

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                                   STATE OF OKLAHOMA

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

4 COMMITTEE SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 3663

By: Kannady and **Kerbs**

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8                                   COMMITTEE SUBSTITUTE

9                   An Act relating to motor vehicles; amending 47 O.S.  
10                   2011, Section 1140, as last amended by Section 2,  
11                   Chapter 195, O.S.L. 2019 (47 O.S. Supp. 2019, Section  
12                   1140), which relates to motor license agents;  
13                   modifying basis for removal of motor license agents;  
14                   providing that motor license agents are subject to  
15                   removal for cause by the Oklahoma Tax Commission;  
16                   providing definition; prohibiting removal for  
17                   exercise of free speech; providing procedure for  
18                   removal; requiring that removal be reviewed by  
19                   Commissioners; requiring notice; authorizing hearing;  
20                   providing for presentation of evidence; creating  
21                   right to appeal; and providing an effective date.

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

23                   SECTION 1.           AMENDATORY           47 O.S. 2011, Section 1140, as  
24                   last amended by Section 2, Chapter 195, O.S.L. 2019 (47 O.S. Supp.  
25                   2019, Section 1140), is amended to read as follows:

26                   Section 1140.   A.   The Oklahoma Tax Commission shall adopt rules  
27                   prescribing minimum qualifications and requirements for locating  
28                   motor license agencies and for persons applying for appointment as a

1 motor license agent. Such qualifications and requirements shall  
2 include, but not be limited to, the following:

3 1. Necessary job skills and experience;

4 2. Minimum office hours;

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

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

10 5. In counties with a population in excess of thirty thousand  
11 (30,000) persons according to the latest Federal Decennial Census, a  
12 requirement that operation of a motor license agency be the primary  
13 source of income for the agent;

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

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

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

20 9. That the location specified in the application for  
21 appointment as a motor license agent not be owned by a member of the  
22 Oklahoma Tax Commission or an employee of the Oklahoma Tax  
23 Commission or any person related to a member of the Oklahoma Tax  
24 Commission or an employee of the Tax Commission within the third

1 degree by consanguinity or affinity and that the location not be  
2 within a three-mile radius of an existing motor license agency  
3 unless the applicant is assuming the location of an operating  
4 agency. If the applicant is assuming the location of an existing or  
5 operating agency, the current agent may submit a letter of  
6 resignation contingent upon the appointment of the applicant  
7 regardless of the population of the municipality in which the agency  
8 is located. The Tax Commission may, at its discretion, approve the  
9 relocation of an existing agency within a three-mile radius of  
10 another existing agency only if a naturally intervening geographic  
11 barrier within that radius causes the locations to be separated by  
12 not less than three (3) miles of roadway by the most direct route.

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

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

22 C. Upon application by a person to serve as a motor license  
23 agent, in such counties, the Tax Commission is authorized to make a  
24 determination whether such person and such location meets the

1 qualifications and requirements prescribed herein and, if such be  
2 the case, may appoint such person to serve as a motor license agent.

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

7 Motor license agents appointed pursuant to this section shall be  
8 subject to all laws relating to motor license agents and shall be  
9 subject to removal ~~at the will of~~ for cause by the Tax Commission.

10 For the purposes of this section, "for cause" shall be defined  
11 as follows:

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

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

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

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

20 and

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

23 Under no circumstances shall a motor license agent be removed  
24 for exercising his or her right of free speech as guaranteed by

1 Section 22 of Article 2 of the Oklahoma Constitution or the First  
2 Amendment of the United States Constitution.

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

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

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

21 ~~G. Any motor license agency operated by a motor license agent~~  
22 ~~who has been charged with a felony shall be closed immediately. The~~  
23 ~~Tax Commission shall determine whether the motor license agency~~  
24 ~~shall be reopened and operated by the motor license agent. The~~

1 ~~determination shall be effected as soon as possible to prevent~~  
2 ~~additional inconvenience to the public.~~ In the event that the Tax  
3 Commission determines by a vote of the majority of the Commissioners  
4 that sufficient grounds exist to remove a motor license agent from  
5 his or her position, the Tax Commission shall cause written notice,  
6 stating with specificity upon which grounds the Tax Commission seeks  
7 removal, to be served upon the motor license agent by certified  
8 mail. The motor license agent may, within ten (10) days of the  
9 receipt of the notice, request a hearing before the Tax Commission  
10 to dispute the removal. Such hearing shall be held within thirty  
11 (30) days of the request by the motor license agent. The motor  
12 license agent shall be allowed to present evidence, call witnesses,  
13 and present testimony regarding the written allegations. Such  
14 hearing shall be conducted pursuant to the provisions of the  
15 Oklahoma Administrative Procedures Act. If, after the conclusion of  
16 the hearing, the Tax Commission determines that the motor license  
17 agent shall be removed, the Tax Commission shall make a written  
18 order to include the specific findings of fact and conclusions of  
19 law upon which the determination was based. This written order  
20 shall be provided to the motor license agent within ten (10) days of  
21 the conclusion of the hearing.

22 The motor license agent shall have the right to judicial review  
23 of the order of the Tax Commission. Proceedings for review shall be  
24 instituted by filing a petition in the district court of the county

1 in which the party seeking review decides or, at the option of such  
2 party, where the affected property interest is situated, within  
3 thirty (30) days after the petitioner is notified of the final order  
4 as provided by Section 312 of Title 75 of the Oklahoma Statutes.

5 The petition shall name as respondents the Tax Commission and any  
6 other parties as allowed by law. The district court shall review  
7 the final order of the Tax Commission de novo. In the event that  
8 the district court determines that the removal proceeding brought by  
9 the Tax Commission was frivolous, the court may order that the  
10 petitioner be entitled to recover any court costs, witness fees, and  
11 reasonable attorney fees from the Tax Commission.

12 H. When an application for registration is made with the Tax  
13 Commission, Corporation Commission or a motor license agent, a  
14 registration fee of One Dollar and seventy-five cents (\$1.75) shall  
15 be collected for each license plate or decal issued. Such fees  
16 shall be in addition to the registration fees on motor vehicles and  
17 when an application for registration is made to the motor license  
18 agent such motor license agent shall retain a fee as provided in  
19 Section 1141.1 of this title. When the fee is paid by a person  
20 making application directly with the Tax Commission or Corporation  
21 Commission, as applicable, the registration fees shall be in the  
22 same amount as provided for motor license agents and the fee  
23 provided by Section 1141.1 of this title shall be deposited in the  
24 Oklahoma Tax Commission Revolving Fund or as provided in Section

1 1167 of this title, as applicable. The Tax Commission shall prepare  
2 schedules of registration fees and charges for titles which shall  
3 include the fees for such agents and all fees and charges paid by a  
4 person shall be listed separately on the application and  
5 registration and totaled on the application and registration. The  
6 motor license agents shall charge only such fees as are specifically  
7 provided for by law, and all such authorized fees shall be posted in  
8 such a manner that any person shall have notice of all fees that are  
9 imposed by law.

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

- 13 1. Any member of the Oklahoma Tax Commission; or
- 14 2. Any employee of the Tax Commission.

15 J. Any motor license agent appointed under the provisions of  
16 this title shall be responsible for all costs incurred by the Tax  
17 Commission when relocating an existing motor license agency. The  
18 Tax Commission may waive payment of such costs in case of unforeseen  
19 business or emergency conditions beyond the control of the agent.

20 SECTION 2. This act shall become effective November 1, 2020.

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22 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/06/2020 - DO  
23 PASS, As Amended and Coauthored.

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