

House Bill 3322

Sponsored by Representatives EVANS, ALONSO LEON; Representatives CLEM, MALSTROM, MEEK, NOSSE, RAYFIELD

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**.

Requires person that engages in business as vehicle repair shop to obtain certificate from Director of Department of Consumer and Business Services. Specifies information, fees and other items applicant must submit to director. Permits director to specify expiration date for certificate and to renew certificate. Permits director to petition court for injunction against person that engages in business as vehicle repair shop without certificate and permits court to impose penalty of not more than \$15,000 if director proves by preponderance of evidence that person did not possess certificate.

Permits department to inspect certificate holder's facility or premises for specified purposes. Permits director to suspend, revoke, refuse to renew or condition renewal of certificate under certain circumstances.

Requires certificate holder to maintain corporate surety bond or irrevocable letter of credit in specified amount. Permits person that suffered ascertainable loss of money or property as result of certificate holder's actions to bring action against certificate holder's bond or letter of credit. Specifies limits on certain recoveries against bond or letter of credit.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to vehicle repair shops; creating new provisions; amending ORS 646A.480; and declaring
3 an emergency.

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

5 **SECTION 1. Sections 2 to 5 of this 2017 Act are added to and made a part of ORS 646A.480**
6 **to 646A.495.**

7 **SECTION 2. (1) A person may not engage in business as a vehicle repair shop unless the**
8 **person first obtains a certificate from the Department of Consumer and Business Services**
9 **in accordance with this section.**

10 **(2) The Director of the Department of Consumer and Business Services, after conducting**
11 **an evaluation in accordance with subsection (3) of this section, may issue a certificate to**
12 **engage in business as a vehicle repair shop to an applicant that submits:**

13 **(a) An application on a form, in a format and with the contents that the department**
14 **specifies by rule, which at a minimum must include:**

15 **(A) Each applicant's name and residential address;**

16 **(B) The name of any business entity that is an applicant, along with:**

17 **(i) The street address of the business entity's principal office;**

18 **(ii) The name and street address of the business entity's registered agent in this state;**

19 **(iii) The names and residential addresses of each of the business entity's directors,**
20 **members, officers or partners, as appropriate; and**

21 **(iv) The state under the laws of which the business entity is incorporated or organized;**

22 **(C) The name under which the applicant will engage in business as a vehicle repair shop**
23 **and the street address, including the city and county within this state, at which the applicant**
24 **will engage in business;**

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 (D) A signed affidavit from the applicant that states that the applicant will engage in
2 business as a vehicle repair shop at the address shown in the application;

3 (E) A signed attestation from an authorized city or county official that states that the
4 applicant has complied with city or county business ordinances, resolutions or regulations
5 that apply to vehicle repair shops and that city or county land use ordinances, resolutions
6 or regulations allow a vehicle repair shop at the location at which the applicant will engage
7 in business; and

8 (F) Any other information the department requires to assess the applicant and efficiently
9 manage the department's duties under this section;

10 (b) A corporate surety bond from a corporate surety that is licensed to do business
11 within this state, or an irrevocable letter of credit from an insured institution, as defined in
12 ORS 706.008, that the Attorney General has approved as to form and that:

13 (A) Runs to the benefit of the State of Oregon in the sum of \$40,000 for each location at
14 which the applicant will engage in business as a vehicle repair shop;

15 (B) Provides that the corporate surety or insured institution shall notify the department
16 immediately if the corporate surety or insured institution cancels the corporate surety bond
17 or irrevocable letter of credit and that the corporate surety or insured institution is liable
18 under the corporate surety bond or irrevocable letter of credit until the date on which the
19 corporate surety or insured institution cancels the corporate surety bond or irrevocable
20 letter of credit or the date on which the department receives notice of the cancellation,
21 whichever date is later; and

22 (C) Requires as a condition that the applicant engage in business as a vehicle repair shop
23 without fraud and without making any fraudulent representations;

24 (c) A certificate of insurance from an insurer authorized to transact insurance in this
25 state that:

26 (A) Shows the insurer's policy number;

27 (B) Sets a coverage limit at or above a minimum limit that the department specifies by
28 rule; and

29 (C) Provides that the insurer shall notify the department immediately if the insurer
30 cancels the applicant's policy and that the insurer remains liable under the policy until the
31 date on which the insurer cancels the policy or the date on which the department receives
32 notice of the cancellation, whichever date is later; and

33 (d) A fee in the amount of \$1,100, if the applicant intends to engage in business as a ve-
34 hicle repair shop in a single location, or a fee of \$1,100 plus \$350 for each additional location
35 at which the applicant intends to engage in business as a vehicle repair shop.

36 (3) The department shall evaluate an application that an applicant submitted under sub-
37 section (2) of this section by verifying the information in the application and, if the director
38 deems necessary, by investigating the applicant individually to verify the applicant's state-
39 ments, using criteria the department specifies by rule.

40 (4)(a) If, after completing the evaluation described in subsection (3) of this section, the
41 director is satisfied that the application is accurate, that the applicant has paid all fees re-
42 quired under this section, has provided a corporate surety bond or irrevocable letter of credit
43 in the required amount, has provided a certificate of insurance and is otherwise eligible to
44 receive a certificate to engage in business as a vehicle repair shop, the director shall issue
45 a certificate with a distinctive number and with a design and other contents that the de-

1 department specifies by rule. The director may also issue identification cards in the applicant's
2 name, in the names of the directors, members, officers or partners of the business entity
3 or in the names of the applicant's authorized employees.

4 (b) The director may not issue a certificate under this subsection to an applicant if the
5 director determines that another jurisdiction has suspended or revoked a certificate or other
6 authorization for the applicant to engage in business as a vehicle repair shop unless the ap-
7 plicant already possesses another certificate that the director issued under this section. If
8 the applicant possesses a certificate the director issued under this section, the director may
9 not deny another certificate to the applicant.

10 (5) The department by rule shall specify an expiration date for a certificate the director
11 issues under this section. The department may renew a certificate if the department deter-
12 mines that the information in an application under this section remains current or if a cer-
13 tificate holder submits new information or a new application that in the director's judgment
14 meets the criteria set forth in this section and entitles the certificate holder to a renewal.
15 The director by rule may specify an amount for, charge and collect a fee for renewing a
16 certificate under this subsection. The amount of the fee the director specifies under this
17 subsection may not exceed the amount set forth in subsection (2)(d) of this section.

18 (6)(a) The director may petition a circuit court of this state to enjoin any person from
19 engaging in business as a vehicle repair shop if the person does not possess a valid, current
20 and unexpired certificate that the director issued under this section or if the person violates
21 a provision of ORS 646A.480 to 646A.495. A single act is sufficient ground for the court to
22 issue an injunction.

23 (b) In addition to issuing an injunction under paragraph (a) of this subsection, the court
24 may assess a penalty of not more than \$15,000 if the director proves by a preponderance of
25 the evidence that a person is engaged in business as a vehicle repair shop without possessing
26 a valid, current and unexpired certificate that the director issued under this section. The
27 court shall direct the person to pay the penalty to the department and shall require the
28 person to pay reasonable attorney fees and costs, including the costs the department in-
29 curred in the department's enforcement action. The department shall deposit moneys the
30 department receives under this subsection as provided in ORS 705.165.

31 **SECTION 3.** (1) The Department of Consumer and Business Services may inspect any
32 facility or premises at which a person engages in business as a vehicle repair shop and the
33 person's books and records solely to determine whether:

34 (a) The person possesses a valid, current and unexpired certificate that the Director of
35 the Department of Consumer and Business Services issued under section 2 of this 2017 Act;

36 (b) The person is complying with the provisions of ORS 646A.480 to 646A.495; or

37 (c) Any stolen vehicles are located at the facility or on the premises.

38 (2) The department may conduct an inspection under subsection (1) of this section at
39 reasonable intervals and only during normal business hours. The department's inspection
40 may not exceed a scope necessary to make the determinations specified in subsection (1) of
41 this section.

42 (3) The department may use information from an inspection the department conducts
43 under this section as the basis for a petition to the court under section 2 (6) of this 2017 Act
44 or may provide a prosecuting attorney with information the prosecuting attorney requires
45 to proceed with an enforcement action under ORS 646.632 or 646.638.

1 (4) In addition to any other action the department may take under this section, the di-
 2 rector may suspend, revoke or refuse to renew a certificate the director issued under section
 3 2 of this 2017 Act or may issue an order to compel a person to comply with the provisions
 4 of ORS 646A.480 to 646A.495 or condition a renewal of the certificate on the person's com-
 5 pliance with the provisions of ORS 646A.480 to 646A.495.

6 **SECTION 4.** (1) A certificate holder shall maintain a corporate surety bond or irrevocable
 7 letter of credit as provided in, and in the amounts specified in, section 2 (2)(b) of this 2017
 8 Act at all times during which the certificate holder engages in business as a vehicle repair
 9 shop. To the extent that a corporate surety or insured institution, as defined in ORS 705.008,
 10 pays a claim from the corporate surety bond or the irrevocable letter of credit, the certif-
 11 icate holder shall immediately obtain a new corporate surety bond or irrevocable letter of
 12 credit or provide a corporate surety bond or irrevocable letter of credit in the amount of the
 13 claim.

14 (2) A certificate holder shall file the required corporate surety bond or irrevocable letter
 15 of credit with the Department of Consumer and Business Services and the department shall
 16 retain the corporate surety bond or irrevocable letter of credit in the department's office
 17 until the certificate holder no longer engages in business as a vehicle repair shop or until the
 18 corporate surety or insured institution cancels the corporate surety bond or irrevocable
 19 letter of credit.

20 (3)(a) Any person that suffers an ascertainable loss of money or property as a result of
 21 a certificate holder's fraudulent actions, fraudulent representations or violation of ORS
 22 646A.480 to 646A.495 has a right of action against the corporate surety bond or irrevocable
 23 letter of credit that the certificate holder submitted to the department.

24 (b) A corporate surety or insured institution is liable to a person that obtains a judgment
 25 against a certificate holder in the amount of the judgment, including reasonable attorney
 26 fees and costs, up to the limit of the corporate surety's or insured institution's corporate
 27 surety bond or irrevocable letter of credit.

28 (c) Notwithstanding paragraph (b) of this subsection, and except for a certificate holder's
 29 retail customers, the maximum amount available to pay claims from a corporate surety bond
 30 or irrevocable letter of credit under this subsection is \$20,000.

31 (4) If the director canceled or refused to renew a certificate the director issued under
 32 section 2 of this 2017 Act, or if a certificate holder surrenders the certificate, a corporate
 33 surety or insured institution that provided the corporate surety bond or irrevocable letter
 34 of credit required under section 2 of this 2017 Act is relieved from any liability that accrues
 35 after the date on which the department canceled or failed to renew the certificate or on
 36 which the certificate holder surrendered the certificate.

37 (5)(a) A certificate holder shall file the certificate of insurance required under section 2
 38 (2)(c) of this 2017 Act with the department and the department shall retain the certificate
 39 in the department's office until the certificate holder no longer engages in business as a ve-
 40 hicle repair shop or until the insurer cancels the policy.

41 (b) A person need not file a certificate of insurance with the department if the person
 42 attests in a form the department specifies that the person does not advertise, offer to per-
 43 form or perform in exchange for payment any evaluations, maintenance or repair of vehicles
 44 for members of the public.

45 **SECTION 5.** The Director of the Department of Consumer and Business Services may

1 **adopt rules necessary to carry out the provisions of sections 1 to 4 of this 2017 Act and**
2 **otherwise administer the provisions of ORS 646A.480 to 646A.495.**

3 **SECTION 6.** ORS 646A.480 is amended to read:

4 646A.480. As used in ORS 646A.480 to 646A.495:

5 **(1) “Certificate holder” means a person that obtained a certificate that the Director of**
6 **the Department of Consumer and Business Services issued under section 2 of this 2017 Act.**

7 [(1)(a)] **(2)(a) “Motor vehicle” means a self-propelled device, other than a motor home, that is**
8 **used:**

9 (A) To transport persons or property upon a public highway; and

10 (B) For personal, family or household purposes.

11 (b) “Motor vehicle” does not include a motor vehicle owned as part of a fleet and maintained
12 under the terms of a maintenance contract.

13 [(2)] **(3) “Owner” means an individual who has legal authority or apparent legal authority to**
14 **make decisions concerning the maintenance or repair of a motor vehicle.**

15 [(3)] **(4) “Owner’s designee” means an individual who received permission in accordance with**
16 **ORS 646A.495 to make decisions concerning the repair or maintenance of a motor vehicle.**

17 [(4)(a)] **(5)(a) “Vehicle repair shop” means an individual, corporation, partnership, limited li-**
18 **ability company or other business entity that engages in a business in which, in exchange for**
19 **payment, the individual, corporation, partnership, limited liability company or other business**
20 **entity advertises to and performs for any member of the public services that include evalu-**
21 **ating [evaluates] the condition of, [maintains] maintaining or [repairs] repairing a motor vehicle.**

22 (b) “Vehicle repair shop” does not include a motor vehicle body and frame repair shop, as de-
23 fined in ORS 746.275.

24 **SECTION 7. (1) Sections 2 to 5 of this 2017 Act and the amendments to ORS 646A.480 by**
25 **section 6 of this 2017 Act become operative January 1, 2018.**

26 **(2) The Director of the Department of Consumer and Business Services may adopt rules**
27 **and take any other action before the operative date specified in subsection (1) of this section**
28 **that is necessary to enable the director to exercise, on and after the operative date specified**
29 **in subsection (1) of this section, all of the duties, functions and powers conferred on the di-**
30 **rector by sections 2 to 5 of this 2017 Act and the amendments to ORS 646A.480 by section 6**
31 **of this 2017 Act.**

32 **SECTION 8. This 2017 Act being necessary for the immediate preservation of the public**
33 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
34 **on its passage.**