

# House Bill 2394

Sponsored by Representative ESQUIVEL (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires certification of vehicle salespersons. Directs Department of Transportation to provide education for vehicle salespersons.

Creates offense of vehicle dealer employing uncertified vehicle salesperson. Punishes by maximum fine of \$360.

## A BILL FOR AN ACT

1  
2 Relating to vehicle salespersons; creating new provisions; and amending ORS 184.642, 822.007,  
3 822.009, 822.045 and 822.700.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 to 7 of this 2007 Act are added to and made a part of the Oregon**  
6 **Vehicle Code.**

7 **SECTION 2. (1) A person may not act as a vehicle salesperson unless the person holds**  
8 **a valid, current vehicle salesperson certificate issued under section 3 of this 2007 Act. A**  
9 **person acts as a vehicle salesperson if the person is employed by a vehicle dealer to buy, sell,**  
10 **trade or exchange vehicles either outright or by means of any conditional sale, bailment,**  
11 **lease, security interest or consignment.**

12 **(2) The Department of Transportation shall adopt a form of application to be used by**  
13 **persons applying for a vehicle salesperson certificate. The department may require any in-**  
14 **formation the department considers necessary.**

15 **SECTION 3. (1) The Department of Transportation shall issue a vehicle salesperson cer-**  
16 **tificate to a person if the person meets all of the following requirements:**

17 **(a) The person must complete the application for a vehicle salesperson certificate de-**  
18 **scribed in section 2 of this 2007 Act.**

19 **(b) The person must deliver to the department a bond or letter of credit that meets the**  
20 **requirements described in section 5 of this 2007 Act.**

21 **(c) The person must pay the fee required by ORS 822.700 for issuance of a vehicle**  
22 **salesperson certificate.**

23 **(d) The person must certify completion of the education and test requirements described**  
24 **in section 4 of this 2007 Act.**

25 **(2) The department may not issue a vehicle salesperson certificate to a person who has**  
26 **been convicted of a felony.**

27 **SECTION 4. (1) Prior to submitting an application for initial issuance of a vehicle**  
28 **salesperson certificate, a person must complete a minimum of five hours of approved edu-**  
29 **cation described in subsection (3) of this section and must pass a test. At least one hour of**  
30 **the approved education must include information about business ethics.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (2) Prior to submitting an application for renewal of a vehicle salesperson certificate, a  
 2 person must complete a minimum of six hours of approved continuing education described  
 3 in subsection (3) of this section. At least two hours of the continuing education must include  
 4 information about business ethics.

5 (3) The Department of Transportation shall provide the education and the test required  
 6 by subsections (1) and (2) of this section. In providing the education, the department shall  
 7 consider any training standards adopted or used in the vehicle sales industry.

8 (4) The education and the test required by subsections (1) and (2) of this section may be  
 9 provided by accredited educational institutions, private vocational schools, correspondence  
 10 schools or trade associations if the education and the test have been approved by the de-  
 11 partment.

12 **SECTION 5.** (1) A bond or letter of credit required to qualify for issuance of a vehicle  
 13 salesperson certificate under section 3 of this 2007 Act or to qualify for renewal of a certif-  
 14 icate under section 6 of this 2007 Act must comply with all of the following:

15 (a) A bond must have a corporate surety licensed to do business within this state. A  
 16 letter of credit must be an irrevocable letter of credit issued by an insured institution, as  
 17 defined in ORS 706.008. The surety or institution shall notify the Department of Transporta-  
 18 tion if the bond or letter of credit is canceled for any reason. The surety or institution con-  
 19 tinues to be liable under the bond or letter of credit until the department receives the notice  
 20 required by this paragraph, or until the cancellation date specified in the notice, whichever  
 21 is later.

22 (b) The bond or letter of credit shall be executed to the State of Oregon.

23 (c) The bond or letter of credit shall be for the sum of \$5,000.

24 (d) The Attorney General shall approve the form of the bond or letter of credit.

25 (e) The bond or letter of credit shall contain a condition that the person issued the ve-  
 26 hicle salesperson certificate shall conduct business as a vehicle salesperson without fraud  
 27 or fraudulent representation and without violating any provisions of the Oregon Vehicle Code  
 28 relating to vehicle sales.

29 (f) The bond or letter of credit must be filed and held in the office of the department.

30 (g) The vehicle salesperson shall purchase a bond or letter of credit as described in this  
 31 subsection every three years, on or before each anniversary of the issuance of the vehicle  
 32 salesperson's certificate.

33 (2) Any person shall have a right of action against a vehicle salesperson, against the  
 34 surety on the vehicle salesperson's bond and against the letter of credit in the person's own  
 35 name if the person suffers any loss or damage by reason of the vehicle salesperson's fraud,  
 36 fraudulent representations or violations of provisions of the Oregon Vehicle Code relating to  
 37 the regulation of vehicle salespersons.

38 (3) If the certificate of a vehicle salesperson is not renewed or is voluntarily or involun-  
 39 tarily canceled, the surety on the bond and the issuer of the letter of credit are relieved from  
 40 liability that accrues after the department cancels the certificate.

41 **SECTION 6.** A vehicle salesperson certificate is valid for a three-year period and may be  
 42 renewed. The Department of Transportation shall renew a certificate if the applicant for  
 43 renewal does the following:

44 (1) Pays the required fee for renewal under ORS 822.700;

45 (2) Delivers to the department a bond or letter of credit that meets the requirements of

1 **section 5 of this 2007 Act; and**

2 **(3) Certifies completion of the education requirements under section 4 of this 2007 Act.**

3 **SECTION 7. The Department of Transportation shall revoke the vehicle salesperson**  
 4 **certificate of any vehicle salesperson convicted of a felony.**

5 **SECTION 8.** ORS 822.007 is amended to read:

6 822.007. (1) In addition to any other remedies provided by law, the Department of Transportation  
 7 may petition the circuit court to enjoin a person from acting as a vehicle dealer **or vehicle**  
 8 **salesperson** in violation of the Oregon Vehicle Code or any rule adopted by the department.

9 (2) A single act in violation of the provisions of the Oregon Vehicle Code or of any rules  
 10 adopted by the department relating to vehicle dealers **or vehicle salespersons** shall be sufficient  
 11 ground for the court to issue the injunction.

12 (3) In addition to issuing an injunction, the court may assess a penalty not to exceed \$15,000 if  
 13 the department proves by a preponderance of the evidence that a person is acting as a vehicle  
 14 dealer without possessing a vehicle dealer certificate **or is acting as a vehicle salesperson with-**  
 15 **out possessing a vehicle salesperson certificate.** The court shall also award reasonable costs and  
 16 disbursements, attorney and enforcement fees.

17 **SECTION 9.** ORS 822.009 is amended to read:

18 822.009. (1) The Department of Transportation may levy and collect a civil penalty, in an amount  
 19 not to exceed \$1,000 for each violation, against any person who has a vehicle dealer certificate **or**  
 20 **vehicle salesperson certificate** if it finds that the dealer **or salesperson** has violated any pro-  
 21 visions of the Oregon Vehicle Code or of any rules adopted by the department relating to the sale  
 22 of vehicles, vehicle titling or vehicle registration.

23 (2) The department may levy and collect a civil penalty, in an amount not to exceed \$5,000 for  
 24 each vehicle improperly sold, brokered, exchanged or offered or displayed for sale, against any per-  
 25 son if it finds that the person is in violation of:

26 (a) ORS 822.005 (1); [or]

27 **(b) Section 2 of this 2007 Act; or**

28 [(b)] **(c)** Any rules adopted by the department relating to the sale of vehicles and the person is  
 29 not subject to subsection (1) of this section.

30 **SECTION 10.** ORS 822.045 is amended to read:

31 822.045. (1) A vehicle dealer improperly conducts a vehicle dealer business and is subject to the  
 32 penalties under this section if the vehicle dealer commits any of the following offenses:

33 (a) A vehicle dealer commits the offense of failure to obtain a supplemental vehicle dealer cer-  
 34 tificate if the vehicle dealer opens any additional place of business using the same business name  
 35 as a place of business approved under a vehicle dealer certificate without first obtaining a supple-  
 36 mental dealer certificate under ORS 822.040.

37 (b) A vehicle dealer commits the offense of failure to obtain a corrected vehicle dealer certif-  
 38 icate if the dealer moves a place of business or changes the business name without first obtaining  
 39 a corrected dealer certificate under ORS 822.040.

40 (c) A vehicle dealer commits the offense of failure to maintain proper vehicle dealer records if  
 41 the dealer does not keep records or books with all of the following information concerning any used  
 42 or secondhand vehicles or campers the dealer deals with:

43 (A) A record of the purchase, sale or exchange or of the dealer's receipt for purpose of sale.

44 (B) A description of the vehicle or camper.

45 (C) The name and address of the seller, the purchaser and the alleged owner or other person

1 from whom the vehicle or camper was purchased or received or to whom it was sold or delivered.

2 (D) For motor vehicles, the vehicle identification number and any other numbers or identifica-  
 3 tion marks as may be thereon and a statement that a number has been obliterated, defaced or  
 4 changed, if such is a fact.

5 (E) For trailers and campers, the vehicle identification number and any other numbers or iden-  
 6 tification marks as may be thereon.

7 (F) A duly assigned certificate of title or other primary ownership record or a bill of sale from  
 8 the registered owner of the vehicle or camper from the time of delivery to the dealer until the dealer  
 9 disposes of the vehicle or camper. If title is issued for the vehicle in a form other than a certificate,  
 10 or if the primary ownership record is in a form other than a document, a dealer shall keep records  
 11 in accordance with rules adopted by the Department of Transportation for the purpose of complying  
 12 with this subparagraph.

13 (d) A vehicle dealer commits the offense of failure to allow administrative inspection if the  
 14 dealer refuses to allow the department to conduct an inspection under ORS 822.035 at any time  
 15 during normal business hours.

16 (e) A vehicle dealer commits the offense of failure to allow police inspection if the dealer refuses  
 17 to allow any police officer to conduct an inspection under ORS 810.480 at any time during normal  
 18 business hours.

19 (f) A vehicle dealer commits the offense of illegal use of dealer vehicle for hire if the dealer  
 20 allows any vehicle operated under vehicle dealer registration to be loaned or rented with or without  
 21 driver for hire or direct compensation.

22 (g) A vehicle dealer commits the offense of improper use of dealer plates or devices if the dealer  
 23 or employee of the dealer causes or permits the display or use of any special vehicle dealer regis-  
 24 tration plate or device on any vehicle not owned or controlled by the dealer.

25 (h) A person commits the offense of improper display of dealer plates if the person operates over  
 26 and along the highways of this state any unregistered vehicle owned or controlled by the dealer and  
 27 any dealer plates issued are not displayed in the manner provided in ORS 803.540 for the display  
 28 of registration plates.

29 (i) A vehicle dealer commits the offense of failure to exhibit the dealer certificate if the dealer  
 30 fails to permanently exhibit the certificate at the place of business of the person at all times while  
 31 the certificate is in force.

32 (j) Except as provided in subsection (2) of this section, a vehicle dealer commits the offense of  
 33 failure to provide clear title if:

34 (A) Within 15 days of transfer of any interest in a vehicle or camper to the dealer by a con-  
 35 sumer, the dealer fails to satisfy:

36 (i) The interest of any person from whom the dealer purchased or obtained the vehicle or  
 37 camper;

38 (ii) The interest of any person from whom the person described in sub-subparagraph (i) of this  
 39 subparagraph leased the vehicle or camper; and

40 (iii) All security interests in the vehicle or camper entered into prior to the time of transfer.

41 (B) Within 15 days of receiving clear title to a vehicle or camper from another dealer, the pur-  
 42 chasing dealer fails to satisfy the interest of the selling dealer.

43 (k) Except as provided in subsection (3) of this section, a vehicle dealer commits the offense of  
 44 failure to furnish certificate of title or application for title if, within 90 calendar days of transfer  
 45 of any interest in a vehicle or camper by the dealer, the dealer has failed to:

1 (A) Furnish the certificate of title or other primary ownership record for the vehicle or camper  
 2 and any release thereon or, if title has been issued or is to be issued in a form other than a certif-  
 3 icate, any information or documents required by rule of the department, to the security interest  
 4 holder next named, if any, otherwise to the lessor or, if none, to the purchaser; or

5 (B) Submit to the department in a manner that complies with any applicable statutes and rules,  
 6 an application for title on behalf of the person to whom the title is to be furnished or whose name  
 7 is to be shown on the title record.

8 (L) A vehicle dealer commits the offense of failure to maintain bond or letter of credit coverage  
 9 if the dealer permits a bond or letter of credit to lapse during the period that the bond or letter of  
 10 credit is required under ORS 822.020 or 822.040 or if the dealer fails to purchase a bond or letter  
 11 of credit required by ORS 822.030.

12 (m) A person commits the offense of acting as a vehicle dealer while under revocation, cancel-  
 13 lation or suspension if the person conducts business as a vehicle dealer in this state and the person's  
 14 vehicle dealer certificate is revoked, canceled or suspended, regardless of whether the person is li-  
 15 censed as a vehicle dealer in another jurisdiction. This paragraph does not apply if the person has  
 16 other current, valid dealer certificates issued in this state.

17 (n) A vehicle dealer commits the offense of improper display of a vehicle for advertising pur-  
 18 poses if the dealer displays a vehicle at a location other than the dealer's place of business for the  
 19 purpose of advertising and the dealer does not comply with the provisions of ORS 822.040 (4).

20 **(o) A vehicle dealer commits the offense of employing an uncertified vehicle salesperson**  
 21 **if the vehicle dealer employs a person to buy, sell, trade or exchange vehicles either outright**  
 22 **or by means of any conditional sale, bailment, lease, security interest or consignment and**  
 23 **the person does not hold a vehicle salesperson certificate issued under section 3 of this 2007**  
 24 **Act.**

25 (2) A dealer shall not be considered to have committed the offense described in subsection (1)(j)  
 26 of this section if the dealer fails to satisfy an interest in a vehicle or camper that arises from an  
 27 inventory financing security interest for which the dealer is the debtor.

28 (3) A dealer shall not be considered to have committed the offense described in subsection (1)(k)  
 29 of this section if the dealer demonstrates that:

30 (a) The dealer has made a good faith effort to comply; and

31 (b) The dealer's inability to provide title is due to circumstances beyond the dealer's control.

32 (4) The offenses described in this section are subject to the following penalties:

33 (a) The offense described in this section, failure to obtain a supplemental vehicle dealer certif-  
 34 icate, is a Class A misdemeanor.

35 (b) The offense described in this section, failure to obtain a corrected vehicle dealer certificate,  
 36 is a Class A misdemeanor.

37 (c) The offense described in this section, failure to maintain proper vehicle dealer records, is a  
 38 Class A misdemeanor.

39 (d) The offense described in this section, failure to allow administrative inspection, is a Class  
 40 A misdemeanor.

41 (e) The offense described in this section, failure to allow police inspection, is a Class A  
 42 misdemeanor.

43 (f) The offense described in this section, illegal use of dealer vehicle for hire, is a Class B traffic  
 44 violation.

45 (g) The offense described in this section, improper use of dealer plates or devices, is a Class D

1 traffic violation.

2 (h) The offense described in this section, improper display of dealer plates, is a Class B traffic  
3 violation.

4 (i) The offense described in this section, failure to exhibit the dealer certificate, is a Class A  
5 misdemeanor.

6 (j) The offense described in this section, failure to provide clear title, is a Class A misdemeanor.

7 (k) The offense described in this section, failure to furnish certificate of title or application for  
8 title, is a Class A misdemeanor.

9 (L) The offense described in this section, failure to maintain bond or letter of credit coverage,  
10 is a Class A misdemeanor.

11 (m) The offense described in this section, acting as a vehicle dealer while under revocation,  
12 cancellation or suspension, is a Class A misdemeanor.

13 (n) The offense described in this section, improper display of a vehicle for advertising purposes,  
14 is a Class A misdemeanor.

15 **(o) The offense described in this section, employing an uncertified vehicle salesperson, is**  
16 **a Class B violation.**

17 **SECTION 11.** ORS 822.700 is amended to read:

18 822.700. (1) Fee for issuance of dismantler certificates:

19 (a) \$450, for an original dismantler certificate covering a single place of business issued under  
20 ORS 822.110;

21 (b) \$90, for a supplemental certificate for each additional place of business to be covered by that  
22 certificate and operated under the same name; and

23 (c) \$30, for each duplicate dismantler certificate issued under ORS 822.110.

24 (2) Fee for renewal of dismantler certificate under ORS 822.125, \$450.

25 (3) Fee for original issuance of vehicle dealer certificate under ORS 822.020:

26 (a) \$958, for a certificate covering a single place of business;

27 (b) \$230, for each additional place of business to be covered by the certificate and operated un-  
28 der the same name; and

29 (c) \$30, for each corrected vehicle dealer certificate issued under ORS 822.040.

30 (4) Fee for renewal of vehicle dealer certificate under ORS 822.040:

31 (a) \$958, for renewal of a vehicle dealer certificate covering a single place of business; and

32 (b) \$230, for each additional place of business to be covered by the certificate and operated un-  
33 der the same name.

34 (5) Fee for issuance of towing business certificate under ORS 822.205, \$17 for each vehicle used  
35 for towing or recovery purposes.

36 (6) Fee for renewal of towing business certificate under ORS 822.210, \$17 for each vehicle used  
37 for towing or recovery purposes.

38 (7) Fee for issuance of vehicle transporter certificate under ORS 822.310, \$150.

39 (8) Fee for renewal of vehicle transporter certificate under ORS 822.310, \$150.

40 (9) Fee for issuance of driver training instructor certificate under ORS 822.530, \$100.

41 (10) Fee for renewal of driver training certificate under ORS 822.530, \$100.

42 (11) Fee for issuance of commercial driver training school certificate under ORS 822.515, \$200.

43 (12) Fee for renewal of commercial driver training school certificate under ORS 822.515, \$200.

44 (13) Fee for issuance of appraiser certificate under ORS 819.230, \$50.

45 (14) Fee for renewal of an appraiser certificate under ORS 819.230, \$50.

1 (15) Fee for initial issuance of a vehicle salesperson certificate under section 3 of this  
 2 2007 Act, \$\_\_\_\_\_.

3 (16) Fee for renewal of a vehicle salesperson certificate under section 6 of this 2007 Act,  
 4 \$\_\_\_\_\_.

5 **SECTION 12.** ORS 184.642 is amended to read:

6 184.642. (1) The Department of Transportation Operating Fund is established in the State  
 7 Treasury separate and distinct from the General Fund and separate and distinct from the State  
 8 Highway Fund. Except as otherwise provided in subsection (3)(e) of this section, moneys in the De-  
 9 partment of Transportation Operating Fund are continuously appropriated to the Department of  
 10 Transportation to pay expenses of the department that are incurred in the performance of functions  
 11 the department is statutorily required or authorized to perform and that may not constitutionally  
 12 be paid from revenues described in section 3a, Article IX of the Oregon Constitution.

13 (2) The operating fund shall consist of the following:

14 (a) Taxes paid on motor vehicle fuels or on the use of fuel in a motor vehicle for which a person  
 15 is entitled to a refund under a provision described in this paragraph but for which no refund is  
 16 claimed, in amounts determined under ORS 184.643. This paragraph applies to refund entitlements  
 17 described in ORS 319.280 (1)(a) and (e), 319.320 (1)(a) and 319.831 (1)(b).

18 (b) Fees collected under ORS 822.700 for issuance or renewal of:

- 19 (A) Dismantler certificates;
- 20 (B) Vehicle dealer certificates;
- 21 (C) Driver training certificates;
- 22 (D) Commercial driver training school certificates; *[and]*
- 23 (E) Appraiser certificates[.]; **and**
- 24 **(F) Vehicle salesperson certificates.**

25 (c) Fees collected under ORS 822.705.

26 (d) Moneys from civil penalties imposed under ORS 822.009.

27 (e) Fees collected under ORS 807.410 for identification cards.

28 (f) Fees collected by the department for issuance of permits to engage in activities described in  
 29 ORS 374.305 to 374.330 that are not directly connected to the construction, reconstruction, im-  
 30 provement, repair, maintenance, operation and use of a public highway, road, street or roadside rest  
 31 area.

32 (g) Interest and other earnings on moneys in the operating fund.

33 (3) Moneys in the Department of Transportation Operating Fund established by subsections (1)  
 34 and (2) of this section may be spent only as follows:

35 (a) Taxes described in subsection (2)(a) of this section may be used only for payment of expenses  
 36 of the Department of Transportation that:

37 (A) May not constitutionally be paid from revenues described in section 3a, Article IX of the  
 38 Oregon Constitution;

39 (B) Are incurred in the performance of functions the department is statutorily required or au-  
 40 thorized to perform; and

41 (C) Are not payable from moneys described in paragraphs (b) to (e) of this subsection.

42 (b) Fees collected under subsection (2)(b) of this section may be used only to carry out the reg-  
 43 ulatory functions of the department relating to the businesses that generate the fees.

44 (c) Fees collected under ORS 822.705 may be used only for the purposes described in ORS  
 45 822.705.

1 (d) Moneys collected from civil penalties imposed under ORS 822.009 may be used only for reg-  
2 ulation of vehicle dealers **and vehicle salespersons.**

3 (e) Moneys collected under ORS 807.410 from fees for identification cards shall be used first to  
4 pay the expenses of the department for performing the functions of the department relating to  
5 identification cards. After paying the expenses related to identification cards, the department shall  
6 transfer the remaining moneys collected under ORS 807.410 to the Elderly and Disabled Special  
7 Transportation Fund established in ORS 391.800.

8 (f) Moneys from the permits described in subsection (2)(f) of this section may be used for costs  
9 of issuing the permits and monitoring the activities that generate the fees.

10 (g) Moneys from interest and other earnings on moneys in the operating fund may be used for  
11 any purpose for which other moneys in the fund may be used.

12 **SECTION 13. Sections 1 to 7 of this 2007 Act and the amendments to ORS 184.642, 822.007,**  
13 **822.009, 822.045 and 822.700 by sections 8 to 12 of this 2007 Act become operative July 1, 2008.**

14