

OSAGE NATION CONGRESS

1st Session of the 1st Legislature (2006)

BILL NUMBER ONCA – 06-11

AS INTRODUCED

September 13, 2006

INTRODUCED BY: Congressman Anthony Shackelford

SPONSOR(S): Congressman Anthony Shackelford, Congressman William Supernaw, Congressman Doug Revard, and Congresswoman Jerri Jean Branstetter

An Act

Governing the imposition of business licenses by the Osage Nation of the Osage Indian Reservation.

Be it enacted by the Congress of the Osage Nation:

SECTION 1 SHORT TITLE, AUTHORITY, AND PURPOSE

1.1 Title. This Act shall be known as the Osage Nation Business License Code. Any prior business license codes imposed by the Osage Nation are repealed.

1.2 Authority. This Act is enacted by the Osage Legislature pursuant to Article VI, Section 12 of the Constitution of the Nation.

1.3 Policies.

a. The Osage Nation of Indians has existed as an independent, sovereign nation since time immemorial. Today the Nation continues to govern the Osage Indian Reservation limited only in its authority by its Constitution and the Constitution and laws of the United States.

b. The Osage Legislature is the governing legislative body of the Osage Nation in accordance with the authority of the Constitution. The Legislature is responsible for ensuring that residents of the Reservation enjoy adequate employment, health care, education opportunities, social services, and other governmental services.

c. It is the policy of the Nation to promote economic development on the Reservation. To achieve that goal, the Nation is adopting a business license scheme to identify and regulate all applicable persons and entities doing business on the Reservation.

d. The Osage Nation has a primary interest in regulating the conduct of business and trade on the Osage Indian Reservation. It is therefore appropriate that all persons who exercise the privilege of engaging in business on the Osage Indian Reservation register and obtain a business license from the Osage Nation through its Tax Commission.

SECTION 2 GENERAL PROVISIONS

2.1 Definitions. As used in this Nation Business License Code, the following definitions shall apply except as otherwise provided. The following terms are defined as follows:

a. “Business” means any activity engaged in by any person, or caused to be engaged in by any person, with the object of gain, benefit, or advantage, either direct or indirect.

b. “Legislature” means the Osage Legislature, established as the governing body of the Nation pursuant to the Constitution of the Osage Nation.

c. “Business License Department” or “License Department” means the Osage Tax Commission established pursuant to enactment by the Osage Tribe Revenue and Taxation Act of 2006.

d. “Business Licensee” or “Licensee” means any person or entity that is subject to the provisions of the Nation Business License Code.

e. “Code” means the Osage Nation Business License Code.

f. “Engaging in Business” or “Business Activity” means commencing, conducting, or continuing in business with the Osage Nation or its agencies or enterprises, and relates to a person who is involved in trade or commerce inclusive of service activities regardless of whether they are, or are intended to be, for profit.

g. “Indian” means an individual who is an enrolled member of a federally recognized Indian Tribe.

h. “Indian Tribe” means any Indian or Alaska Native tribe, band, village, community, or pueblo recognized by the United States Department of the Interior as eligible for services.

i. “Person” means any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, corporation, association, society, political entity, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise who are or may become subject to this act, provided that the term does not include:

(1) The government of the Osage Nation and any governmental entities of the Nation, or the Federal or State Government and their respective agencies; or

(2) Any of the above-listed forms of business entities that are wholly owned and operated by the Osage Nation or the Federal or State Government.

j. “Real Property” means all lands or interests in land including all mines, quarries, and minerals in and under the land, and all rights and privileges thereunto appertaining; and permanent improvements.

k. “Personal property” means everything which is subject to ownership and which is not included within the term of “real property”. “Personal property” includes machinery, equipment, and other articles related to a commercial or industrial operation, which are either affixed or not affixed to the real property for proper utilization of such articles.

l. “Improvements” mean all structures, buildings, fences, and water rights erected upon or affixed to land, whether or not title to such land has been acquired.

m. “Reservation” means the territory within the boundaries of the Osage Indian Reservation, all lands outside and inside the exterior boundaries of the Reservation which are under the jurisdiction of the Nation, and such other lands without such boundaries as may hereafter be added thereto under any law of the United States of America, except as otherwise provided by law.

n. “Tax Commission” means the Tax Commission of the Osage Nation established pursuant to the Osage Tribe Revenue and Taxation Act of 2006.

o. “Tribal Member” means an individual who is a member of the Osage Nation.

p. “Nation” means the Osage Nation.

2.2 Legislature to Set All License Fees

All License Fees shall be set by the Legislature, only after consideration of the recommendations of the Principal Chief and the Tax Commission and shall be expressly set in this Code.

2.3 Sovereign Immunity

The Osage Nation and all its constituent parts, subordinate organizations, boards, and committees, including the Tax Commission, are immune from suit in any jurisdiction except to the extent that such immunity has been expressly and unequivocally waived by

the Nation or the United States Congress. This Business License Code shall not be construed in any way as a waiver of the Nation's sovereign immunity, except as specifically stated herein.

2.4 Businesses Exempt From License Fees

The following types of businesses shall be exempt from the license requirements as set by this Code:

- a. Any business currently licensed by any other Osage Nation entity in accordance with Osage Law;
- b. Businesses whose primary activity is to utilize federal trust land for farming and agricultural purposes;
- c. All non-profit, charitable institutions or organizations which engage in business activity in order to raise funds for social, educational, religious or other purposes that are for the benefit of the community;
- d. All businesses or enterprises which are owned by the Osage Nation;
- e. Vendors at I'n-Lon-Schka;
- f. Smoke shop wholesalers and retailers who have a license pursuant to Chapter 2 of the Osage Nation Revenue and Taxation Act of 2006; and
- g. All other exemptions recognized by federal law and statutes.

SECTION 3 BUSINESS LICENSE

3.1 Business License Required

No person shall engage in or carry on any trade, commerce, profession, or business activity of any sort on the Reservation until a business license is obtained, unless a person is exempt under Section 2.

3.2 Business License Term

a. A Business License shall be good for the calendar year wherein it is granted. All business licenses shall be renewed on or before January 1st of each year and shall expire on December 31st of the same calendar year. The license fee required by Section 3.3 shall accompany the application for a business license.

b. A Business License application form may be obtained during regular business hours at the Business License Department of the Osage Nation, Pawhuska, Oklahoma 74056. The license required to be obtained under this Code shall be in

addition to all other licenses, fees, permits, contracts, leases and grants required by Nation and Federal law, unless stated specifically otherwise.

3.3 License Fee Schedule

a. The fee schedule for Business Licenses is as follows:

(1)	Manufacturing & Processing	\$25.00
(2)	Mining	25.00
(3)	Service	25.00
(4)	Construction	25.00
(5)	Transportation	25.00
(6)	Communications	25.00
(7)	Utility	25.00
(8)	Real Estate Agencies	25.00
(9)	Gas or Similar Leases/per well	25.00
(10)	Peddler's License (per day)	10.00
(11)	Vendors	25.00
(12)	Any other type of business not listed above	25.00
(13)	Temporary (Quarterly or 3 months)	15.00

b. Oil and gas producers and/or Lessees shall pay an additional annual fee in the amount of Ten Dollars (\$10.00) for each vehicle utilized on Osage Nation land, to be evidenced by a decal provided by the Tax Commission. The decal shall be prominently displayed on the passenger side back window of the vehicle.

c. Oil purchasers entering Osage jurisdiction for the purpose of purchasing and transporting oil shall pay an additional annual fee of \$25 per vehicle utilized within Osage Nation jurisdiction.

SECTION 4 LICENSE APPLICATION

4.1 License Application Procedures

a. Within ten (10) working days after receipt of a completed application, other required documentation and fee the Business License Department may issue to the applicant a license to engage in business activity for which the entity has been licensed.

b. Notwithstanding subsection 1 of this Section, no license shall be granted to any licensee until it has presented proof to the Business License Department that it has complied with all Nation requirements established as conditions of commencing business on the Reservation, including, but not limited to, the following:

- (1) The Osage Nation's Contract and Employment Preference Law, if any;

(2) If and when the Nation adopts a Land Use Law, evidence that the person is in compliance with that Law and has obtained such permits and approvals required by the Law; and

(3) Evidence that the person has complied with the Nation's Environmental Department requirements and the requirements of the Indian Health Service and Bureau of Indian Affairs, if applicable.

c. Notwithstanding subsection 1 of this Section, where the Business License Department has reason to believe that a person applying for or possessing a license intends to commence or continue an activity that presents a danger to the health, safety, welfare, or morals of the residents of the Reservation, the Business License Department shall provide the said person with a written notice setting out the reasons it believes that the person presents such danger and noticing the date for hearing on the matter; said hearing to be held not later than ten (10) working days after delivery of the said notice. At the said hearing, the person shall be given an opportunity to demonstrate that its business activity does not present a danger to the health, safety, welfare, or morals of the residents of the Reservation. The Business License Department shall establish necessary procedures for said hearing to provide due process. If the Business License Department finds that a danger does exist, it shall notify said person in writing, stating the reasons for its finding, and shall deny or revoke the person's Business License. The person may appeal the Business License Department's decision to the Osage Tax Commission; if the person is not satisfied at that level, the person may appeal the decision to the Osage Nation Judiciary and shall be entitled to a hearing on the matter. The court's decision shall be final.

4.2 Forms Required

a. Prior to engaging in any business, all person(s) shall file with the Business License Department the necessary completed forms as required by this Code, including but not limited to a Business License Application and a Routing List.

b. Prior to engaging in any business on the Reservation, all persons shall have in their possession a Business License duly issued by the Osage Nation.

4.3 Display of License

All persons shall display the issued Business License in a conspicuous place at the business location listed on the Business License or Certificate of Registration.

SECTION 5 PENALTY AND ENFORCEMENT AND APPEAL

5.1 Transacting Business without a License

a. Any person doing business on the Reservation who fails to obtain a Business License or fails to renew a Business License as provided in this Code shall, in

addition to being required to immediately obtain such a Business License and pay for the requested fee, be fined \$50.00 per day for each day it operates on the Reservation without a license, unless good cause is shown to the Business License Department as to why such a license had not been obtained in a timely manner.

b. If the Business License Department becomes aware that a person conducts business on the Reservation without a license, it shall deliver written notice to and informing the person that he operates on the Reservation in violation of this Code and that he shall, within two (2) working days, obtain such a license and pay such fee and fines as are indicated in the letter of notice. However, where the Business License Department has reason to believe that the health, safety, welfare, or morals of the residents of the Reservation are endangered by the continuation of such business activity, the Business License Department may order such business to cease all business activity until it has obtained a license. Such order may be appealed in accordance with the procedure set forth in Section 4.1.c.

c. Upon notice from the Business License Department, pursuant to the provisions of this Code, said person(s) shall immediately cease to conduct business on the Reservation until a Business License has been obtained and all fees and penalties applicable thereto have been paid. If the person fails to comply, the Business License Department shall petition the Osage judiciary to hold an expedited hearing on the matter. If the person fails to appear or fails to show good cause, the Osage judiciary shall issue appropriate relief, including, but not limited to, an injunction and/or order to cease business.

d. Any entity doing business on the Reservation without a Business License who fails to obtain a license within the time period required by the Business License Department as provided in this Section, or any person whose license to do business has been revoked by any court or agency of competent jurisdiction pursuant to any provision of this Code, shall immediately cease to conduct business on the Reservation; provided, that upon a showing of good cause, the Osage judiciary may grant the entity a reasonable period of time during which to conclude its business, if the business does not endanger the health, safety, welfare, or morals of residents of the Reservation. Where notice to cease business is issued by the Osage judiciary, notice shall be hand delivered to the business or forwarded by certified mail, return receipt requested.

5.2 Exclusion

a. If any person doing business on the Reservation who has been directed by the Osage judiciary to cease doing business on the Reservation, either pursuant to this Code or any other Nation Code, fails to comply, then the Business License Department shall petition the Osage judiciary for, or the Court on its own motion shall issue, a show cause order as to why the said business shall not be excluded from the Reservation. The Osage judiciary shall hold a hearing upon the matter as soon as possible. If the person fails to appear or fails to show good cause, the Osage judiciary shall order the Nation Police to take appropriate actions.

b. In conjunction with subsection (1) of this Section, where the person(s) engaging in business are not members of the Osage Nation, the Osage judiciary shall order the police to physically remove all person(s) operating the business from the Reservation along with any personal property that can be removed without causing permanent damage to it. For property that cannot be removed, such as a building, the Osage judiciary shall order, and the police shall implement, the incapacitation of said property by padlocking or other means so that it can no longer be used to carry out the business.

5.3 Violation of Code

The Nation, through the Business License Department, may file a civil action to enforce the provisions of this Code against any person(s) doing business in violation of this Code and/or in violation of any court orders related to this Code for civil contempt or other relief, and all real and personal property used in the conduct of the said business may be impounded, padlocked, or otherwise incapacitated so that it cannot be used to carry out any further business on the Reservation.

5.4 Revocation of License

A Business License issued under this Code may be revoked after notice and hearing before the Osage judiciary for any of the following reasons:

a. Fraud, misrepresentation, or incorrect statement contained in the application for Business License or other documents submitted to obtain a Business License;

b. Violations of this Code or any other Nation statute or regulation;

c. Conducting business in an unlawful manner or in a manner which endangers the health, safety, welfare, or morals of residents of the Reservation.

5.5 Recovery of Property

A person may recover all such property incapacitated or impounded under this Code by paying to the Nation the costs incurred by the Nation in carrying out any legal proceedings, and a civil fine not to exceed \$300.00 per day for each day that passes since the person was ordered by the Osage judiciary to obtain a Nation Business License or to otherwise comply with this Code.

5.6 Reinstatement of License

Any person excluded, incapacitated or prohibited from doing business on the Reservation may be granted a new Business License to engage in business activity on the Reservation if:

a. No less than six months have passed since the date of the exclusion or incapacitation order; and/or

b. The person has paid all costs incurred by the Nation in carrying out the exclusion or incapacitation order, and has paid such civil fines as the Osage judiciary deems appropriate, but not to exceed \$50,000.00;

c. Notwithstanding subsection (a) of this Section, the Business License Department may, for good cause, deny such licensee a new license, may attach such conditions as it deems appropriate upon granting a license, or may waive or mitigate the provisions of subsection (a) of this Section.

SECTION 6 SEVERABILITY, EFFECTIVE DATE AND AMENDMENTS

6.1 Severability

If any provision or section of this Code is held invalid, whether in general or in a particular case this shall not effect any other provision, and to this end the provisions of the Code shall be severable.

6.2 Conflict with Other Applicable Law

In the event of a conflict between the provisions of this Code and any other provisions of applicable law that by its terms is applicable to business licensing, this Code shall supersede and be controlling, unless specifically stated otherwise. This Code shall supersede and replace any prior Codes adopted by the Nation that specifically address business licenses.

6.3 Effective Date

This Act shall be deemed effective Thirty (30) days after passage by the Osage Nation Congress and approval by the Principal chief or otherwise enacted into law in accordance with Article VI, Section 13 of the Osage Nation Constitution.

6.4 Amendments

This Code may be amended by Resolution passed by the Legislature in accordance with the Nation's Constitution. The Business License Department shall notify persons doing business of any amendment(s) in the manner considered appropriate by the Business License Department.

ENACTED by the Osage Nation Congress on this 27 day of Sept, 2006.

IN WITNESS WHEREOF, the Speaker of the Osage Nation Congress has hereto attached his signature.



Archie Mason, Speaker
Osage Nation Congress

CERTIFICATION

I, THE UNDERSIGNED, CERTIFY THAT THE FOREGOING IS A TRUE EXTRACT FROM THE MINUTES OF THE Osage Nation Congress comprised of twelve members and one ex-officio member with 13 members attending this meeting on the 27 day of Sept, 2006, and that the above is in conformity with the provisions therein adopted by a vote of 12 in favor, 0 against, 0 abstentions.

Faren Revard Anderson	<u>YES</u>
Jerri Jean Branstetter	<u>YES</u>
Shannon Edwards	<u>YES</u>
Mark Freeman	<u>YES</u>
Debra Littleton	<u>YES</u>
Archie Mason	<u>YES</u>
Raymond Red Corn	<u>YES</u>
Eddy Red Eagle, Jr.	<u>YES</u>
Doug Revard	<u>YES</u>
Anthony Shackelford	<u>YES</u>
Mark Simms	<u>YES</u>
William Supernaw	<u>YES</u>

Said Bill has not been rescinded or amended in any way and the above is the signature of the Speaker of the Osage Nation Congress.


Alexis Rencountre, Clerk
Osage Nation Congress

EFFECTIVE DATE CERTIFICATION

I, THE UNDERSIGNED, CERTIFY THAT THE FOREGOING EFFECTIVE DATE was approved by a two-thirds vote of the Osage Nation Congress in accordance with the Constitution of the Osage Nation Article VI, Section 13. This provision was adopted by a vote of 12 in favor, 0 against, 0 abstentions.

Office of the Principal Chief
Osage Nation

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Jim Gray
Principal Chief



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John D. Red Eagle
Assistant Principal Chief

EXECUTIVE VETO MESSAGE

October 3, 2006

The Honorable Archie Mason, Speaker of the Osage Nation Congress
Members of the 1st Osage Nation Congress

Dear Mr. Speaker and Members of the 1st Osage Nation Congress:

I hereby transmit pursuant to the provisions of Section 11 of Article VII and Section 13 of Article VI of the Osage Nation Constitution, a statement of items to which I object and which I do not approve, contained in Bill ONCA 06-11, entitled:

“An Act Governing the imposition of business licenses by the Osage Nation of the Osage Indian Reservation.” Inclusive

My reason for vetoing this bill is as follows:

This legislation is intended to require any person, excepting those specifically exempted in the bill, engaging in business activity with the Osage Nation to purchase a business license from the Business License Department of the Osage Nation. I am returning Bill ONCA 06-11 without my signature as it remains unclear whether the imposition of business licenses may have the unintended consequence of adversely affecting commerce and economic development within the Osage Nation.

Of particular concern is the potential negative effect this bill may have on oil and gas production and leases. Consultation with the Osage Minerals Council is critical as is holding public hearings that include producers and lessees. A thorough assessment of the impact on all businesses of such an imposition is necessary to fully understand the ramifications of such an act. The potential benefits and costs to the Nation need to be more clearly defined and understood prior to enacting this bill into law.

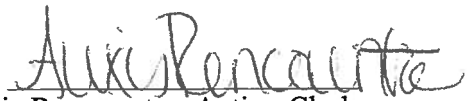
Respectfully Submitted,

A handwritten signature in black ink, appearing to read "John D. Red Eagle".

John D. Red Eagle
Assistant Principal Chief

Faren Revard Anderson
Jerri Jean Branstetter
Shannon Edwards
Mark Freeman
Debra Littleton
Archie Mason
Raymond Red Corn
Eddy Red Eagle, Jr.
Doug Revard
Anthony Shackelford
Mark Simms
William Supernaw

YES
YES
YES
YES
YES
YES
YES
YES
YES
YES
YES
YES


Alexis Rencountre, Acting Clerk
Osage Nation Congress

APPROVAL

I, the Principal Chief of the Osage Nation, hereby affix my signature this
day ____ of _____, 2006, to the above Bill No. ONCA 06-11 authorizing it
to become a law under the Constitution of the Osage Nation.

Jim R. Gray, Principal Chief
Osage Nation