

House Bill 2438

Sponsored by Representative GARRARD; Representative SCHAUFLEER (at the request of Oregon Vehicle Dealer Association)

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**.

Decreases required vehicle dealer bond amount.

Removes requirement that vehicle dealer give specified disclosure notice with vehicle sold on consignment.

Provides that motor vehicle repair shop is exempt from requirement to hold vehicle dealer certificate only if motor vehicle repair shop acquires vehicles from insurance company at auction held by person who holds vehicle dealer certificate and sells repaired vehicles to person who holds vehicle dealer certificate.

Requires motor vehicle repair shop to keep specific records of vehicles being sold to person holding vehicle dealer certificate. Imposes civil penalty of up to \$1,000 for violation of record keeping provisions.

A BILL FOR AN ACT

1
2 Relating to vehicle dealers; creating new provisions; and amending ORS 822.015, 822.030 and 822.060.

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

4 **SECTION 1.** ORS 822.030 is amended to read:

5 822.030. (1) A bond or letter of credit required to qualify for a vehicle dealer certificate under
6 ORS 822.020 or to qualify for renewal of a certificate under ORS 822.040 must comply with all of the
7 following:

8 (a) The bond shall have a corporate surety licensed to do business within this state. A letter
9 of credit shall be an irrevocable letter of credit issued by an insured institution, as defined in ORS
10 706.008. The surety or institution shall notify the Department of Transportation if the bond or letter
11 of credit is canceled for any reason. The surety or institution shall continue to be liable under the
12 bond or letter of credit until the department receives the notice required by this paragraph, or until
13 the cancellation date specified in the notice, whichever is later.

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

15 (c) Except as otherwise provided in this paragraph, the bond or letter of credit shall be in the
16 following sum:

17 (A) If the applicant is seeking a certificate to be a dealer exclusively in motorcycles, mopeds,
18 Class I all-terrain vehicles or snowmobiles or any combination of those vehicles, the bond or letter
19 of credit shall be for \$2,000.

20 (B) Except as provided in subparagraph (A) of this paragraph, if the applicant is seeking a cer-
21 tificate to be a vehicle dealer, the bond or letter of credit shall be for [~~\$40,000~~] **\$35,000** for each year
22 the certificate is valid.

23 (d) The bond or letter of credit described in this subsection shall be approved as to form by the
24 Attorney General.

25 (e) The bond or letter of credit must be conditioned that the person issued the certificate shall
26 conduct business as a vehicle dealer without fraud or fraudulent representation and without violat-

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 ing any provisions of the vehicle code relating to vehicle registration, vehicle permits, the transfer
 2 or alteration of vehicles or the regulation of vehicle dealers.

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

4 (g) The vehicle dealer shall purchase a bond or letter of credit under this subsection annually
 5 on or before each anniversary of the issuance of the vehicle dealer's certificate.

6 (2) Any person shall have a right of action against a vehicle dealer, against the surety on the
 7 vehicle dealer's bond and against the letter of credit in the person's own name if the person suffers
 8 any loss or damage by reason of the vehicle dealer's fraud, fraudulent representations or violations
 9 of provisions of the vehicle code relating to:

10 (a) Vehicle registration;

11 (b) Vehicle permits;

12 (c) The transfer or alteration of vehicles; or

13 (d) The regulation of vehicle dealers.

14 (3) Notwithstanding subsection (2) of this section, the maximum amount available under a bond
 15 described in subsection (1)(c)(B) of this section for the payment of claims by persons other than re-
 16 tail customers of the dealer is \$20,000.

17 (4) If the certificate of a vehicle dealer is not renewed or is voluntarily or involuntarily can-
 18 celed, the sureties on the bond and the issuer of the letter of credit are relieved from liability that
 19 accrues after the department cancels the certificate.

20 **SECTION 2.** ORS 822.060 is amended to read:

21 822.060. (1) A vehicle dealer issued a certificate under ORS 822.020 commits the offense of illegal
 22 consignment practices if the dealer does any of the following:

23 (a) Takes a vehicle on consignment from a person who is not a certified dealer and does not
 24 have proof that the consignor is the registered owner, a security interest holder or lessor of the
 25 vehicle.

26 (b) Takes a vehicle on consignment from a security interest holder without the security interest
 27 holder first completing a repossession action prior to consigning the vehicle and providing the
 28 dealer with proper documentary proof of the repossession action.

29 (c) Takes a vehicle on consignment and does not have the terms of the consignment agreement
 30 in writing and provide a copy of the agreement to the consignor. The agreement shall include a
 31 provision stating that if the terms of the agreement are not met, the consignor may file a complaint
 32 in writing with the Department of Transportation, Salem, Oregon.

33 (d) Sells a vehicle that the dealer has on consignment and does not pay the consignor within
 34 10 days of the sale.

35 (e) Sells a vehicle that the dealer has on consignment and does not either provide the purchaser
 36 with a certificate of title to the vehicle or with other primary ownership records in the form of
 37 documents or apply to the department in the purchaser's name for title to the vehicle within 30 days
 38 of the sale in a manner provided by the department by rule.

39 (f) Does not allow the department or any duly authorized representative to inspect and audit
 40 any records of any separate accounts into which the dealer deposits any funds received or handled
 41 by the dealer or in the course of business as a dealer from consignment sale of vehicles at such
 42 times as the department may direct.

43 (g) Takes any part of any money paid to the dealer in connection with any consignment trans-
 44 action as part or all of the dealer's commission or fee until the transaction has been completed or
 45 terminated.

1 (h) Does not make arrangement for the disposition of money from a consignment transaction
2 with the seller at the time of establishing a consignment agreement.

3 [(i) Sells a vehicle that the dealer has taken on consignment without first giving the purchaser the
4 following disclosure in writing:]

5 [_____]

6
7 *DISCLOSURE REGARDING*
8 *CONSIGNMENT SALE*

9
10 _____ (Name of Dealer) is selling the following described vehicle:
11 _____ (Year) _____ (Make) _____ (Model) _____ (Vehicle Identification Number)
12 on consignment. Title to this vehicle is in the name of: _____ (Vehicle Owner(s) as
13 shown on Certificate of Title) and the following are listed on the Certificate of Title as security interest
14 holders:

15 _____
16
17 _____

18
19
20 *YOU SHOULD TAKE ACTION TO ENSURE THAT ANY SECURITY INTERESTS ARE RE-*
21 *LEASED AND THAT THE TITLE TO THE VEHICLE IS TRANSFERRED TO YOU. OTHER-*
22 *WISE, YOU MAY TAKE TITLE SUBJECT TO ANY UNSATISFIED SECURITY INTERESTS.*

23 [_____]

24
25 (2) The offense described in this section, illegal consignment practices, is a Class A
26 misdemeanor.

27 **SECTION 3.** ORS 822.015 is amended to read:

28 822.015. In addition to any exemptions from the vehicle code under ORS 801.026, ORS 822.005
29 does not apply to the following vehicles or persons:

30 (1) Road rollers, farm tractors, farm trailers, trolleys, implements of husbandry, emergency ve-
31 hicles, well-drilling machinery and boat or utility trailers with a gross weight of 1,800 pounds or
32 less.

33 (2) The owner of a vehicle as shown by the vehicle title issued by any jurisdiction if the person
34 owned the vehicle primarily for personal, family or household purposes. If the person has sold,
35 traded, displayed or offered for sale, trade or exchange more than five vehicles in one calendar year,
36 the person shall have the burden of proving that the person owned the vehicles primarily for per-
37 sonal, family or household purposes or for other purposes that the Department of Transportation,
38 by rule, defines as constituting an exemption under this section.

39 (3) A receiver, trustee, personal representative or public officer while performing any official
40 duties.

41 (4) The lessor or security interest holder of a vehicle as shown by the vehicle title issued by
42 any jurisdiction.

43 (5) Except as otherwise provided in this subsection, a manufacturer who sells vehicles the
44 manufacturer has manufactured in Oregon. Nothing in this subsection prevents any manufacturer
45 from obtaining a vehicle dealer certificate under ORS 822.020. This subsection does not exempt a

1 manufacturer who sells or trades campers or travel trailers.

2 (6) An insurance adjuster authorized to do business under ORS 744.505 or 744.515 who is dis-
3 posing of vehicles for salvage.

4 (7) Except as otherwise provided in this subsection, a person who sells or trades or offers to sell
5 or trade a vehicle that has been used in the operation of the person's business. This subsection does
6 not exempt a person who is in the business of selling, trading, displaying, rebuilding, renting or
7 leasing vehicles from any requirement to obtain a certificate for dealing in those vehicles.

8 (8) A person who is licensed as a vehicle dealer in another jurisdiction who is participating with
9 other dealers in a display of vehicles, including but not limited to an auto show. This subsection
10 applies only if the display is an event that lasts for 10 days or less and is an event for which the
11 public is charged admission.

12 (9) A person who receives no money, goods or services, either directly or indirectly, for dis-
13 playing a vehicle or acting as an agent in the buying or selling of a vehicle.

14 (10) A person who collects, purchases, acquires, trades or disposes of vehicles and vehicle parts
15 for the person's own use in order to preserve, restore and maintain vehicles for the person's own
16 use or for hobby or historical purposes.

17 (11) A manufactured structure dealer subject to the licensing requirement of ORS 446.671 or a
18 person exempt from licensing under ORS 446.676 when selling a vehicle, trailer or semitrailer ac-
19 cepted in trade as part of a manufactured structure transaction. A manufactured structure dealer-
20 ship or exempt person may not directly sell more than three vehicles per calendar year under
21 authority of this subsection, but by consignment with a dealer certified under ORS 822.020 or
22 822.040 may sell an unlimited number of vehicles acquired as described in this subsection.

23 (12) A lien claimant who sells vehicles in order to foreclose possessory liens.

24 (13) A lien claimant who, in a 12-month period, sells 12 or fewer vehicles that the lien claimant
25 acquired through possessory liens if the vehicles are sold at the business location of the lien
26 claimant.

27 (14) Electric personal assistive mobility devices.

28 (15) **A motor vehicle repair shop if:**

29 (a) **The shop acquires vehicles from an insurance company at an auction held by a person**
30 **who holds a vehicle dealer certificate issued under ORS 822.020; and**

31 (b) **The shop sells the repaired vehicles to a person who holds a vehicle dealer certificate**
32 **issued under ORS 822.020.**

33 **SECTION 4. Section 5 of this 2007 Act is added to and made a part of the Oregon Vehicle**
34 **Code.**

35 **SECTION 5. (1) A motor vehicle repair shop that sells or offers for sale vehicles to a**
36 **person who holds a vehicle dealer certificate issued under ORS 822.020, or sells or offers for**
37 **sale vehicles acquired through auctions held by a person who holds a vehicle dealer certif-**
38 **icate issued under ORS 822.020, shall keep records sufficient to establish that all vehicles**
39 **being sold or offered for sale are sold, offered or acquired in accordance with ORS 822.015**
40 **(15). Records kept in accordance with this subsection must be made available to the De-**
41 **partment of Transportation on request.**

42 (2) **The department may adopt such rules as are necessary to carry out the provisions**
43 **of this section, including but not limited to rules that:**

44 (a) **Specify the form in which the records must be kept, how the records must be main-**
45 **tained and the period for which they must be retained.**

1 **(b) Specify how the records will be provided to the department if requested.**

2 **(3) Rules adopted under this section shall be developed in consultation with represen-**
3 **tatives of those lien claimants who may be affected by this section, including but not limited**
4 **to towing business operators.**

5 **(4) The department may impose a civil penalty, in an amount not to exceed \$1,000 for**
6 **each violation, against any person who violates this section or any rules adopted by the de-**
7 **partment under this section. Civil penalties shall be imposed as provided in ORS 183.745.**

8 **SECTION 6. Section 5 of this 2007 Act and the amendments to ORS 822.015, 822.030 and**
9 **822.060 by sections 1, 2 and 3 of this 2007 Act apply to vehicles sold or offered for sale on or**
10 **after the effective date of this 2007 Act.**

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