

Senate Bill 534

Sponsored by Senator METSGER; Senator GEORGE

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**.

Eliminates requirement that Department of Transportation notify every person who has certificate or pending application to operate as for-hire carrier and conduct hearing when person applies for issuance, transfer or extension of certificate to operate as for-hire carrier of household goods.

A BILL FOR AN ACT

1
2 Relating to for-hire carriers; creating new provisions; and amending ORS 825.005, 825.102, 825.110,
3 825.115, 825.117, 825.127, 825.129, 825.135, 825.180, 825.245 and 825.326.

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

5 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 825.**

6 **SECTION 2. (1) When a person files with the Department of Transportation an applica-**
7 **tion for a certificate to operate as a for-hire carrier of household goods, for the extension**
8 **of an existing certificate or for the transfer of a certificate, the department shall issue,**
9 **transfer or extend a certificate if the applicant shows compliance with subsection (2) of this**
10 **section.**

11 **(2) The department shall issue the certificate if the applicant has complied with this**
12 **chapter and the rules of the department, and if the department finds from the record and**
13 **the evidence submitted at the hearing, if the application is the subject of a hearing, that:**

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

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

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

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

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

23 **(3) If the department does not find that all the conditions provided in subsection (2) of**
24 **this section are satisfied, the department may deny the application or may defer issuance**
25 **of the certificate pending compliance by the applicant with the conditions provided in sub-**
26 **section (2) of this section.**

27 **(4)(a) Pending determination of application for transfer of a certificate, the department**
28 **may grant approval of the temporary operation of the certificate by the prospective**
29 **transferee, or, if the transferor's service to the public may be substantially impaired, may**
30 **authorize temporary management of the transferor's motor carrier operations by the pro-**
31 **spective transferee.**

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

3 **(c) Evidence of operation under temporary authority as provided in this section is not**
4 **admissible to show the extent of utilization of the certificate to be transferred.**

5 **SECTION 3.** ORS 825.005 is amended to read:

6 825.005. As used in this chapter:

7 (1) "Carrier" or "motor carrier" means for-hire carrier or private carrier.

8 (2) "Cartage carrier" means any person who undertakes to transport any class of property by
9 motor vehicle for compensation when the transportation is performed wholly within an incorporated
10 city or a commercial zone adjacent to an incorporated city.

11 (3) "Certificate" means an authority issued to a for-hire carrier under ORS 825.110 **or section**
12 **2 of this 2009 Act.**

13 (4) "Combined weight" means the weight of the motor vehicle plus the weight of the maximum
14 load which the applicant has declared such vehicle will carry. Any declared combined weight is
15 subject to audit and approval by the Department of Transportation. The combined weight of motor
16 buses or bus trailers is the light weight of the vehicle plus the weight of the maximum seating ca-
17 pacity including the driver's seat estimated at 170 pounds per seat, exclusive of emergency seats,
18 except that transit-type motor vehicles may use 150 pounds per seat in determining combined weight.
19 In cases where a bus has a seating capacity which is not arranged for separate or individual seats,
20 18 lineal inches of such capacity shall be deemed the equivalent of a passenger seat.

21 (5) "Department" means the Department of Transportation.

22 (6) "Extreme miles" or "extreme mileage" means the total miles operated by a vehicle over the
23 public highways, except the extra miles necessarily operated in traversing detours or temporary
24 routes on account of road blockades in the state.

25 (7) "For-hire carrier" means:

26 (a) Any person who transports persons or property for hire or who publicly purports to be
27 willing to transport persons or property for hire by motor vehicle; or

28 (b) Any person who leases, rents or otherwise provides a motor vehicle to the public and who
29 in connection therewith in the regular course of business provides, procures or arranges for, di-
30 rectly, indirectly or by course of dealing, a driver or operator therefor.

31 (8) "Motor vehicle" means any self-propelled vehicle and any such vehicle in combination with
32 any trailing units, used or physically capable of being used upon any public highway in this state
33 in the transportation of persons or property, except vehicles operating wholly on fixed rails or
34 tracks and electric trolley buses. "Motor vehicle" includes overdimension vehicles or vehicles per-
35 mitted excessive weights pursuant to a special authorization issued by a city, county or the De-
36 partment of Transportation.

37 (9) "Pack or load services" means services relating to the packing or loading of personal prop-
38 erty that are performed:

39 (a) By a person that is in the business of performing such services;

40 (b) For compensation;

41 (c) For the purpose of moving the personal property; and

42 (d) By a person that does not directly or indirectly provide a motor vehicle for the movement
43 of the property or act as an agent for a person that provides a motor vehicle for the movement of
44 the property.

45 (10) "Permit" means an authority issued to a carrier under ORS 825.102, 825.106, 825.108 or

1 825.127.

2 (11) "Private carrier" means any person who operates a motor vehicle over the public highways
3 of this state for the purpose of transporting persons or property when the transportation is inci-
4 dental to a primary business enterprise, other than transportation, in which such person is engaged.

5 (12) "Privilege taxes" means the weight-mile tax and fees prescribed in this chapter.

6 (13) "Property" includes, but is not limited to, permanent loads such as equipment, appliances,
7 devices, or ballast that are attached to, carried on, or made a part of the vehicle and that are de-
8 signed to serve some functional purpose.

9 (14) "Public highway" means every street, alley, road, highway and thoroughfare in this state
10 used by the public or dedicated or appropriated to public use.

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

13 [(16)] (15) "Transit-type motor vehicle" means any passenger-carrying vehicle that does not have
14 a separate space for transporting baggage or express.

15 [(17)] (16) "Transporter" has the meaning given that term in ORS 466.005.

16 **SECTION 4.** ORS 825.102 is amended to read:

17 825.102. (1) Except as provided in subsection (6) of this section and ORS 825.135, the Department
18 of Transportation shall issue a permit to a person to provide transportation as a for-hire carrier
19 over any highway in this state in intrastate commerce if the person applies for the permit and the
20 department is satisfied that the person is able to comply with the provisions of this chapter and the
21 rules of the department.

22 (2) In deciding whether to approve an application for a permit under this section, the department
23 shall consider any evidence demonstrating that the applicant is unable to comply with this chapter
24 and the rules of the department and shall deny the application if the applicant does not meet the
25 financial responsibility and safety requirements established by this chapter and by rules of the de-
26 partment.

27 (3) If an application for a permit under this section is denied, the department shall notify the
28 applicant of the reasons for denial. The applicant is entitled to a hearing if written request for a
29 hearing is made within 15 days of the notification of denial.

30 (4) A permit granted under this section is not transferable. The department shall determine by
31 rule what constitutes transfer of a permit.

32 (5) A permit issued under this section may be suspended or revoked as provided in this chapter.
33 Grounds for suspension or revocation include, but are not limited to, failure to maintain compliance
34 with safety requirements, failure to maintain compliance with financial responsibility requirements
35 and failure to report or pay fees, taxes or penalties due the department.

36 (6) A permit shall not be granted under this section for transportation of persons by a regular
37 route full-service scheduled carrier or for transportation of household goods. Regular route full-
38 service scheduled carriers of persons and carriers of household goods are subject to the certificate
39 provisions of ORS 825.110 **and section 2 of this 2009 Act.**

40 **SECTION 5.** ORS 825.110 is amended to read:

41 825.110. (1) When a person files with the Department of Transportation an application for a
42 certificate to operate as a for-hire regular route full-service scheduled carrier of persons as de-
43 scribed in ORS 825.234, [*or as a for-hire carrier of household goods,*] for the extension of an existing
44 certificate, or for the transfer of a certificate, the department shall serve notice of the application
45 upon every person who has an application filed and pending before the department to serve the

1 territory proposed to be served by the applicant, or who holds a certificate to serve that territory.
2 If any person desires to protest the issuance, extension or transfer of the certificate, the person may
3 file notice thereof with the department within 15 days from the date of service of the notice of ap-
4 plication. The department thereupon shall fix a time and place for a hearing upon the application,
5 and shall serve notice of the hearing upon the applicant and any person who has filed a protest. For
6 the purpose of being properly and fully informed, the department may hold a hearing on an appli-
7 cation although no protest is filed.

8 (2) If no person protests within the time provided in subsection (1) of this section, the depart-
9 ment may order the issuance, transfer or extension of the certificate without a hearing, if the ap-
10 plicant shows compliance with subsection (4)(a), (b) and (d) to (f) of this section.

11 (3) If all protests to the application are withdrawn prior to the closing of the record, the de-
12 partment may order the issuance or transfer of the certificate if the applicant shows compliance
13 with subsection (4)(a), (b) and (d) to (f) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

3 **SECTION 6.** ORS 825.115 is amended to read:

4 825.115. (1) The Department of Transportation may grant temporary authority for a for-hire
5 carrier to provide transportation of persons or household goods where it is shown that a need exists
6 for such service. Such temporary authority may be authorized only if the department receives a re-
7 quest for service from a user of the proposed transportation service, and if the department con-
8 cludes, after investigation, that the request represents a true need.

9 (2) The department shall provide for protest and hearing under ORS 825.110 within 90 days after
10 temporary authority is issued under this section **to a person operating as a for-hire regular route**
11 **full-service scheduled carrier of persons.** The department shall cancel immediately any temporary
12 authority granted under this section if the department determines [*at hearing*] that the **temporary**
13 **authority issued** does not comply with requirements for grant of authority under ORS 825.110 **or**
14 **section 2 of this 2009 Act.**

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

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

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

22 (6) A grant of temporary authority under this section does not establish any right to a grant
23 of permanent authority under this chapter, but a carrier may use evidence from operation under
24 temporary authority under this section to establish a need for transportation services and to estab-
25 lish an ability to provide those services.

26 **SECTION 7.** ORS 825.117 is amended to read:

27 825.117. (1) If any condition or emergency arises requiring relief in cases of general epidemic,
28 pestilence or other calamitous visitation in the state or any community therein, wherein the public
29 or community interest or the transportation of any persons or household goods requires, in the
30 opinion of the Department of Transportation, the issuance of a certificate for emergency transpor-
31 tation [*service*] **services**, the department may issue [*an emergency*] **a certificate [therefor] for**
32 **emergency transportation services**, without hearing or order, the term of which shall be limited
33 to a reasonable time to be determined by the department under the circumstances.

34 (2) The department may issue [*an emergency*] **a certificate** without hearing or order for **emer-**
35 **gency** transportation services donated for the benefit of a charitable organization, if the services
36 are transportation of persons or household goods and the services are not of a type ordinarily re-
37 quired in the operation of the organization. Notwithstanding any other provision of this chapter, a
38 certificate issued pursuant to this subsection shall be issued without charge to the applicant. As
39 used in this subsection “charitable organization” means any person organized and existing for reli-
40 gious or medical purposes or any political subdivision of this state.

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

43 **SECTION 8.** ORS 825.127 is amended to read:

44 825.127. [*Hearing and order are not required for the*] **The Department of Transportation may**
45 **grant** issuance of a permit to a for-hire carrier engaged in performing local cartage of household

1 goods within areas designated by the department [*of Transportation*] pursuant to ORS 825.240.

2 **SECTION 9.** ORS 825.129 is amended to read:

3 825.129. (1) Notwithstanding any provision of law, no certificate issued under this chapter, or
4 any prior law, shall be assigned or otherwise transferred except as provided in ORS 825.110 **and**
5 **section 2 of this 2009 Act.**

6 (2) No such certificate shall be construed to be a franchise or irrevocable or exclusive or to
7 possess value for ratemaking purposes. However, upon the death of an individual holding a certif-
8 icate:

9 (a) If the estate of such individual is admitted to probate, the executor or personal represen-
10 tative may continue the operation thereunder, for the purpose of transferring the certificate, for a
11 period not to exceed two years from the date of death; or

12 (b) If the estate of such individual is not probated, all the heirs of the deceased holder of the
13 certificate may file with the Department of Transportation an application for the transfer of the
14 certificate together with an affidavit signed by the heirs stating the name of the person to whom the
15 certificate is to be transferred. If any heir has not reached the age of majority or is otherwise le-
16 gally incapacitated, the heir's parent or guardian shall sign for the heir. The affidavit shall be on
17 a form prescribed and furnished by the department. Subject to the provisions of ORS 825.135, the
18 department shall transfer the certificate to the person named as transferee in the affidavit.

19 (3) In determining the scope of authority to be transferred under subsection (2) of this section,
20 the department shall consider, as evidence of past use under the certificate, only the services fur-
21 nished during the two-year period immediately preceding the death of the certificate holder.

22 (4) If an application under subsection (2) of this section for the transfer of the certificate is not
23 filed within 18 months of the date of death, and if such certificate is not transferred within two
24 years of the date of death, the certificate shall be deemed automatically revoked.

25 **SECTION 10.** ORS 825.135 is amended to read:

26 825.135. (1) **As used in this section, "applicant" includes, but is not limited to, any person**
27 **having a substantial interest or control, directly or indirectly, in or over the operations**
28 **conducted or to be conducted under the carrier's authority.**

29 [(1)] (2) Notwithstanding any other provision of law, [*an applicant shall not be granted*] **the**
30 **Department of Transportation may not grant to an applicant** a certificate, permit, transfer of
31 any operating authority, extension of any operating authority or variance permit under ORS chapter
32 818 if the department [*of Transportation*] has reasonable grounds to believe, based on information
33 contained in department files and records, or based on evidence presented either during hearing held
34 under the provisions of ORS 825.110 or during hearing with respect to an application filed under
35 ORS 825.102, that any of the following apply:

36 (a) The applicant is not capable of conducting the transportation service contemplated, in com-
37 pliance with the law and rules of the department.

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

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

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

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

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

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

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

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

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

26 **SECTION 11.** ORS 825.180 is amended to read:

27 825.180. (1) In addition to the other fees prescribed in this chapter:

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

29 **(b) A person applying for a certificate under section 2 of this 2009 Act shall pay an ap-**
 30 **plication fee of \$300.**

31 [(b)] (c) A person applying for a permit under ORS 825.127 shall pay a fee of \$50.

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

33 [(d)] (e) A person applying for a change in a permit shall pay a fee of \$50.

34 [(e)] (f) A person applying for transfer of a certificate shall pay a fee of \$300.

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

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

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

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

44 (b) The department finds that:

45 (A) Applicant is not eligible to file application;

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

2 (C) Applicant's death or serious illness precludes conducting the operations for which applica-
3 tion was made; or

4 (D) Transferor withdraws consent for transfer of certificate.

5 (3) When the department fixes a time and place for a hearing as required by ORS 825.110 (1),
6 if any person who protested fails to appear at the hearing and failed to withdraw the protest at least
7 five days before the date of the hearing, the department may require such person to pay a sum equal
8 to the application fee required by this section.

9 **SECTION 12.** ORS 825.245 is amended to read:

10 825.245. (1) Any person that offers to perform or performs pack or load services, including but
11 not limited to a for-hire carrier of household goods issued a certificate under [ORS 825.110] **section**
12 **2 of this 2009 Act** that performs pack or load services, must register annually with the Department
13 of Transportation on a form provided by the department and according to rules adopted by the de-
14 partment.

15 (2) The department shall establish by rule an annual registration fee, not to exceed \$100. The
16 department may establish by rule the dates for annual renewal of registration.

17 (3)(a) Upon receipt of information required by the registration form, proof of compliance with
18 ORS 825.246, the registration fee under subsection (2) of this section and the initial application fee
19 under ORS 825.180, the department shall issue proof of registration to the person offering to perform
20 or performing the pack or load services.

21 (b) Upon receipt of information required by the registration form, proof of compliance with ORS
22 825.246, and the registration fee under subsection (2) of this section, the department shall issue proof
23 of renewal of registration to the person offering to perform or performing the pack or load services.

24 (4) A person may not perform or purport to perform pack or load services unless the person has
25 registered in accordance with this section and with any rules adopted by the department. Violation
26 of this subsection is subject to penalties as provided in ORS 825.950.

27 **SECTION 13.** ORS 825.326 is amended to read:

28 825.326. (1) Except as provided in subsection (2) of this section, all fees, taxes, charges and other
29 sums collected by the Department of Transportation under this chapter shall be paid into the State
30 Treasury and shall be placed to the credit of an account, separate and distinct from the General
31 Fund, to be known as the Motor Carrier Account. Interest earned by the account shall be credited
32 to the account.

33 (2) Notwithstanding ORS 823.991, all fees collected under ORS 825.180 [(1)(f)] **(1)(g)**, 825.245 and
34 825.247, all penalties collected under ORS 825.950 for violation of ORS 825.245 and all penalties for
35 transporting household goods without a certificate shall be paid into the State Treasury and shall
36 be placed to the credit of an account, separate and distinct from the General Fund, to be known as
37 the Consumer Protection Household Moves Account. Interest earned by the account shall be cred-
38 ited to the account. Moneys in the account are continuously appropriated to the department for
39 purposes specified in subsection (5) of this section.

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

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

1 (5) Moneys in the Consumer Protection Household Moves Account shall be used by the depart-
2 ment exclusively for administration and enforcement of provisions of this chapter relating to persons
3 that provide pack or load services.

4 **SECTION 14. Section 2 of this 2009 Act and the amendments to ORS 825.110 by section**
5 **5 of this 2009 Act apply to applications submitted on or after the effective date of this 2009**
6 **Act.**

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