

Senate Bill 455

Sponsored by Senator BEYER (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**.

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 825.007, 825.017, 825.028,
3 825.102, 825.110, 825.115, 825.135, 825.137, 825.180, 825.202, 825.222, 825.224, 825.234 and 825.950.

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

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

6 825.202. The Department of Transportation shall supervise and regulate the transportation of
7 *[persons and of]* household goods by for-hire carriers and with respect *[thereto]* **to the transporta-**
8 **tion service** shall:

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

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

15 (b) Have access *[thereto]* **to the accounts, manifests, receipts and records** with right of audit
16 and inspection at all reasonable times.

17 (3) Require the filing of such periodical or other reports or data of such carriers as the depart-
18 ment deems necessary.

19 (4) Require reasonably adequate service and facilities.

20 *[(5) Regulate operating schedules of for-hire regular route full-service scheduled carriers of persons*
21 *so as to meet the needs of any community served and so as to prevent unnecessary duplication of for-*
22 *hire carrier services.]*

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

24 825.224. (1) The rates, **classifications**, rules and practices used by for-hire carriers in the
25 transportation of *[persons and of]* household goods shall be prescribed by the Department of Trans-
26 portation and:

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

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

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

32 (a) Charge, collect or receive a different remuneration for the transportation of *[persons or]*

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 household goods, or for any **related** service [*in connection therewith*], than the rates [*which*] **that**
2 have been legally prescribed and filed with the department.

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

5 (3)(a) Any action against for-hire carriers of [*persons or*] household goods for recovery of over-
6 charges, or by the carriers for the collection of undercharges, shall be commenced within two years
7 from the time the cause of action accrued.

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

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

12 (B) "Undercharges" **means charges assessed for transportation service that are less than**
13 **the rates applicable under the tariff lawfully in effect or in written contracts on file with the**
14 **department.**

15 (4) The department shall check the records of [*for-hire carriers of persons and of*] for-hire carri-
16 ers of household goods for the purpose of discovering all discriminations and rebates. The depart-
17 ment:

18 (a) Upon the department's own motion, may, and upon the complaint of any aggrieved person,
19 shall, pursuant to written notice served upon any carrier subject to this subsection, investigate the
20 **carrier's service and the carrier's** rates, classifications, rules and practices [*of the carrier and*
21 *investigate service in connection therewith*]; and

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

27 (5) The department may suspend a tariff [*or time schedule*] of **for-hire** carriers of [*persons or*]
28 household goods that the department believes will impair the ability of the carriers to serve the
29 public or **that** appears to be unjust, unfair, unreasonable, prejudicial, discriminatory or otherwise
30 unlawful.

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

32 825.234. [(1) *As used in this section.*]

33 [(a) "*Regular route scheduled transportation*" means the transportation of persons between desig-
34 nated points over designated routes under time schedules that provide a regularity of service.]

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

37 [(2)] (1) For-hire carriers of [*persons or of*] household goods shall be classified, and the classi-
38 fication shall be shown on the carrier's certificate when issued or reissued by the Department of
39 Transportation, as follows:

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

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

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

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

1 [(4)] (2) Irregular route carriers of household goods shall file tariffs and classifications governing
 2 rates.

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

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

7 825.007. (1) The business of operating as a motor carrier of persons or property for hire upon
 8 the highways of this state is declared to be a business affected with the public interest. It is hereby
 9 declared to be the state transportation policy to do the following:

10 (a) Promote safe, adequate, economical and efficient service and to promote the conservation
 11 of energy.

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

13 (c) Encourage the establishment and maintenance of reasonable rates for transportation ser-
 14 vices, without unjust discriminations, undue preferences or advantages or unfair or destructive
 15 competitive practices.

16 (d) Provide specific state action immunity against all antitrust claims and prosecution in those
 17 instances when carriers lawfully develop, publish and charge rates relating to the transportation of
 18 [*persons or*] household goods and joint line rates relating to the transportation of other property and
 19 provide services specifically prescribed and subject to regulation by the Department of Transporta-
 20 tion and in those instances when carriers lawfully engage in prior consultation for purposes de-
 21 scribed in this paragraph.

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

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

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

27 (c) A minimum of inconvenience to other users of the highways be effected;

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

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

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

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

34 (h) The various transportation agencies of the state be adjusted and correlated so that public
 35 highways may serve the best interest of the general public; and

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

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

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

41 825.017. Except as provided in ORS 825.026 and 825.030, this chapter does not apply to the per-
 42 sons or vehicles described in this section. The exemption under this section applies to the following
 43 persons and vehicles:

44 (1) Vehicles being used by, or under contract with, any school board, district or person respon-
 45 sible for the administration of elementary or secondary school activities, and engaged exclusively

1 in transporting students or combinations of students and other persons to or from school, to or from
 2 authorized school activities or other activities sponsored by the State Board of Higher Education,
 3 or for purposes provided under ORS 332.427. This exemption shall not be affected by the charging
 4 of a fee to cover the costs of the transportation.

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

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

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

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

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

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

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

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

16 (7) Vehicles being used on any road, thoroughfare or property, other than a state highway,
 17 county road or city street, for the removal of forest products as defined in ORS 321.005, or the
 18 product of forest products converted to a form other than logs at or near the harvesting site, or
 19 when used for the construction or maintenance of the road, thoroughfare or property, pursuant to
 20 a written agreement or permit authorizing the use, construction or maintenance of the road,
 21 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 products as defined in ORS
 27 321.005, or the products of forest products converted to a form other than logs at or near the har-
 28 vesting site, if:

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

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

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

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

40 (a) Is performed by a nonprofit entity;

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

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

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

1 this subsection.

2 (10) Vehicles being used in transporting persons with disabilities, with or without their super-
3 visors or assistants, to or from rehabilitation facilities or child care services if the motor vehicle is
4 a passenger motor vehicle with a seating capacity of not more than 12 passengers. The exemption
5 provided by this subsection applies only when the motor vehicle is operated by or under contract
6 with any person responsible for the administration of rehabilitation facilities as defined in ORS
7 344.710 to 344.730 or child care services provided by a facility licensed under ORS 329A.030 and
8 329A.250 to 329A.450.

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

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

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

16 (14) Vehicles owned or operated by, or under contract with, a charitable organization when ex-
17 clusively engaged in performing transportation, either one way or round trip, necessary to the op-
18 eration of the charitable organization. As used in this subsection, "charitable organization" means
19 an organization that has no capital stock and no provision for making dividends or profits, but de-
20 rives its funds principally from public and private charity and holds them in trust for the promotion
21 of the welfare of others and not for profit. Any organization claiming an exemption under this sub-
22 section shall file an affidavit with the department stating that it is organized and operated in ac-
23 cordance with the requirements of this subsection.

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

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

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

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

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

35 (c) Operates on an irregular route basis.

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

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

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

41 (b) Act as an agent for any person who does provide or operate a motor vehicle for the move-
42 ment of the household goods.

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

44 825.028. (1) For-hire carriers may provide transportation of [*persons or*] household goods for
45 charitable organizations or civic nonprofit organizations and festivals at no charge or at reduced

1 rates or in exchange for promotional services by the charitable organization or civic nonprofit or-
2 ganization or festival.

3 (2) As used in this section:

4 (a) "Charitable organization" has the meaning given [for] that term in ORS 825.017 (14).

5 (b) "Civic nonprofit organization" or "festival" means an organization or festival classified under
6 the Internal Revenue Code as having a 501(c)(3) or 501(c)(4) tax exempt status.

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

8 825.102. (1) Except as provided in subsection (6) of this section and ORS 825.135, the Department
9 of Transportation shall issue a permit to a person to provide transportation **service** as a for-hire
10 carrier over any highway in this state in intrastate commerce if the person applies for the permit
11 and the department is satisfied that the person is able to comply with the provisions of this chapter
12 and the rules of the department.

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

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

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

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

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

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

32 825.110. [*(1) When a person files with the Department of Transportation an application for a cer-*
33 *tificate to operate as a for-hire regular route full-service scheduled carrier of persons as described in*
34 *ORS 825.234, for the extension of an existing certificate or for the transfer of a certificate, the depart-*
35 *ment shall serve notice of the application upon every person who has an application filed and pending*
36 *before the department to serve the territory proposed to be served by the applicant, or who holds a*
37 *certificate to serve that territory. If any person desires to protest the issuance, extension or transfer of*
38 *the certificate, the person may file notice thereof with the department within 15 days from the date of*
39 *service of the notice of application. The department thereupon shall fix a time and place for a hearing*
40 *upon the application, and shall serve notice of the hearing upon the applicant and any person who has*
41 *filed a protest. For the purpose of being properly and fully informed, the department may hold a*
42 *hearing on an application although no protest is filed.]*

43 [(2) *If no person protests within the time provided in subsection (1) of this section, or if all protests*
44 *to the application are withdrawn prior to the closing of the record, the department may order the is-*
45 *suance, extension or transfer of the certificate if the applicant shows compliance with subsection (4)(a),*

1 (b) and (d) to (f) of this section.]

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

7 [(4)] (2) If the application for issuance, extension or transfer of a certificate under this section
8 is the subject of a hearing, the department shall issue the certificate if the applicant has complied
9 with this chapter and the rules of the department, and if the department finds from the record and
10 the evidence submitted at the hearing that:

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

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

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

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

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

21 [(f)] (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 [(5)] (3) [*If the application for issuance or transfer of a certificate is the subject of a hearing,*
24 *and*] If the department does not find that all the conditions provided in subsection [(4)] (2) of this
25 section are satisfied, the department may deny the application or may defer issuance of the certif-
26 icate pending compliance by the applicant with those conditions provided in subsection [(4)] (2) of
27 this section.

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

31 [(6)] (5) If the applicant fails to appear at the time and place fixed for the hearing, the applica-
32 tion may be denied.

33 [(7)(a)] (6)(a) Pending determination of application for transfer of a certificate, the
34 department[, *without hearing,*] may grant approval of the temporary operation of the certificate by
35 the prospective transferee[,] or, if the transferor's service to the public may be substantially im-
36 paired, may authorize temporary management of the transferor's motor carrier operations by the
37 prospective transferee.

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

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

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

45 [(8)] (7) The department may require an applicant for a certificate to operate as a for-hire car-

1 rier of household goods issued under this section to complete a criminal background check. The
 2 department shall adopt rules describing the standards used by the department to determine if an
 3 applicant is unfit based on the results of the applicant's criminal history.

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

5 825.115. (1) *[The Department of Transportation may grant temporary authority for a for-hire car-*
 6 *rier to provide transportation of persons where it is shown that a need exists for such service.]* The
 7 Department **of Transportation** may grant temporary authority for a for-hire carrier to provide
 8 transportation of household goods where it is in the public interest. Such temporary authority may
 9 be authorized only if the department receives a request for service from a user of the proposed
 10 transportation service, and if the department concludes, after investigation, that the request re-
 11 presents a true need or is in the public interest.

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

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

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

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

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

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

30 825.135. (1) As used in this section, "applicant" includes, but is not limited to, any person having
 31 a substantial interest or control, directly or indirectly, in or over the operations conducted or to
 32 be conducted under the carrier's authority.

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

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

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

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

1 (3) A person whose application has been denied under subsection (2) of this section is not eli-
 2 gible to renew the application or to operate or participate directly or indirectly in the proposed
 3 operation for a period of time ordered by the department. The period of time ordered by the de-
 4 partment under this subsection shall in no event be less than a period of six months from the date
 5 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 (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 (2) of this section shall be strictly construed for purposes described in this sub-
 14 section and shall control over any other purposes or policy considerations under the laws relating
 15 to motor carriers. The department shall exercise the authority granted under subsection (2) of this
 16 section to assure that persons described in subsection (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 825.137 is amended to read:

27 825.137. (1) Certificates and permits when issued shall be valid until suspended or revoked when
 28 the carrier is found by the Department of Transportation to be in violation of this chapter or ORS
 29 chapter 818. A variance permit issued under ORS chapter 818 shall be valid for the length of time
 30 for which it is issued unless prior to that time the permit is suspended or revoked by the Depart-
 31 ment of Transportation for violation of this chapter or ORS chapter 818.

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

35 (a) Or agents or employees of the holder have repeatedly violated this chapter or other highway
 36 or motor laws of this state. In applying this paragraph the department may consider violations by
 37 agents or employees of the holder that occurred prior to the time they became agents or employees
 38 of the holder, but only if the agent or employee has a substantial interest or control, directly or
 39 indirectly, in or over the operation of the holder.

40 (b) Has repeatedly violated or avoided any order or rule of the department.

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

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

1 (e) Has not, except for reasons beyond the control of the holder, transported [*persons or*
 2 household goods authorized by the certificate for a period exceeding 180 consecutive days imme-
 3 diately preceding the filing of the complaint in the proceeding. The department in these cases may
 4 also, in the discretion of the department, restrict the certificate to conform with operations per-
 5 formed that were required by the public convenience and necessity.

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

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

12 (h) Has failed to appear for hearing after notice that the certificate or permit is under investi-
 13 gation.

14 (i) Has filed with the department an application which is false with regard to the ownership,
 15 possession or control of the equipment being used or the operation being conducted.

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

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

22 825.180. (1) In addition to the other fees prescribed in this chapter:

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

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

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

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

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

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

30 (2) The Department of Transportation may refund the fees collected under this section if the
 31 applicant parties or their duly authorized representatives make written request [*therefor*] **for a re-**
 32 **fund**, if:

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

36 (b) The department finds that:

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

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

39 (C) **The** applicant's death or serious illness precludes conducting the operations for which ap-
 40 plication was made; or

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

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

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

2 825.222. When directed by the Department of Transportation, any **for-hire** carrier of [*persons*
3 *or*] household goods, or agent on behalf of the carrier, [*which*] **that** proposes the establishment or
4 modification of a rate, classification or practice shall publish notice [*thereof*] **of the proposal** in a
5 newspaper of general circulation in the area in which the proposal shall be effective. Publication
6 shall be within the time provided by the department.

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

8 825.950. (1)(a) Except as otherwise provided in paragraph (b) of this subsection, in addition to
9 all other penalties provided by law, every person who violates or who procures, aids or abets in the
10 violation of any provision of this chapter, ORS chapter 818 or 826 or any order, rule or decision of
11 the Department of Transportation shall incur a civil penalty of not more than \$100 for every such
12 violation.

13 (b) In addition to all other penalties provided by law, every person who violates or who pro-
14 cures, aids or abets in the violation of ORS 825.100 by offering to transport or transporting house-
15 hold goods without a certificate shall incur a civil penalty of not more than \$1,000 for every such
16 violation.

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

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

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

24 (a) The defendant admits the violations alleged in the notice and makes timely request for re-
25 duction of the penalty; or

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

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

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

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

