board of Trustees of the Oklahoma College Savings Plan;

11. The supervisory or administrative agency of any penal, mental, medical or eleemosynary institution, only with respect to the institutional supervision, custody, control, care or treatment of inmates, prisoners or patients therein; provided, that the provisions of Article II shall apply to and govern all administrative actions of the Oklahoma Alcohol Prevention, Training, Treatment and Rehabilitation Authority;

12. The Board of Regents or employees of any university, college, or other institution of higher learning;

13. The Oklahoma Horse Racing Commission, its employees or agents only with respect to hearing and notice requirements on the following classes of violations which are an imminent peril to the public health, safety and welfare:

a. any rule regarding the running of a race,

b. any violation of medication laws and rules,

c. any suspension or revocation of an occupation license by any racing jurisdiction recognized by the Commission,

d. any assault or other destructive acts within Commission-licensed premises,

e. any violation of prohibited devices, laws and rules, or

f. any filing of false information;

14. The Commissioner of Public Safety only with respect to driver license hearings and hearings conducted pursuant to the provisions of Section 2-115 of Title 47 of the Oklahoma Statutes;

15. The Administrator of the Department of Securities only with respect to hearings conducted pursuant to provisions of the Oklahoma Take-over Disclosure Act of 1985;

16. Hearings conducted by a public agency pursuant to Section 962 of Title 47 of the Oklahoma Statutes;

17. The Oklahoma Military Department;

18. The University Hospitals Authority, including all hospitals or other institutions operated by the University Hospitals Authority;

19. The Oklahoma Health Care Authority Board and the Administrator of the Oklahoma Health Care Authority; and

20. The Oklahoma Office of Homeland Security.

SECTION 5. This act shall become effective November 1, 2021.

Passed the Senate the 11th day of March, 2021.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of __________, 2021.

____
Presiding Officer of the House
of Representatives