

D R A F T

SUMMARY

Deregulates oversight of for-hire carriers of persons.

A BILL FOR AN ACT

1
2 Relating to transportation of persons by for-hire carriers; amending ORS
3 825.007, 825.017, 825.028, 825.102, 825.110, 825.115, 825.135, 825.137, 825.180,
4 825.202, 825.222, 825.224, 825.234 and 825.950.

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

6 **SECTION 1.** ORS 825.202 is amended to read:

7 825.202. The Department of Transportation shall supervise and regulate
8 the transportation of [*persons and of*] household goods by for-hire carriers
9 and with respect [*thereto*] **to the transportation service** shall:

10 (1) After hearing, regulate and prescribe just, fair and reasonable rates,
11 classifications and practices.

12 (2)(a) Prescribe the kind and form of accounts, manifests, receipts and
13 records to be used and kept pertaining to operation, [*and*] **prescribe** the
14 method and manner of keeping [*them*] **the accounts, manifests, receipts**
15 **and records** and require their preservation for such time as the department
16 may determine proper[,]; and

17 (b) Have access [*thereto*] **to the accounts, manifests, receipts and re-**
18 **cords** with right of audit and inspection at all reasonable times.

19 (3) Require the filing of such periodical or other reports or data of such
20 carriers as the department deems necessary.

21 (4) Require reasonably adequate service and facilities.

22 [*(5) Regulate operating schedules of for-hire regular route full-service*]

1 *scheduled carriers of persons so as to meet the needs of any community served*
2 *and so as to prevent unnecessary duplication of for-hire carrier services.]*

3 **SECTION 2.** ORS 825.224 is amended to read:

4 825.224. (1) The rates, **classifications**, rules and practices used by for-hire
5 carriers in the transportation of [*persons and of*] household goods shall be
6 prescribed by the Department of Transportation and:

7 (a) Be plainly stated in tariffs [*or schedules*] available to the public at
8 each carrier's office, and at the office of the department; and

9 (b) Be just, reasonable and fair and [*shall*] **may** not be unduly
10 discriminatory, prejudicial or preferential.

11 (2) [*No*] **A** for-hire carrier of [*persons or*] household goods [*shall*] **may**
12 **not:**

13 (a) Charge, collect or receive a different remuneration for the transpor-
14 tation of [*persons or*] household goods, or for any **related** service [*in con-*
15 *nection therewith*], than the rates [*which*] **that** have been legally prescribed
16 and filed with the department.

17 (b) Refund or remit in any manner or by any device any portion of the
18 rates required to be collected by its tariffs or written contracts on file with
19 the department.

20 (3)(a) Any action against for-hire carriers of [*persons or*] household goods
21 for recovery of overcharges, or by the carriers for the collection of under-
22 charges, shall be commenced within two years from the time the cause of
23 action accrued.

24 (b) As used in this subsection[,]:

25 (A) "Overcharges" [*or undercharges shall mean*] **means** charges assessed
26 for transportation service [*different from those*] **that are more than the**
27 **rates** applicable under the tariff lawfully in effect **or in written contracts**
28 **on file with the department.**

29 (B) "Undercharges" **means charges assessed for transportation ser-**
30 **vice that are less than the rates applicable under the tariff lawfully in**
31 **effect or in written contracts on file with the department.**

1 (4) The department shall check the records of [*for-hire carriers of persons*
2 *and of*] for-hire carriers of household goods for the purpose of discovering
3 all discriminations and rebates. The department:

4 (a) Upon the department's own motion, may, and upon the complaint of
5 any aggrieved person, shall, pursuant to written notice served upon any
6 carrier subject to this subsection, investigate the **carrier's service and the**
7 **carrier's** rates, classifications, rules and practices [*of the carrier and inves-*
8 *tigate service in connection therewith*]; and

9 (b) To the extent that the rates, classifications, rules or practices are
10 found by the department to be unreasonable, unlawful, unfair or unduly
11 discriminatory, preferential or prejudicial, shall, by orders based upon the
12 evidence, require the carrier to comply with just, fair, lawful and reasonable
13 rates, classifications, rules and practices established by the department. Such
14 carrier shall [*forthwith*] **immediately** comply with such orders.

15 (5) The department may suspend a tariff [*or time schedule*] of **for-hire**
16 carriers of [*persons or*] household goods that the department believes will
17 impair the ability of the carriers to serve the public or **that** appears to be
18 unjust, unfair, unreasonable, prejudicial, discriminatory or otherwise unlaw-
19 ful.

20 **SECTION 3.** ORS 825.234 is amended to read:

21 825.234. [(1) *As used in this section:*]

22 [(a) "*Regular route scheduled transportation*" means the transportation of
23 *persons between designated points over designated routes under time schedules*
24 *that provide a regularity of service.*]

25 [(b) "*Full-service*" means service that is offered during any part of more
26 *than 10 consecutive months in any 12-month period.*]

27 [(2)] (1) For-hire carriers of [*persons or of*] household goods shall be
28 classified, and the classification shall be shown on the carrier's certificate
29 when issued or reissued by the Department of Transportation, as follows:

30 [(a) *Regular route full-service scheduled transportation of persons.*]

31 [(b)] (a) Irregular route transportation of household goods.

1 [(c)] (b) Local cartage of household goods.

2 [(3) *Carriers providing regular route full-service scheduled transportation*
3 *of persons shall file a schedule setting forth the termini between which service*
4 *is rendered, the hours of departure and arrival, and tariffs and classifications*
5 *governing rates.*]

6 [(4)] (2) Irregular route carriers of household goods shall file tariffs and
7 classifications governing rates.

8 [(5)] (3) Cartage carriers of household goods shall file tariffs and classi-
9 fications governing rates. The department shall, after hearing, determine
10 what territorial limits will be included within the commercial area adjacent
11 to the limits of any incorporated city.

12 **SECTION 4.** ORS 825.007 is amended to read:

13 825.007. (1) The business of operating as a motor carrier of persons or
14 property for hire upon the highways of this state is declared to be a business
15 affected with the public interest. It is hereby declared to be the state trans-
16 portation policy to do the following:

17 (a) Promote safe, adequate, economical and efficient service and to pro-
18 mote the conservation of energy.

19 (b) Promote sound, economic conditions in transportation.

20 (c) Encourage the establishment and maintenance of reasonable rates for
21 transportation services, without unjust discriminations, undue preferences
22 or advantages or unfair or destructive competitive practices.

23 (d) Provide specific state action immunity against all antitrust claims and
24 prosecution in those instances when carriers lawfully develop, publish and
25 charge rates relating to the transportation of [*persons or*] household goods
26 and joint line rates relating to the transportation of other property and
27 provide services specifically prescribed and subject to regulation by the De-
28 partment of Transportation and in those instances when carriers lawfully
29 engage in prior consultation for purposes described in this paragraph.

30 (2) The volume of motor carrier traffic presents dangers and hazards on
31 public highways and makes it imperative that:

1 (a) Stringent rules be employed, to the end that the highways may be
2 rendered safe for the use of the general public;

3 (b) The wear of such highways be controlled;

4 (c) A minimum of inconvenience to other users of the highways be ef-
5 fected;

6 (d) A minimum hindrance and stoppage to other users of the highways
7 compatible with needs of the public for adequate transportation service, be
8 effected;

9 (e) The highways be safeguarded from improper or unnecessary usage;

10 (f) Operation by irresponsible persons or any other operation threatening
11 the safety of the public or detrimental to the general welfare be prevented;

12 (g) Congestion of traffic on the highways be minimized;

13 (h) The various transportation agencies of the state be adjusted and cor-
14 related so that public highways may serve the best interest of the general
15 public; and

16 (i) A method of assessing privilege taxes be provided to enable the further
17 construction of highways and to provide for the operation, preservation and
18 maintenance of highways already built.

19 (3) The [*legislature*] **Legislative Assembly** hereby declares that to effect
20 the ends and purposes listed in this section, this chapter is adopted.

21 **SECTION 5.** ORS 825.017 is amended to read:

22 825.017. Except as provided in ORS 825.026 and 825.030, this chapter does
23 not apply to the persons or vehicles described in this section. The exemption
24 under this section applies to the following persons and vehicles:

25 (1) Vehicles being used by, or under contract with, any school board,
26 district or person responsible for the administration of elementary or sec-
27 ondary school activities, and engaged exclusively in transporting students
28 or combinations of students and other persons to or from school, to or from
29 authorized school activities or other activities sponsored by the State Board
30 of Higher Education, or for purposes provided under ORS 332.427. This ex-
31 emption shall not be affected by the charging of a fee to cover the costs of

1 the transportation.

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

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

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

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

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

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

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

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

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

22 (a) An agency of the United States;

23 (b) The State Board of Forestry;

24 (c) The State Forester; or

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

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

29 (a) The use is pursuant to a written agreement entered into with the State
30 Board of Forestry, the State Forester or an agency of the United States,
31 authorizing the owner of the motor vehicle to use the road and requiring the

1 owner to pay for or to perform the construction or maintenance of the
2 county road, including any operator of a motor vehicle retained to transport
3 logs, poles and piling for the owners who are exempt under this section;

4 (b) The board, officer or agency that entered into the agreement or
5 granted the permit, by contract with the county court or board of county
6 commissioners, has assumed the responsibility for the construction or main-
7 tenance of the county road; and

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

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

12 (a) Is performed by a nonprofit entity;

13 (b) Is not in competition with [*a regular route full-service scheduled car-*
14 *rier of persons that is subject to the provisions of this chapter or*]:

15 (A) A service provided by a mass transit district **or a transportation**
16 **district** [*formed*] **organized** under ORS chapter 267; **or**

17 (B) **A service provided by an entity described in subsections (20),**
18 **(21) or (22) of this section;**

19 (c) Is performed by use of vehicles operating in compliance with ORS
20 820.020 to 820.070; and

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

23 (10) Vehicles being used in transporting persons with disabilities, with
24 or without their supervisors or assistants, to or from rehabilitation facilities
25 or child care services if the motor vehicle is a passenger motor vehicle with
26 a seating capacity of not more than 12 passengers. The exemption provided
27 by this subsection applies only when the motor vehicle is operated by or
28 under contract with any person responsible for the administration of reha-
29 bilitation facilities as defined in ORS 344.710 to 344.730 or child care services
30 provided by a facility licensed under ORS 329A.030 and 329A.250 to 329A.450.

31 (11) Vehicles owned or operated by the United States or by any govern-

1 mental jurisdiction within the United States except when owned or operated
2 as a carrier of property for hire.

3 (12) Vehicles owned or operated by a mass transit district **or a trans-**
4 **portation district** [*created*] **organized** under ORS chapter 267.

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

10 (14) Vehicles owned or operated by, or under contract with, a charitable
11 organization when exclusively engaged in performing transportation, either
12 one way or round trip, necessary to the operation of the charitable organ-
13 ization. As used in this subsection, "charitable organization" means an or-
14 ganization that has no capital stock and no provision for making dividends
15 or profits, but derives its funds principally from public and private charity
16 and holds them in trust for the promotion of the welfare of others and not
17 for profit. Any organization claiming an exemption under this subsection
18 shall file an affidavit with the department stating that it is organized and
19 operated in accordance with the requirements of this subsection.

20 (15) Vehicles with a maximum speed that does not exceed 35 miles per
21 hour that are designed for off-road use and that are operated on the public
22 highways in any one calendar year a number of miles that does not exceed
23 15 percent of the total number of miles the vehicle is operated for that cal-
24 endar year.

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

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

31 (a) Is a passenger vehicle with a passenger seating capacity that does not

1 exceed eight;

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

3 (c) Operates on an irregular route basis.

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

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

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

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

13 **(20) Vehicles owned or operated by a county service district au-**
14 **thorized to provide public transportation under ORS 451.010.**

15 **(21) Vehicles owned or operated by a city or county to provide**
16 **public transportation.**

17 **(22) Vehicles owned or operated by an intergovernmental body**
18 **formed by two or more public bodies, as defined in ORS 174.109, to**
19 **provide public transportation.**

20 **SECTION 6.** ORS 825.028 is amended to read:

21 825.028. (1) For-hire carriers may provide transportation of [*persons or*]
22 household goods for charitable organizations or civic nonprofit organizations
23 and festivals at no charge or at reduced rates or in exchange for promotional
24 services by the charitable organization or civic nonprofit organization or
25 festival.

26 (2) As used in this section:

27 (a) “Charitable organization” has the meaning given [*for*] that term in
28 ORS 825.017 (14).

29 (b) “Civic nonprofit organization” or “festival” means an organization or
30 festival classified under the Internal Revenue Code as having a 501(c)(3) or
31 501(c)(4) tax exempt status.

1 **SECTION 7.** ORS 825.102 is amended to read:

2 825.102. (1) Except as provided in subsection (6) of this section and ORS
3 825.135, the Department of Transportation shall issue a permit to a person
4 to provide transportation **service** as a for-hire carrier over any highway in
5 this state in intrastate commerce if the person applies for the permit and the
6 department is satisfied that the person is able to comply with the provisions
7 of this chapter and the rules of the department.

8 (2) In deciding whether to approve an application for a permit under this
9 section, the department shall consider any evidence demonstrating that the
10 applicant is unable to comply with this chapter and the rules of the depart-
11 ment and shall deny the application if the applicant does not meet the fi-
12 nancial responsibility and safety requirements established by this chapter
13 and by rules of the department.

14 (3) If an application for a permit under this section is denied, the de-
15 partment shall notify the applicant of the reasons for denial. The applicant
16 is entitled to a hearing if written request for a hearing is made within 15
17 days of the notification of denial.

18 (4) A permit granted under this section is not transferable. The depart-
19 ment shall determine by rule what constitutes transfer of a permit.

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

25 (6) *[A permit shall not be granted under this section for transportation of*
26 *persons by a regular route full-service scheduled carrier or]* **The department**
27 **may not issue a permit under this section** for transportation of household
28 goods. *[Regular route full-service scheduled carriers of persons and]* **For-hire**
29 carriers of household goods are subject to the certificate provisions of ORS
30 825.110.

31 **SECTION 8.** ORS 825.110 is amended to read:

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

15 [(2) *If no person protests within the time provided in subsection (1) of this*
16 *section, or if all protests to the application are withdrawn prior to the closing*
17 *of the record, the department may order the issuance, extension or transfer of*
18 *the certificate if the applicant shows compliance with subsection (4)(a), (b) and*
19 *(d) to (f) of this section.*]

20 [(3)] **(1)** When a person files with the Department **of Transportation** an
21 application for a certificate to operate as a for-hire carrier of household
22 goods, for the extension of an existing certificate or for the transfer of a
23 certificate, the department may issue, extend or transfer the certificate if the
24 department determines the applicant meets the requirements of subsection
25 [(4)(a), (b) and (d) to (f)] **(2)** of this section.

26 [(4)] **(2)** If the application for issuance, extension or transfer of a certif-
27 icate under this section is the subject of a hearing, the department shall is-
28 sue the certificate if the applicant has complied with this chapter and the
29 rules of the department, and if the department finds from the record and the
30 evidence submitted at the hearing that:

31 (a) The applicant is fit, willing and able to perform the **transportation**

1 service proposed;

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

5 [(c) *The service proposed, to the extent authorized, is or will be required*
6 *by the present or future public convenience and necessity or in case of pro-*
7 *ceedings under ORS 825.129 if the department finds the assignment or other*
8 *transfer is in the public interest;*]

9 [(d)] (c) The service proposed will not be attended with substantial dam-
10 age to the highways or danger to other highway users or to the public;

11 [(e)] (d) The rates[, *schedules*] or contracts proposed by the applicant, if
12 an intrastate operator, are approved by the department; and

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

15 [(5)] (3) [*If the application for issuance or transfer of a certificate is the*
16 *subject of a hearing, and*] If the department does not find that all the con-
17 ditions provided in subsection [(4)] (2) of this section are satisfied, the de-
18 partment may deny the application or may defer issuance of the certificate
19 pending compliance by the applicant with those conditions provided in sub-
20 section [(4)] (2) of this section.

21 **(4) If an application for a certificate under this section is denied,**
22 **the department shall notify the applicant of the reasons for denial.**
23 **The applicant is entitled to a hearing if written request for a hearing**
24 **is made within 15 days of the notification of denial.**

25 [(6)] (5) If the applicant fails to appear at the time and place fixed for the
26 hearing, the application may be denied.

27 [(7)(a)] (6)(a) Pending determination of application for transfer of a cer-
28 tificate, the department[, *without hearing,*] may grant approval of the tem-
29 porary operation of the certificate by the prospective transferee[,] or, if the
30 transferor's service to the public may be substantially impaired, may au-
31 thorize temporary management of the transferor's motor carrier operations

1 by the prospective transferee.

2 (b) Service performed under temporary authority granted under this sec-
3 tion is subject to all provisions of this chapter and the rules of the depart-
4 ment.

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

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

11 [(8)] (7) The department may require an applicant for a certificate to op-
12 erate as a for-hire carrier of household goods issued under this section to
13 complete a criminal background check. The department shall adopt rules
14 describing the standards used by the department to determine if an applicant
15 is unfit based on the results of the applicant's criminal history.

16 **SECTION 9.** ORS 825.115 is amended to read:

17 825.115. (1) [*The Department of Transportation may grant temporary au-*
18 *thority for a for-hire carrier to provide transportation of persons where it is*
19 *shown that a need exists for such service.*] The Department **of Transporta-**
20 **tion** may grant temporary authority for a for-hire carrier to provide trans-
21 portation of household goods where it is in the public interest. Such
22 temporary authority may be authorized only if the department receives a
23 request for service from a user of the proposed transportation service, and
24 if the department concludes, after investigation, that the request represents
25 a true need or is in the public interest.

26 (2) [*The department shall provide for protest and hearing under ORS*
27 *825.110 within 90 days after temporary authority is issued under this section*
28 *to a for-hire carrier of persons.*] The department shall cancel immediately any
29 temporary authority granted under this section if the department determines
30 that the temporary authority issued does not comply with requirements for
31 grant of authority under ORS 825.110.

1 (3) The department may not grant temporary authority under this section
2 for an initial period of more than six months.

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

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

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

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

15 825.135. (1) As used in this section, “applicant” includes, but is not limited
16 to, any person having a substantial interest or control, directly or indirectly,
17 in or over the operations conducted or to be conducted under the carrier’s
18 authority.

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

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

29 (b) The applicant is or has been a repeated and intentional violator of the
30 provisions of this chapter, of ORS chapter 818 or of the rules of the depart-
31 ment. This paragraph does not apply to violations for which an applicant has

1 been penalized under subsection (3) of this section.

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

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

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

20 (5) Subsection (2) of this section shall be strictly construed for purposes
21 described in this subsection and shall control over any other purposes or
22 policy considerations under the laws relating to motor carriers. The depart-
23 ment shall exercise the authority granted under subsection (2) of this section
24 to assure that persons described in subsection (2)(b) of this section:

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

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

30 (6) If the department determines that a carrier issued authority under this
31 chapter is not providing requested transportation services that are within

1 the authority of the carrier, the department shall limit the authority of the
2 carrier to service that the carrier is actually providing unless the carrier
3 provides full transportation services permitted under the carrier's authority.

4 **SECTION 11.** ORS 825.137 is amended to read:

5 825.137. (1) Certificates and permits when issued shall be valid until sus-
6 pended or revoked when the carrier is found by the Department of Trans-
7 portation to be in violation of this chapter or ORS chapter 818. A variance
8 permit issued under ORS chapter 818 shall be valid for the length of time for
9 which it is issued unless prior to that time the permit is suspended or re-
10 voked by the Department of Transportation for violation of this chapter or
11 ORS chapter 818.

12 (2) Certificates or permits, or variance permits issued pursuant to ORS
13 chapter 818, may be suspended or canceled by the department based upon the
14 department's own motion after notice and hearing, when the certificate or
15 permit holder:

16 (a) Or agents or employees of the holder have repeatedly violated this
17 chapter or other highway or motor laws of this state. In applying this para-
18 graph the department may consider violations by agents or employees of the
19 holder that occurred prior to the time they became agents or employees of
20 the holder, but only if the agent or employee has a substantial interest or
21 control, directly or indirectly, in or over the operation of the holder.

22 (b) Has repeatedly violated or avoided any order or rule of the depart-
23 ment.

24 (c) Is a transporter of [*persons or*] household goods and has repeatedly
25 made unlawful rebates or repeatedly underestimated transportation charges
26 to clients.

27 (d) Has repeatedly refused or has repeatedly failed, after being requested
28 to do so, to furnish service authorized by certificate. The department in such
29 cases may also, in the discretion of the department, restrict the certificate
30 to conform with operations conducted.

31 (e) Has not, except for reasons beyond the control of the holder, trans-

1 ported [*persons or*] household goods authorized by the certificate for a period
2 exceeding 180 consecutive days immediately preceding the filing of the com-
3 plaint in the proceeding. The department in these cases may also, in the
4 discretion of the department, restrict the certificate to conform with oper-
5 ations performed that were required by the public convenience and necessity.

6 (f) Has not, except for reasons beyond the control of the holder, trans-
7 ported property [*or persons*] authorized by the permit for a period exceeding
8 one year immediately preceding the filing of the complaint in the proceeding.

9 (g) Has refused, or has failed, within the time provided, to file the annual
10 report required by ORS 825.320 or has failed or refused to maintain records
11 required by the department or to produce such records for examination
12 within the time set by the department.

13 (h) Has failed to appear for hearing after notice that the certificate or
14 permit is under investigation.

15 (i) Has filed with the department an application which is false with re-
16 gard to the ownership, possession or control of the equipment being used or
17 the operation being conducted.

18 (3) The department shall not suspend or revoke a certificate or permit of
19 a vehicle or person described in ORS 825.020 unless the person or vehicle is
20 in violation of this section and ORS 825.139, 825.141, 825.160, 825.164, 825.166,
21 825.168, 825.210 (1) and (3), 825.212, 825.450, 825.454, 825.470, 825.472, 825.474,
22 825.476, 825.480, 825.484, 825.488, 825.490, 825.492, 825.494, 825.496, 825.498,
23 825.504, 825.506, 825.507, 825.508 or 825.515.

24 **SECTION 12.** ORS 825.180 is amended to read:

25 825.180. (1) In addition to the other fees prescribed in this chapter:

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

28 (b) A person applying for a permit under ORS 825.127 shall pay a fee of
29 \$50.

30 (c) A person applying for a permit under ORS 825.102 shall pay an appli-
31 cation fee of \$300.

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

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

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

6 (2) The Department of Transportation may refund the fees collected under
7 this section if the applicant parties or their duly authorized representatives
8 make written request [*therefor*] **for a refund**, if:

9 (a) Request for withdrawal of the application was received by the de-
10 partment no later than five days before the hearing date, or if no hearing
11 is required, such request must have been received prior to issuance of au-
12 thority; and

13 (b) The department finds that:

14 (A) **The** applicant is not eligible to file **the** application;

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

16 (C) **The** applicant's death or serious illness precludes conducting the op-
17 erations for which application was made; or

18 (D) **The** transferor withdraws consent for **the** transfer of **the** certificate.

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

24 **SECTION 13.** ORS 825.222 is amended to read:

25 825.222. When directed by the Department of Transportation, any **for-hire**
26 carrier of [*persons or*] household goods, or agent on behalf of the carrier,
27 [*which*] **that** proposes the establishment or modification of a rate, classi-
28 fication or practice shall publish notice [*thereof*] **of the proposal** in a
29 newspaper of general circulation in the area in which the proposal shall be
30 effective. Publication shall be within the time provided by the department.

31 **SECTION 14.** ORS 825.950 is amended to read:

1 825.950. (1)(a) Except as otherwise provided in paragraph (b) of this sub-
2 section, in addition to all other penalties provided by law, every person who
3 violates or who procures, aids or abets in the violation of any provision of
4 this chapter, ORS chapter 818 or 826 or any order, rule or decision of the
5 Department of Transportation shall incur a civil penalty of not more than
6 \$100 for every such violation.

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

11 (2) Each violation described in this section is a separate offense and in
12 case of a continuing violation every day's continuance is a separate vio-
13 lation. Every act of commission or omission [*which*] **that** procures, aids or
14 abets in the violation is a violation under this section and subject to the
15 civil penalty provided in this section.

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

18 (4) The Department of Transportation may reduce any civil penalty pro-
19 vided for in this section on such terms as the department considers proper
20 if:

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

23 (b) The defendant submits to the department a written request for re-
24 duction of the penalty within 15 days from the date the penalty order is
25 served.

26 (5) If the amount of such penalty is not paid to the department, the At-
27 torney General, at the request of the department, shall bring an action in the
28 name of the State of Oregon in the Circuit Court of Marion County to re-
29 cover such penalty. The action [*shall*] **may** not be commenced until after the
30 time has expired for an appeal from the findings, conclusions and order of
31 the department. In all such actions the procedure and rules of evidence shall

1 be the same as an ordinary civil action except as otherwise provided in this
2 chapter.

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

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

17
