House Bill 2790

Sponsored by Representative EVANS (at the request of Oregon Vehicle Dealer Association) (Presession filed.)

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.

Directs Department of Transportation to provide two days’ notice to vehicle dealers and dismantlers before inspecting records unless department is responding to complaint.

A BILL FOR AN ACT

Relating to businesses regulated by the Department of Transportation; creating new provisions; and amending ORS 822.035, 822.045 and 822.130.

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

SECTION 1. ORS 822.035 is amended to read:

822.035. The Department of Transportation:

(1) Upon receipt of an application for a vehicle dealer certificate, shall examine the application and may make an individual investigation relative to statements contained in the application.

(2) Upon being satisfied that an applicant is entitled to a vehicle dealer certificate and that the proper fees have been paid for the certificate, shall assign the vehicle dealer a distinctive dealer number that allows the dealer to conduct business under the certificate and shall forward to the dealer a vehicle dealer certificate stating thereon the dealer's number.

(3) Has authority to determine whether or not an applicant for a vehicle dealer certificate is a vehicle dealer.

(4) Has authority to make suitable rules for the issuance of vehicle dealer certificates to expire consistently with ORS 822.040.

(5) May make inspections of any vehicle dealer records required under ORS 822.045 and of any vehicles included in a vehicle dealer's inventory or located on the vehicle dealer's premises. For inspections instituted by a complaint, the department may conduct the inspections without prior notice. For routine or periodic inspections, which may be conducted at reasonable intervals, the department shall provide at least two days’ notice before the date of the inspection. All inspections authorized by this subsection may be conducted [by the department at reasonable intervals,] during normal business hours, and may not exceed a scope of inspection necessary for the department to determine the following:

(a) A vehicle dealer’s compliance with statutes regulating vehicle dealers under the vehicle code;

(b) A vehicle dealer’s compliance with those provisions of the vehicle code regulating the titling and registration of vehicles;

(c) A vehicle dealer’s compliance with rules adopted by the department relating to the regulation of vehicle dealers and the registration and titling of vehicles; and

(d) The identification of stolen vehicles.

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.

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(6) Shall provide a vehicle dealer with plates or devices authorized under ORS 805.200 to allow the exercise of the privileges granted under ORS 822.040.

(7) May provide a vehicle dealer with identification cards in the names of the owners of the business or in the names of authorized employees of the business.

(8) May not issue a vehicle dealer certificate under ORS 822.020 to an applicant who has been issued a similar certificate from another jurisdiction that has been revoked or is currently suspended unless the applicant possesses a current, valid vehicle dealer certificate issued under ORS 822.020.

(9) May not use the revocation or suspension by another jurisdiction of a vehicle dealer certificate or similar certificate as a basis for refusing to allow a vehicle dealer holding a current, valid vehicle dealer certificate issued under ORS 822.020 or a supplemental certificate under ORS 822.040 or to renew a certificate under ORS 822.040.

(10) May adopt any reasonable rules necessary for the administration of the laws relating to the regulation of vehicle dealers, the issuance of vehicle dealer certificates, the issuance of vehicle dealer identification cards, regulation of vehicle dealers designated as agents under ORS 802.031 and the issuance of vehicle dealer plates. The rules adopted under this subsection must be consistent with the statutory provisions of the vehicle code. The rules may include, but are not limited to, grounds and procedures for the revocation, denial, probation or suspension of vehicle dealer certificates or of a vehicle dealer’s designation to act as an agent of the department.

SECTION 2. ORS 822.045 is amended to read:

822.045. (1) A vehicle dealer improperly conducts a vehicle dealer business and is subject to the penalties under this section if the vehicle dealer commits any of the following offenses:

(a) A vehicle dealer commits the offense of failure to obtain a supplemental vehicle dealer certificate if the vehicle dealer opens any additional place of business using the same business name as a place of business approved under a vehicle dealer certificate without first obtaining a supplemental dealer certificate under ORS 822.040.

(b) A vehicle dealer commits the offense of failure to obtain a corrected vehicle dealer certificate if the dealer moves a place of business or changes the business name without first obtaining a corrected dealer certificate under ORS 822.040.

(c) A vehicle dealer commits the offense of failure to maintain proper vehicle dealer records if the dealer does not keep records or books with all of the following information concerning any used or secondhand vehicles or campers the dealer deals with:

(1) A record of the purchase, sale or exchange or of the dealer’s receipt for purpose of sale.

(2) A description of the vehicle or camper.

(3) The name and address of the seller, the purchaser and the alleged owner or other person from whom the vehicle or camper was purchased or received or to whom it was sold or delivered.

(4) For motor vehicles, the vehicle identification number and any other numbers or identification marks as may be thereon and a statement that a number has been obliterated, defaced or changed, if such is a fact.

(E) For trailers and campers, the vehicle identification number and any other numbers or identification marks as may be thereon.

(F) A duly assigned certificate of title or other primary ownership record or a bill of sale from the registered owner of the vehicle or camper from the time of delivery to the dealer until the dealer disposes of the vehicle or camper. If title is issued for the vehicle in a form other than a certificate, or if the primary ownership record is in a form other than a document, a dealer shall keep records
in accordance with rules adopted by the Department of Transportation for the purpose of complying
with this subparagraph.

(d) A vehicle dealer commits the offense of failure to allow administrative inspection if the
dealer refuses to allow the department to conduct an inspection as provided under ORS 822.035
[at any time during normal business hours].

(e) A vehicle dealer commits the offense of failure to allow police inspection if the dealer
refuses to allow any police officer to conduct an inspection under ORS 810.480 at any time during normal
business hours.

(f) A vehicle dealer commits the offense of illegal use of dealer vehicle for hire if the dealer
allows any vehicle operated under vehicle dealer registration to be loaned or rented with or without
driver for hire or direct compensation.

(g) A vehicle dealer commits the offense of improper use of dealer plates or devices if the dealer
or employee of the dealer causes or permits the display or use of any special vehicle dealer regis-
tration plate or device on any vehicle not owned or controlled by the dealer.

(h) A person commits the offense of improper display of dealer plates if the person operates over
and along the highways of this state any unregistered vehicle owned or controlled by the dealer and
any dealer plates issued are not displayed in the manner provided in ORS 803.540 for the display
of registration plates.

(i) A vehicle dealer commits the offense of failure to exhibit the dealer certificate if the dealer
fails to permanently exhibit the certificate at the place of business of the person at all times while
the certificate is in force.

(j) Except as provided in subsection (2) of this section, a vehicle dealer commits the offense of
failure to provide clear title if:

(A) Within 15 days of transfer of any interest in a vehicle or camper to the dealer by a con-
sumer, the dealer fails to satisfy:

(i) The interest of any person from whom the dealer purchased or obtained the vehicle or
camper;

(ii) The interest of any person from whom the person described in sub-subparagraph (i) of this
subparagraph leased the vehicle or camper; and

(iii) All security interests in the vehicle or camper entered into prior to the time of transfer.

(B) Within 15 days of receiving clear title to a vehicle or camper from another dealer, the pur-
chasing dealer fails to satisfy the interest of the dealer from which the purchasing dealer received
the certificate of title or other primary ownership document. For purposes of this subparagraph, a
purchasing dealer receives a certificate of title or other primary ownership document from a dealer
on the date:

(i) The purchasing dealer or the Department of Transportation takes physical possession of the
certificate or document; or

(ii) A written notice is mailed by certified or registered mail, return receipt requested, to the
purchasing dealer from the dealer, stating that the certificate or document is available to be picked
up at a place and time prearranged by both parties. The written notice must be mailed to a business
address of the purchasing dealer that is on file with the department. Service by mail under this
sub-subparagraph is effective on the date of mailing.

(k) Except as provided in subsection (3) of this section, a vehicle dealer commits the offense of
failure to furnish certificate of title or application for title if, within 90 calendar days of transfer
of any interest in a vehicle or camper by the dealer, the dealer has failed to:
(A) Furnish the certificate of title or other primary ownership record for the vehicle or camper and any release thereon or, if title has been issued or is to be issued in a form other than a certificate, any information or documents required by rule of the department, to the security interest holder next named, if any, otherwise to the lessor or, if none, to the purchaser; or

(B) Submit to the department in a manner that complies with any applicable statutes and rules, an application for title on behalf of the person to whom the title is to be furnished or whose name is to be shown on the title record.

(L) A vehicle dealer commits the offense of failure to maintain bond or letter of credit coverage if the dealer permits a bond or letter of credit to lapse during the period that the bond or letter of credit is required under ORS 822.020 or 822.040 or if the dealer fails to purchase a bond or letter of credit required by ORS 822.030.

(m) A person commits the offense of acting as a vehicle dealer while under revocation, cancellation or suspension if the person conducts business as a vehicle dealer in this state and the person's vehicle dealer certificate is revoked, canceled or suspended, regardless of whether the person is licensed as a vehicle dealer in another jurisdiction. This paragraph does not apply if the person has other current, valid dealer certificates issued in this state.

(n) A vehicle dealer commits the offense of improper display of a vehicle for advertising purposes if the dealer displays a vehicle at a location other than the dealer's place of business for the purpose of advertising and the dealer does not comply with the provisions of ORS 822.040 (4).

(2) A dealer is not considered to have committed the offense described in subsection (1)(j)(A) of this section if the dealer fails to satisfy an interest in a vehicle or camper that arises from an inventory financing security interest for which the dealer is the debtor.

(3) A dealer is not considered to have committed the offense described in subsection (1)(k) of this section if the dealer demonstrates that:

(a) The dealer has made a good faith effort to comply; and

(b) The dealer's inability to provide title is due to circumstances beyond the dealer's control.

(4) The offenses described in this section are subject to the following penalties:

(a) The offense described in this section, failure to obtain a supplemental vehicle dealer certificate, is a Class A misdemeanor.

(b) The offense described in this section, failure to obtain a corrected vehicle dealer certificate, is a Class A misdemeanor.

(c) The offense described in this section, failure to maintain proper vehicle dealer records, is a Class A misdemeanor.

(d) The offense described in this section, failure to allow administrative inspection, is a Class A misdemeanor.

(e) The offense described in this section, failure to allow police inspection, is a Class A misdemeanor.

(f) The offense described in this section, illegal use of dealer vehicle for hire, is a Class B traffic violation.

(g) The offense described in this section, improper use of dealer plates or devices, is a Class D traffic violation.

(h) The offense described in this section, improper display of dealer plates, is a Class B traffic violation.

(i) The offense described in this section, failure to exhibit the dealer certificate, is a Class A misdemeanor.
(j) The offense described in this section, failure to provide clear title, is a Class A misdemeanor.

(k) The offense described in this section, failure to furnish certificate of title or application for title, is a Class A misdemeanor.

(L) The offense described in this section, failure to maintain bond or letter of credit coverage, is a Class A misdemeanor.

(m) The offense described in this section, acting as a vehicle dealer while under revocation, cancellation or suspension, is a Class A misdemeanor.

(n) The offense described in this section, improper display of a vehicle for advertising purposes, is a Class A misdemeanor.

SECTION 3. ORS 822.130 is amended to read:

822.130. (1) The Department of Transportation may inspect the books, records and inventory of any business issued a certificate under ORS 822.110 for the purpose of determining compliance with any of the following:

(a) Those laws regulating the issuance of certificates to dismantlers.

(b) Requirements for records under ORS 822.135 and 822.137.

(c) ORS 802.200, 803.140, 819.010, 819.016, 819.030, 819.040 or 822.120.

(d) Rules adopted by the department concerning businesses issued certificates under ORS 822.110.

(2) Except as provided in subsection (4) of this section, each year the department shall inspect the premises used by any business issued a certificate under ORS 822.110 for the purpose of determining compliance with any of the following:

For inspections instituted by a complaint, the department may conduct the inspections without prior notice. For routine or periodic inspections, the department shall provide at least two days' notice before the date of the inspection. All inspections authorized by this subsection may be conducted during normal business hours, and may not exceed a scope of inspection necessary for the purpose of determining whether the items listed in subsection (3) of this section are on the premises and determining compliance with any of the following:

(a) Those laws regulating the issuance of certificates to dismantlers.

(b) Requirements for records under ORS 822.135 and 822.137.

(c) ORS 802.200, 803.140, 819.010, 819.016, 819.030, 819.040 or 822.120.

(d) Rules adopted by the department concerning businesses issued certificates under ORS 822.110.

(3) If the Department of Transportation determines that any of the following items are on the premises used by a business issued a certificate under ORS 822.110, the Department of Transportation shall submit a report to the Department of Environmental Quality and include information about the following:

(a) The presence of piled waste tires, as defined in ORS 459.705, in an amount greater than 100 waste tires;

(b) If there is a metal shredder;

(c) If there are any open or unlabeled containers of automotive fluids; and

(d) If there is an underground injection control.

(4) The Department of Transportation may inspect a premises under subsection (2) of this section every two years if the three most recent, consecutive inspections show that the business is in compliance with subsection (2)(a) to (d) of this section.

(5) Provisions for enforcing this section are established under ORS 822.135 and 822.145.

SECTION 4. The amendments to ORS 822.035, 822.045 and 822.130 by sections 1 to 3 of this...
2023 Act apply to inspections conducted on or after the effective date of this 2023 Act.