Enrolled
House Bill 2817

Sponsored by COMMITTEE ON TRANSPORTATION (at the request of Oregon Moving and Storage Association)

CHAPTER .....

AN ACT

Relating to for-hire carriers; creating new provisions; amending ORS 825.005, 825.017, 825.110, 825.115, 825.117, 825.127, 825.135, 825.180, 825.247, 825.326, 825.352 and 825.950; repealing ORS 825.245 and 825.246; and declaring an emergency.

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

SECTION 1. 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) "Household goods" means the personal effects or other property used or to be used in a dwelling but does not include property transported from a store or factory or property exclusively for office use.

[*(8)*] **(9)** "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, 825.106, 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 2. ORS 825.017 is amended to read:

825.017. Except as provided in ORS 825.026 and 825.030, this chapter does not apply to the persons or vehicles described in this section. The exemption under this section applies to the following persons and vehicles:

(1) Vehicles being used by, or under contract with, any school board, district or person responsible for the administration of elementary or secondary school activities, and engaged exclusively in transporting students or combinations of students and other persons to or from school, to or from authorized school activities or other activities sponsored by the State Board of Higher Education, or for purposes provided under ORS 332.427. This exemption shall not be affected by the charging of a fee to cover the costs of the transportation.

(2) Vehicles being used in a taxicab operation if the vehicle:

(a) Is a passenger vehicle with a passenger seating capacity that does not exceed five;

(b) Carries passengers for hire where the destination and route traveled may be controlled by a passenger and the fare is calculated on the basis of any combination of an initial fee, distance traveled or waiting time; and

(c) Is transporting persons or property, or both, between points in Oregon.

(3) Vehicles being used for the transportation of property by private carrier by means of a single vehicle or combination of vehicles with a combined weight that does not exceed 8,000 pounds.

(4) Vehicles being used in operating implements of husbandry.

(5) Vehicles being used as a hearse or ambulance.

(6) Vehicles being used over any private road or thoroughfare.

(7) Vehicles being used on any road, thoroughfare or property, other than a state highway, county road or city street, for the removal of forest products as defined in ORS 321.005, or the product of forest products converted to a form other than logs at or near the harvesting site, or when used for the construction or maintenance of the road, thoroughfare or property, pursuant to a written agreement or permit authorizing the use, construction or maintenance of the road, thoroughfare or property, with:

(a) An agency of the United States;

(b) The State Board of Forestry;

(c) The State Forester; or

(d) A licensee of an agency named in this subsection.

(8) Vehicles being used on any county road for the removal of forest products as defined in ORS 321.005, or the products of forest products converted to a form other than logs at or near the harvesting site, if:

(a) The use is pursuant to a written agreement entered into with the State Board of Forestry, the State Forester or an agency of the United States, authorizing the owner of the motor vehicle to use the road and requiring the owner to pay for or to perform the construction or maintenance of the county road, including any operator of a motor vehicle retained to transport logs, poles and piling for the owners who are exempt under this section;

(b) The board, officer or agency that entered into the agreement or granted the permit, by contract with the county court or board of county commissioners, has assumed the responsibility for the construction or maintenance of the county road; and

(c) Copies of the agreements or permits required by this subsection are filed with the Director of Transportation.

(9) Vehicles being used in the transportation of persons for hire if the operation:

(a) Is performed by a nonprofit entity;

(b) Is not in competition with a regular route full-service scheduled carrier of persons that is subject to the provisions of this chapter or a service provided by a mass transit district formed under ORS chapter 267;

(c) Is performed by use of vehicles operating in compliance with ORS 820.020 to 820.070; and

(d) Is approved by the Department of Transportation as complying with paragraphs (a) to (c) of this subsection.

(10) Vehicles being used in transporting persons with disabilities, with or without their supervisors or assistants, to or from rehabilitation facilities or child care services if the motor vehicle is a passenger motor vehicle with a seating capacity of not more than 12 passengers. The exemption provided by this subsection applies only when the motor vehicle is operated by or under contract with any person responsible for the administration of rehabilitation facilities as defined in ORS 344.710 to 344.730 or child care services provided by a facility licensed under ORS 657A.030 and 657A.250 to 657A.450.

(11) Vehicles owned or operated by the United States or by any governmental jurisdiction within the United States except when owned or operated as a carrier of property for hire.

(12) Vehicles owned or operated by a mass transit district created under ORS chapter 267.

(13) Vehicles owned or operated by, or under contract with, a person responsible for the construction or reconstruction of a highway under contract with the Department of Transportation or with an agency of the United States when operated within the immediate construction project as described in the governmental agency contract during the construction period.

(14) Vehicles owned or operated by, or under contract with, a charitable organization when exclusively engaged in performing transportation, either one way or round trip, necessary to the operation of the charitable organization. As used in this subsection, "charitable organization" means an organization that has no capital stock and no provision for making dividends or profits, but derives its funds principally from public and private charity and holds them in trust for the promotion of the welfare of others and not for profit. Any organization claiming an exemption under this sub-

section shall file an affidavit with the department stating that it is organized and operated in accordance with the requirements of this subsection.

(15) Vehicles with a maximum speed that does not exceed 35 miles per hour that are designed for off-road use and that are operated on the public highways in any one calendar year a number of miles that does not exceed 15 percent of the total number of miles the vehicle is operated for that calendar year.

(16) Passenger vehicles with a passenger seating capacity that does not exceed five when used in the transportation of new telephone books.

(17) A vehicle that is used in a limousine service operation in which the destination and route traveled may be controlled by the passenger and the fare is calculated on the basis of any combination of initial fee, distance traveled and waiting time if the vehicle:

(a) Is a passenger vehicle with a passenger seating capacity that does not exceed eight;

(b) Carries passengers for hire between points in Oregon; and

(c) Operates on an irregular route basis.

(18) Fire trucks and rescue vehicles that are designated as emergency vehicles by the Department of Transportation under ORS 801.260, while involved in emergency and related operations.

(19) A person who provides services related to the packing or loading of household goods if the person does not:

(a) Provide or operate a motor vehicle for the movement of the household goods; and

(b) Act as an agent for any person who does provide or operate a motor vehicle for the movement of the household goods.

SECTION 3. ORS 825.110 is amended to read:

825.110. (1) When a person files with the Department of Transportation an application for a certificate to operate as a for-hire regular route full-service scheduled carrier of persons as described in ORS 825.234 [*or as a for-hire carrier of household goods*], for the extension of an existing certificate[,] or for the transfer of a certificate, the department shall serve notice of the application upon every person who has an application filed and pending before the department to serve the territory proposed to be served by the applicant, or who holds a certificate to serve that territory. If any person desires to protest the issuance, extension or transfer of the certificate, the person may file notice thereof with the department within 15 days from the date of service of the notice of application. The department thereupon shall fix a time and place for a hearing upon the application, and shall serve notice of the hearing upon the applicant and any person who has filed a protest. For the purpose of being properly and fully informed, the department may hold a hearing on an application although no protest is filed.

(2) If no person protests within the time provided in subsection (1) of this section, [*the department may order the issuance, transfer or extension of the certificate without a hearing, if the applicant shows compliance with subsection (4)(a), (b) and (d) to (f) of this section.*]

[*(3)*] **or** if all protests to the application are withdrawn prior to the closing of the record, the department may order the issuance**, extension** or transfer of the certificate if the applicant shows compliance with subsection (4)(a), (b) and (d) to (f) of this section.

(3) When a person files with the department an application for a certificate to operate as a for-hire carrier of household goods, for the extension of an existing certificate or for the transfer of a certificate, the department may issue, extend or transfer the certificate if the department determines the applicant meets the requirements of subsection (4)(a), (b) and (d) to (f) of this section.

(4) If the application for issuance**, extension** or transfer of a certificate **under this section** is the subject of a hearing, the department shall issue the certificate if the applicant has complied with this chapter and the rules of the department, and if the department finds from the record and the evidence submitted at the hearing that:

(a) The applicant is fit, willing and able [*properly*] to perform the service proposed;

(b) The applicant has certified that the vehicles listed on the application comply with all Oregon laws and rules covering vehicle safety and operations and will be so maintained;

(c) The service proposed, to the extent authorized, is or will be required by the present or future public convenience and necessity or in case of proceedings under ORS 825.129 if the department finds the assignment or other transfer is in the public interest;

(d) The service proposed will not be attended with substantial damage to the highways or danger to other highway users or to the public;

(e) The rates, schedules or contracts proposed by the applicant, if an intrastate operator, are approved by the department; and

(f) The applicant can and will furnish and file the insurance, bond or substitute security or qualify as self-insurer as provided in this chapter.

(5) If the application for issuance or transfer of a certificate is the subject of a hearing, and if the department does not find that all the conditions provided in subsection (4) of this section are satisfied, the department may deny the application or may [*order that*] **defer** issuance of the certificate [*be deferred*] pending compliance by the applicant with those conditions provided in subsection (4) of this section [*specified in the order*].

(6) If the applicant fails to appear at the time and place fixed for the hearing, the application may be denied.

(7)(a) Pending determination of application for transfer of a certificate, the department, without hearing, may grant approval of the temporary operation of the certificate by the prospective transferee, or, if the transferor's service to the public may be substantially impaired, may authorize temporary management of the transferor's motor carrier operations by the prospective transferee.

(b) Service performed under [*any*] temporary authority granted under this section is subject to all provisions of this chapter and the rules of the department.

(c) Service performed under [*any*] temporary authority granted under this section creates no presumption that transfer of the certificate is required by the public convenience and necessity or is in the public interest.

(d) Evidence of operation under [*a*] temporary authority as provided in this section is not admissible to show the extent of utilization of the certificate to be transferred.

(8) The department may require an applicant for a certificate to operate as a for-hire carrier of household goods issued under this section to complete a criminal background check. The department shall adopt rules describing the standards used by the department to determine if an applicant is unfit based on the results of the applicant's criminal history.

SECTION 4. Section 5 of this 2009 Act is added to and made a part of ORS chapter 825.

SECTION 5. An authorized intrastate for-hire carrier of household goods shall obtain and retain for a period of at least three years a criminal background check of each employee whose duties may require contact with the public or entry into a private residence or storage facility for the purpose of providing or facilitating the transportation of household goods. The department shall adopt rules for conducting the criminal background check required and may prohibit an employee's activities based on the result of the criminal background check.

SECTION 6. ORS 825.115 is amended to read:

825.115. (1) The Department of Transportation may grant temporary authority for a for-hire carrier to provide transportation of persons [*or household goods*] where it is shown that a need exists for such service. **The department may grant temporary authority for a for-hire carrier to provide transportation of household goods where it is in the public interest.** Such temporary authority may be authorized only if the department receives a request for service from a user of the proposed transportation service, and if the department concludes, after investigation, that the request represents a true need **or is in the public interest**.

(2) The department shall provide for protest and hearing under ORS 825.110 within 90 days after temporary authority is issued under this section **to a for-hire carrier of persons**. The department shall cancel immediately any temporary authority granted under this section if the department determines [*at hearing*] that the **temporary** authority **issued** does not comply with requirements for grant of authority under ORS 825.110.

(3) The department [*shall*] **may** not grant temporary authority under this section for an initial period of more than six months.

(4) The department may renew temporary authority granted under this section one time for a period of not more than six months.

(5) A person who is granted temporary authority under this section may apply for permanent authority to provide the transportation after the expiration of the temporary authority by making application in the manner provided for application for permanent authority under this chapter.

(6) A grant of temporary authority under this section does not establish any right to a grant of permanent authority under this chapter, but a [*carrier*] **for-hire carrier of persons** may use evidence from operation under temporary authority under this section to establish a need for transportation services and to establish an ability to provide those services.

SECTION 7. ORS 825.117 is amended to read:

825.117. (1) If any condition or emergency arises requiring relief in cases of general epidemic, pestilence or other calamitous visitation in the state or any community therein, wherein the public or community interest or the transportation of any persons or household goods requires, in the opinion of the Department of Transportation, the issuance of a certificate for emergency transportation [*service*] **services**, the department may issue [*an emergency*] **a** certificate **for emergency transportation services,** [*therefor, without hearing or order,*] the term of which shall be limited to a reasonable time to be determined by the department under the circumstances.

(2) The department may issue [*an emergency*] **a** certificate [*without hearing or order*] for **emergency** transportation services donated for the benefit of a charitable organization, if the services are transportation of persons or household goods and the services are not of a type ordinarily required in the operation of the organization. Notwithstanding any other provision of this chapter, a certificate issued pursuant to this subsection shall be issued without charge to the applicant. As used in this subsection "charitable organization" means any person organized and existing for religious or medical purposes or any political subdivision of this state.

(3) The emergency authority issued under this section [*will*] **does** not convey any right to permanent authority [*or be*] **and is not** evidence of a need for permanent authority.

SECTION 8. ORS 825.127 is amended to read:

825.127. [*Hearing and order are not required for the*] **The Department of Transportation may grant** issuance of a permit to a for-hire carrier engaged in performing local cartage of household goods within areas designated by the department [*of Transportation*] pursuant to ORS 825.240.

SECTION 9. ORS 825.135 is amended to read:

825.135. **(1) As used in this section, "applicant" includes, but is not limited to, any person having a substantial interest or control, directly or indirectly, in or over the operations conducted or to be conducted under the carrier's authority.**

[*(1)*] **(2)** Notwithstanding any other provision of law, [*an applicant shall not be granted*] **the Department of Transportation may not grant to an applicant** a certificate, permit, transfer of any operating authority, extension of any operating authority or variance permit under ORS chapter 818 if the department [*of Transportation*] has reasonable grounds to believe, based on information contained in department files and records, or based on evidence presented either during hearing held under the provisions of ORS 825.110 or during hearing with respect to an application filed under ORS 825.102, that any of the following apply:

(a) The applicant is not capable of conducting the transportation service contemplated, in compliance with the law and rules of the department.

(b) The applicant is or has been a repeated and intentional violator of the provisions of this chapter, of ORS chapter 818 or of the rules of the department. This paragraph does not apply to violations for which an applicant has been penalized under subsection (3) of this section.

(c) The information contained in the application pertaining to ownership, possession or control of the equipment or operation to be conducted is false.

[*(2) As used in this section "applicant" includes, but is not necessarily limited to, any person having a substantial interest or control, directly or indirectly, in or over the operations conducted or to be conducted under the carrier's authority.*]

(3) A person whose application has been denied under subsection [*(1)*] **(2)** of this section [*shall*] **is** not [*be*] eligible to renew the application or to operate or participate directly or indirectly in the proposed operation for a period of time ordered by the department. The period of time ordered by the department under this subsection shall in no event be less than a period of six months from the date application has been denied and shall continue until the applicant has complied with any other penalties ordered by the department under this or other provisions of this chapter. An applicant may renew an application without prejudice by past violations after the penalty period under this subsection.

(4) Upon request, any person whose application has been denied under subsection [*(1)*] **(2)** of this section shall be granted a hearing. This subsection does not require a separate or additional hearing for applicants if the issues are addressed as part of any hearing on the application. After the hearing, the department shall grant or deny the application in conformity with the findings.

(5) Subsection [*(1)*] **(2)** of this section shall be strictly construed for purposes described in this subsection and shall control over any other purposes or policy considerations under the laws relating to motor carriers. The department shall exercise the authority granted under subsection [*(1)*] **(2)** of this section to assure that persons described in subsection [*(1)(b)*] **(2)(b)** of this section:

(a) Achieve an awareness of and respect for the provisions of this chapter, ORS chapter 818 and rules of the department.

(b) Do not legitimize activities that violate this chapter, ORS chapter 818 or the rules of the department by applying for and receiving any operating authority to continue previously unlawful activities.

(6) If the department determines that a carrier issued authority under this chapter is not providing requested transportation services that are within the authority of the carrier, the department shall limit the authority of the carrier to service that the carrier is actually providing unless the carrier provides full transportation services permitted under the carrier's authority.

SECTION 10. ORS 825.180 is amended to read:

825.180. (1) In addition to the other fees prescribed in this chapter:

(a) A person applying for a certificate under ORS 825.110 shall pay an application fee of $300.

(b) A person applying for a permit under ORS 825.127 shall pay a fee of $50.

(c) A person applying for a permit under ORS 825.102 shall pay an application fee of $300.

(d) A person applying for a change in a permit shall pay a fee of $50.

(e) A person applying for transfer of a certificate shall pay a fee of $300.

[*(f) A person registering under ORS 825.245 for the first time shall pay an initial application fee of $200.*]

[*(g)*] **(f)** A person making an application under any provision of this chapter not specified in this subsection shall pay a fee of $150 if the matter is set for a hearing.

(2) The Department of Transportation may refund the fees collected under this section if the applicant parties or their duly authorized representatives make written request therefor, if:

(a) Request for withdrawal of the application was received by the department no later than five days before the hearing date or if no hearing is required, such request must have been received prior to issuance of authority; and

(b) The department finds that:

(A) Applicant is not eligible to file application;

(B) Certificate authority is not needed for the service intended;

(C) Applicant's death or serious illness precludes conducting the operations for which application was made; or

(D) Transferor withdraws consent for transfer of certificate.

(3) When the department fixes a time and place for a hearing as required by ORS 825.110 (1), if any person who protested fails to appear at the hearing and failed to withdraw the protest at least

five days before the date of the hearing, the department may require such person to pay a sum equal to the application fee required by this section.

SECTION 11. ORS 825.247 is amended to read:

825.247. (1) The Department of Transportation may impose an annual fee in an amount determined under subsection (2) of this section on each for-hire carrier of household goods to defray the costs to the department of regulating persons [*performing pack or load services*] **offering or providing intrastate transportation of household goods without a certificate**. The department shall establish the due date of the fee by rule and shall give notice to each for-hire carrier of household goods at least 15 days prior to the due date.

(2) The fee imposed under this section on each carrier may not exceed 0.1 percent of the carrier's gross operating revenue derived from transportation of household goods within this state in the prior calendar year, except that the fee may not be less than $100. A for-hire carrier of household goods in its first year of operation shall pay a fee of $100.

(3) The fee imposed under this section is in addition to any other fee prescribed in this chapter for for-hire carriers of household goods.

(4) A for-hire carrier of household goods shall submit with the fee required by this section a statement verified by the carrier showing the gross operating revenues of the carrier derived from transportation of household goods within this state in the prior calendar year. The department shall prescribe the form for the statement and the information that must be included and may audit the forms at any time. The department may refund any overpayment of the fee in the same manner as the department refunds other moneys collected from motor carriers.

(5) A for-hire carrier of household goods that fails to pay the fee required by this section by the due date shall **be subject to suspension under ORS 825.139.** [*pay a penalty of two percent of the amount of the fee for each month or fraction of a month that the fee is overdue. The penalty is in addition to the amount of the fee. If the department determines that action is necessary to collect unpaid fees or penalties, the department may bring such action in a court of competent jurisdiction and is entitled to recover all costs of and disbursements for the action.*]

SECTION 12. ORS 825.326 is amended to read:

825.326. (1) Except as provided in subsection (2) of this section, all fees, taxes, charges and other sums collected by the Department of Transportation under this chapter shall be paid into the State Treasury and shall be placed to the credit of an account, separate and distinct from the General Fund, to be known as the Motor Carrier Account. Interest earned by the account shall be credited to the account.

(2) Notwithstanding ORS 823.991, all fees collected under ORS [*825.180 (1)(f), 825.245 and*] 825.247[,] **and** all penalties collected under ORS 825.950 for [*violation of ORS 825.245 and all penalties for*] **offering to transport or** transporting household goods without a certificate shall be paid into the State Treasury and shall be placed to the credit of an account, separate and distinct from the General Fund, to be known as the Consumer Protection Household Moves Account. Interest earned by the account shall be credited to the account. Moneys in the account are continuously appropriated to the department for purposes specified in subsection (5) of this section.

(3) The department may purchase the necessary supplies and equipment and provide for all necessary and incidental expenses incurred by the department in administering and enforcing this chapter.

(4) All claims, duly approved by the department, that have been incurred in pursuance of law, shall be paid by warrants drawn in the manner provided by law, payable out of the Motor Carrier Account or the Consumer Protection Household Moves Account.

(5) Moneys in the Consumer Protection Household Moves Account shall be used by the department exclusively for administration and enforcement of provisions of this chapter relating to persons that **offer to** provide **or** [*pack or load services*] **provide transportation of household goods without a certificate**.

SECTION 13. ORS 825.352 is amended to read:

825.352. A carrier that transports household goods shall include the carrier's certificate number in all newsprint classified advertising, newsprint display advertising**, Internet advertising** and telephone directory advertising prepared by or at the direction or request of the carrier.

SECTION 14. ORS 825.950 is amended to read:

825.950. (1)(a) Except as otherwise provided in paragraph (b) of this subsection, in addition to all other penalties provided by law, every person who violates or who procures, aids or abets in the violation of any provision of this chapter, ORS chapter 818 or 826 or any order, rule or decision of the Department of Transportation shall incur a civil penalty of not more than $100 for every such violation.

(b) In addition to all other penalties provided by law, every person who violates or who procures, aids or abets in the violation of ORS 825.100 [*or 825.245*] **by offering to transport or transporting household goods without a certificate** shall incur a civil penalty of not more than [*$500*] **$1,000** for every such violation.

(2) Each violation described in this section is a separate offense and in case of a continuing violation every day's continuance is a separate violation. Every act of commission or omission which procures, aids or abets in the violation is a violation under this section and subject to the civil penalty provided in this section.

(3) Civil penalties under this section shall be imposed in the manner provided in ORS 183.745.

(4) The Department of Transportation may reduce any civil penalty provided for in this section on such terms as the department considers proper if:

(a) The defendant admits the violations alleged in the notice and makes timely request for reduction of the penalty; or

(b) The defendant submits to the department a written request for reduction of the penalty within 15 days from the date the penalty order is served.

(5) If the amount of such penalty is not paid to the department, the Attorney General, at the request of the department, shall bring an action in the name of the State of Oregon in the Circuit Court of Marion County to recover such penalty. The action shall not be commenced until after the time has expired for an appeal from the findings, conclusions and order of the department. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter.

(6) Any motor carrier of persons or of household goods found knowingly to have assessed charges for transportation service less than published in its tariffs or written contracts on file with the department may be directed to collect the undercharges from the persons liable therefor and to remit such undercharges to the department in addition to any monetary penalties imposed against the carrier for charging less than the tariff or contract prescribes.

(7) Any motor carrier of persons or of household goods found to have assessed charges for transportation service more than the rates which have been legally filed with and prescribed by the department shall refund the overcharges to the persons from whom collected. If the carrier is unable to do so, the carrier may be required to remit such overcharges to the department in addition to any monetary penalties imposed against the carrier for charging more than the applicable tariff or contract prescribes.

SECTION 15. ORS 825.245 and 825.246 are repealed.

SECTION 16. The amendments to ORS 825.110 by section 3 of this 2009 Act apply to applications submitted on or after the effective date of this 2009 Act.

SECTION 17. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect October 1, 2009.

Passed by House April 15, 2009

Repassed by House June 4, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate June 2, 2009

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President of Senate

Received by Governor:

.....M.,....., 2009

Approved:

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Governor

Filed in Office of Secretary of State:

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Secretary of State