

Enrolled
Senate Bill 222

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CHAPTER

AN ACT

Relating to motor carriers; creating new provisions; amending ORS 656.027, 823.012, 825.005, 825.022, 825.104, 825.160, 825.168, 825.450 and 825.470; and declaring an emergency.

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

SECTION 1. ORS 825.450 is amended to read:

825.450. (1) Except as otherwise permitted under ORS 825.470, the Department of Transportation shall issue a receipt stating the combined weight of each self-propelled or motor-driven vehicle and any train or combination of vehicles to be used therewith.

(2) *[The receipt shall be carried with the motor vehicle at all times, and no person shall]* **A person may not** load any motor vehicle in excess of its combined weight permit rating thus determined except as variations may necessarily result in passenger loading. A fee of \$8 shall be paid to the department for each weight receipt issued.

(3) Receipts issued under this section shall be valid from the first day of any calendar quarter to the last day of the fourth consecutive calendar quarter. Each carrier may select the calendar quarter in which the period will begin except that, if necessary for administrative convenience, the department may require a carrier to adopt a starting date chosen by the department.

(4) All vehicles operating under the carrier's authority shall have the same four-quarter period of receipt validity. The department may allow a carrier to operate with expired receipts for up to one extra quarter if the renewal application has been submitted and the required fees have been paid on or before the last day of the period of validity of the receipt. The extension of time allowed by this subsection shall be granted only if the department determines that the extension is necessary for the administrative convenience of the department.

(5) The department may adopt rules necessary to administer the provisions of this section.

SECTION 2. ORS 825.470 is amended to read:

825.470. (1) For single trip or short-time operation not exceeding 10 days of a vehicle subject to the provisions of this chapter, the Department of Transportation may issue a temporary pass identifying the motor vehicle. *[The pass must be carried in the motor vehicle for which it is issued.]* For this pass a fee of \$9 for each motor vehicle shall be paid.

(2) The department may adopt rules necessary to administer the provisions of this section.

SECTION 3. Section 4 of this 2007 Act is added to and made a part of ORS chapter 825.

SECTION 4. (1) The Department of Transportation may enter into an agreement with the authorized representatives of any jurisdiction outside this state for the purposes of confirming federal registration and accepting proof of financial responsibility for interstate motor carriers.

(2) A motor carrier registered in a jurisdiction that is a party to an agreement entered into under this section is considered registered for interstate operations in Oregon for the purpose of ORS 825.104.

(3) The department may adopt any rules the department deems necessary to effectuate and administer the provisions of an agreement entered into under this section.

(4) An agreement may not provide for any benefit, exemption or privilege with respect to any fees or taxes levied or assessed against the use of highways or use or ownership of vehicles.

SECTION 5. ORS 825.104 is amended to read:

825.104. [(1) A for-hire or private carrier engaged or to engage in interstate operations shall apply to the Department of Transportation for a permit.]

[(2) The department shall issue a permit to the carrier without a hearing and as a matter of course if:]

[(a) The carrier files with the department a statement that its operations either are authorized by the United States Department of Transportation or are exempt from such regulation; and]

[(b) The carrier furnishes to the department either evidence of coverage by public liability or property damage insurance, as required by ORS 825.160 to 825.166, or evidence that it qualifies as a self-insurer under ORS 825.168.]

[(3) No for-hire or private carrier engaged or to engage in interstate operations shall perform any transportation service upon the public highways of this state without first having applied for and secured a permit in compliance with subsection (1) of this section.]

An interstate for-hire carrier or private carrier required to obtain a United States Department of Transportation registration number engaged or to engage in interstate operations may not perform transportation services on the public highways of this state without having first complied with federal registration and financial responsibility requirements.

SECTION 6. ORS 656.027 is amended to read:

656.027. All workers are subject to this chapter except those nonsubject workers described in the following subsections:

(1) A worker employed as a domestic servant in or about a private home. For the purposes of this subsection “domestic servant” means any worker engaged in household domestic service by private employment contract, including, but not limited to, home health workers.

(2) A worker employed to do gardening, maintenance, repair, remodeling or similar work in or about the private home of the person employing the worker.

(3)(a) A worker whose employment is casual and either:

(A) The employment is not in the course of the trade, business or profession of the employer; or

(B) The employment is in the course of the trade, business or profession of a nonsubject employer.

(b) For the purpose of this subsection, “casual” refers only to employments where the work in any 30-day period, without regard to the number of workers employed, involves a total labor cost of less than \$500.

(4) A person for whom a rule of liability for injury or death arising out of and in the course of employment is provided by the laws of the United States.

(5) A worker engaged in the transportation in interstate commerce of goods, persons or property for hire by rail, water, aircraft or motor vehicle, and whose employer has no fixed place of business in this state.

(6) Firefighter and police employees of any city having a population of more than 200,000 that provides a disability and retirement system by ordinance or charter.

(7)(a) Sole proprietors, except those described in paragraph (b) of this subsection. When labor or services are performed under contract, the sole proprietor must qualify as an independent contractor.

(b) Sole proprietors actively registered under ORS 671.525 or licensed under ORS 701.035. When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the sole proprietor must qualify as an independent contractor. Any sole proprietor registered under ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(8) Except as provided in subsection (23) of this section, partners who are not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement on real property or appurtenances thereto. When labor or services are performed under contract, the partnership must qualify as an independent contractor.

(9) Except as provided in subsection (25) of this section, members, including members who are managers, of limited liability companies, regardless of the nature of the work performed. However, members, including members who are managers, of limited liability companies with more than one member, while engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement on real property or appurtenances thereto, are subject workers. When labor or services are performed under contract, the limited liability company must qualify as an independent contractor.

(10) Except as provided in subsection (24) of this section, corporate officers who are directors of the corporation and who have a substantial ownership interest in the corporation, regardless of the nature of the work performed by such officers, subject to the following limitations:

(a) If the activities of the corporation are conducted on land that receives farm use tax assessment pursuant to ORS chapter 308A, corporate officer includes all individuals identified as directors in the corporate bylaws, regardless of ownership interest, and who are members of the same family, whether related by blood, marriage or adoption.

(b) If the activities of the corporation involve the commercial harvest of timber and all officers of the corporation are members of the same family and are parents, daughters or sons, daughters-in-law or sons-in-law or grandchildren, then all such officers may elect to be nonsubject workers. For all other corporations involving the commercial harvest of timber, the maximum number of exempt corporate officers for the corporation shall be whichever is the greater of the following:

(A) Two corporate officers; or

(B) One corporate officer for each 10 corporate employees.

(c) When labor or services are performed under contract, the corporation must qualify as an independent contractor.

(11) A person performing services primarily for board and lodging received from any religious, charitable or relief organization.

(12) A newspaper carrier utilized in compliance with the provisions of ORS 656.070 and 656.075.

(13) A person who has been declared an amateur athlete under the rules of the United States Olympic Committee or the Canadian Olympic Committee and who receives no remuneration for performance of services as an athlete other than board, room, rent, housing, lodging or other reasonable incidental subsistence allowance, or any amateur sports official who is certified by a recognized Oregon or national certifying authority, which requires or provides liability and accident insurance for such officials. A roster of recognized Oregon and national certifying authorities will be maintained by the Department of Consumer and Business Services, from lists of certifying organizations submitted by the Oregon School Activities Association and the Oregon Park and Recreation Society.

(14) Volunteer personnel participating in the ACTION programs, organized under the Domestic Volunteer Service Act of 1973, P.L. 93-113, known as the Foster Grandparent Program and the Senior Companion Program, whether or not the volunteers receive a stipend or nominal reimbursement for time and travel expenses.

(15) A person who has an ownership or leasehold interest in equipment and who furnishes, maintains and operates the equipment. As used in this subsection “equipment” means:

- (a) A motor vehicle used in the transportation of logs, poles or piling.
- (b) A motor vehicle used in the transportation of rocks, gravel, sand, dirt or asphalt concrete.
- (c) A motor vehicle operated as a taxicab as defined in ORS 825.017.

(d) A motor vehicle used in the transportation of property by a for-hire motor carrier that is required under ORS 825.100 or 825.104 to possess a certificate or permit **or to be registered**.

(16) A person engaged in the transportation of the public for recreational down-river boating activities on the waters of this state pursuant to a federal permit when the person furnishes the equipment necessary for the activity. As used in this subsection, “recreational down-river boating activities” means those boating activities for the purpose of recreational fishing, swimming or sightseeing utilizing a float craft with oars or paddles as the primary source of power.

(17) A person who performs volunteer ski patrol activities who receives no wage other than noncash remuneration.

(18) A person 19 years of age or older who contracts with a newspaper publishing company or independent newspaper dealer or contractor to distribute newspapers to the general public and perform or undertake any necessary or attendant functions related thereto.

(19) A person performing foster parent or adult foster care duties pursuant to ORS chapter 411, 418, 430 or 443.

(20) A person performing services on a volunteer basis for a nonprofit, religious, charitable or relief organization, whether or not such person receives meals or lodging or nominal reimbursements or vouchers for meals, lodging or expenses.

(21) A person performing services under a property tax work-off program established under ORS 310.800.

(22) A person who performs service as a caddy at a golf course in an established program for the training and supervision of caddies under the direction of a person who is an employee of the golf course.

(23)(a) Partners who are actively registered under ORS 671.525 or licensed under ORS 701.035 and who have a substantial ownership interest in a partnership. If all partners are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such partners may elect to be nonsubject workers. For all other partnerships registered under ORS 671.510 to 671.710 or licensed under ORS chapter 701, the maximum number of exempt partners shall be whichever is the greater of the following:

- (A) Two partners; or
- (B) One partner for each 10 partnership employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the partnership qualifies as an independent contractor. Any partnership registered under ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(24)(a) Corporate officers who are directors of a corporation actively registered under ORS 671.525 or licensed under ORS 701.035 and who have a substantial ownership interest in the corporation, regardless of the nature of the work performed. If all officers of the corporation are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such officers may elect to be nonsubject workers. For all other corporations registered under ORS 671.510 to 671.710 or licensed under ORS chapter 701, the maximum number of exempt corporate officers shall be whichever is the greater of the following:

- (A) Two corporate officers; or
- (B) One corporate officer for each 10 corporate employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the corporation qualifies as an independent contractor. Any corporation registered under ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(25)(a) Limited liability company members who are members of a company actively registered under ORS 671.525 or licensed under ORS 701.035 and who have a substantial ownership interest in the company, regardless of the nature of the work performed. If all members of the company are members of the same family and are parents, spouses, sisters, brothers, daughters or sons, daughters-in-law or sons-in-law or grandchildren, all such members may elect to be nonsubject workers. For all other companies registered under ORS 671.510 to 671.710 or licensed under ORS chapter 701, the maximum number of exempt company members shall be whichever is the greater of the following:

(A) Two company members; or

(B) One company member for each 10 company employees.

(b) When labor or services are performed under contract for remuneration, notwithstanding ORS 656.005 (30), the company qualifies as an independent contractor. Any company registered under ORS 671.525 or licensed under ORS 701.035 and involved in activities subject thereto is conclusively presumed to be an independent contractor.

(26) A person serving as a referee or assistant referee in a youth or adult recreational soccer match whose services are retained on a match-by-match basis.

(27) A person performing language translator or interpreter services that are provided for others through an agent or broker.

SECTION 7. ORS 823.012 is amended to read:

823.012. (1) If the Director of Transportation determines that an emergency, as defined in ORS 401.025, has occurred or is imminent, the director may suspend operation of one or more of the following statutes involving motor carriers for the purpose of expediting the movement of persons or property:

(a) ORS 818.400, compliance with commercial vehicle enforcement requirements related to commercial vehicle weight, size, load, conformation or equipment.

(b) ORS 825.100, certificate or permit requirement for commercial transportation of persons or property.

(c) ORS 825.104, [*permit*] **registration** requirement for for-hire or private carrier engaged in interstate operations.

(d) ORS 825.160, requirement for person operating as motor carrier to have policy of public liability and property damage **insurance**.

(e) ORS 825.162, requirement for person operating as for-hire carrier of freight or express to have cargo insurance.

(f) ORS 825.250, requirement to stop and submit to an inspection of the driver, the cargo or the vehicle or combination of vehicles.

(g) ORS 825.252, safety regulations for for-hire and private carriers.

(h) ORS 825.258, rules for transportation of hazardous waste, hazardous material and PCB.

(i) ORS 825.450, weight receipts issued by Department of Transportation for motor vehicles subject to weight-mile tax.

(j) ORS 825.470, temporary pass for single trip or short-time operation of vehicle.

(k) ORS 825.474, assessment of tax for use of highways.

(L) ORS 826.031, registration of certain vehicles not already registered with state.

(2) A suspension under this section may occur prior to a declaration of a state of emergency under ORS 401.055, but may not exceed 72 hours unless a state of emergency is declared under ORS 401.055. If a state of emergency is declared under ORS 401.055, the suspension shall last until the state of emergency is terminated as provided under ORS 401.105.

(3) The director may designate by rule a line of succession of deputy directors or other employees of the department who may suspend operations of statutes under this section in the event the director is not available. Any suspension by a person designated by the director under this subsection has the same force and effect as if issued by the director, except that, if the director can be reached, the suspension must be affirmed by the director when the director is reached. If the

director does not set aside a suspension within 24 hours of being reached, the suspension shall be considered affirmed by the director.

SECTION 8. ORS 825.005 is amended to read:

825.005. As used in this chapter:

- (1) "Carrier" or "motor carrier" means for-hire carrier or private carrier.
- (2) "Cartage carrier" means any person who undertakes to transport any class of property by motor vehicle for compensation when the transportation is performed wholly within an incorporated city or a commercial zone adjacent to an incorporated city.
- (3) "Certificate" means an authority issued to a for-hire carrier under ORS 825.110.
- (4) "Combined weight" means the weight of the motor vehicle plus the weight of the maximum load which the applicant has declared such vehicle will carry. Any declared combined weight is subject to audit and approval by the Department of Transportation. The combined weight of motor buses or bus trailers is the light weight of the vehicle plus the weight of the maximum seating capacity including the driver's seat estimated at 170 pounds per seat, exclusive of emergency seats, except that transit-type motor vehicles may use 150 pounds per seat in determining combined weight. In cases where a bus has a seating capacity which is not arranged for separate or individual seats, 18 lineal inches of such capacity shall be deemed the equivalent of a passenger seat.
- (5) "Department" means the Department of Transportation.
- (6) "Extreme miles" or "extreme mileage" means the total miles operated by a vehicle over the public highways, except the extra miles necessarily operated in traversing detours or temporary routes on account of road blockades in the state.
- (7) "For-hire carrier" means:
 - (a) Any person who transports persons or property for hire or who publicly purports to be willing to transport persons or property for hire by motor vehicle; or
 - (b) Any person who leases, rents or otherwise provides a motor vehicle to the public and who in connection therewith in the regular course of business provides, procures or arranges for, directly, indirectly or by course of dealing, a driver or operator therefor.
- (8) "Motor vehicle" means any self-propelled vehicle and any such vehicle in combination with any trailing units, used or physically capable of being used upon any public highway in this state in the transportation of persons or property, except vehicles operating wholly on fixed rails or tracks and electric trolley buses. "Motor vehicle" includes overdimension vehicles or vehicles permitted excessive weights pursuant to a special authorization issued by a city, county or the Department of Transportation.
- (9) "Pack or load services" means services relating to the packing or loading of personal property that are performed:
 - (a) By a person that is in the business of performing such services;
 - (b) For compensation;
 - (c) For the purpose of moving the personal property; and
 - (d) By a person that does not directly or indirectly provide a motor vehicle for the movement of the property or act as an agent for a person that provides a motor vehicle for the movement of the property.
- (10) "Permit" means an authority issued to a carrier under ORS 825.102, [825.104,] 825.106, 825.108 or 825.127.
- (11) "Private carrier" means any person who operates a motor vehicle over the public highways of this state for the purpose of transporting persons or property when the transportation is incidental to a primary business enterprise, other than transportation, in which such person is engaged.
- (12) "Privilege taxes" means the weight-mile tax and fees prescribed in this chapter.
- (13) "Property" includes, but is not limited to, permanent loads such as equipment, appliances, devices, or ballast that are attached to, carried on, or made a part of the vehicle and that are designed to serve some functional purpose.
- (14) "Public highway" means every street, alley, road, highway and thoroughfare in this state used by the public or dedicated or appropriated to public use.

(15) "Safe for operation" means mechanical safety and compliance with rules regarding equipment and operation as are specified by law or by rule of the Department of Transportation.

(16) "Transit-type motor vehicle" means any passenger-carrying vehicle that does not have a separate space for transporting baggage or express.

(17) "Transporter" has the meaning given that term in ORS 466.005.

SECTION 9. ORS 825.160 is amended to read:

825.160. (1) *[Except as provided in ORS 825.168, no certificate or permit shall be issued to any person to]* **A person may not** operate as a motor carrier **on public highways of this state** until the person has in effect a policy of public liability and property damage **insurance** *[issued by an insurance company or reciprocal insurance exchange authorized to transact business within this state, and in accordance with the policies, forms and manuals on file with the Director of the Department of Consumer and Business Services].*

(2) Insurance required under this section shall be provided at minimum limits the Department of Transportation by rule may prescribe, and upon such terms, conditions and provisions as the department may determine to be necessary for the reasonable indemnification of the patrons of the applicant and of the public against damage and injury for which the applicant may be liable by reason of the operation of any motor vehicle. However, the insurance policy required of a carrier or persons engaged solely in interstate commerce need not provide for the protection of their patrons.

(3) In fixing the amount of the insurance policy the Department of Transportation shall give due consideration to the character and amount of traffic, the number of persons involved and the degree of danger which the proposed operation involves.

SECTION 10. ORS 825.168 is amended to read:

825.168. (1) Any for-hire carrier, engaged in interstate or interstate and intrastate operations within the State of Oregon, which is or becomes qualified as a self-insurer with the *[Interstate Commerce Commission of the]* United States **Department of Transportation** in accordance with laws of the United States applicable to self-insurance by motor carriers, is exempt, so long as such qualification remains effective, from the provisions of ORS 825.160 to 825.166.

(2) The Department of Transportation may require proof of the existence and continuation of *[such]* exempt status to be made by affidavit of the carrier in *[such]* **a** form and at *[such]* **the** times as the department may prescribe.

SECTION 11. ORS 825.022 is amended to read:

825.022. The provisions of ORS *[825.104,]* 825.160, 825.450, 825.454, 825.470, 825.472, 825.474, 825.476, 825.480, 825.484, 825.488, 825.490, 825.492, 825.494, 825.496 and 825.515 do not apply to any vehicle or combination of vehicles with a combined weight of 26,000 pounds or less.

SECTION 12. **This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.**

Passed by Senate March 19, 2007

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Secretary of Senate

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President of Senate

Passed by House June 4, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State