

Enrolled
House Bill 3089

Sponsored by Representative GILMAN (at the request of Darrell Fuller)

CHAPTER

AN ACT

Relating to motor vehicle dealers; creating new provisions; and amending ORS 822.040 and 822.045.

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

SECTION 1. ORS 822.040 is amended to read:

822.040. (1) The holder of a current, valid vehicle dealer certificate issued under ORS 822.020 may exercise the following privileges under the certificate:

(a) A dealer is authorized, without violating ORS 803.025 or 803.300, to use and operate over and along the highways of this state all vehicles displaying the dealer's plates whether registered or not or whether or not a title is issued for the vehicle subject to the following:

(A) This paragraph does not authorize dealers to use or operate vehicles under dealer plates unless the vehicles are actually owned or controlled by the dealer and in actual use by the dealer, members of the dealer's firm, any salesperson thereof or any person authorized by the dealer. Vehicles operated under dealer plates may be used for the same purposes as are any other vehicles registered in this state that are registered by payment of the fee under ORS 803.420. This paragraph is subject to the limitations under ORS 822.045.

(B) Nothing in this paragraph allows dealers to use or operate manufactured structures under dealer plates. All movement of manufactured structures by dealers shall be by trip permits issued under ORS 803.600 and 820.560.

(C) Vehicles registered or titled in another state, country, province, territory or the District of Columbia are subject to the provisions under ORS 803.300 and 803.305 applicable to such vehicles.

(b) A dealer is entitled to receive dealer plates or devices and replacement or additional dealer plates or devices. As many additional dealer plates as may be desired may be obtained upon the filing of a formal application for additional plates with the Department of Transportation. The plates issued to dealers shall require the payment of fees as provided under ORS 805.250.

(c) The person is not subject to the prohibitions and penalties under ORS 822.005 as long as the holder's vehicle dealer business is conducted in a location approved under the certificate.

(d) The dealer shall be considered the owner of vehicles manufactured or dealt in by the dealer, before delivery and sale of the vehicles, and of all vehicles in the dealer's possession and operated or driven by the dealer or the dealer's employees.

(2) The holder of a vehicle dealer certificate may open additional places of business under the same business name by obtaining a supplemental certificate from the department under this subsection. The following all apply to a supplemental certificate issued under this subsection:

(a) The department shall not issue a supplemental certificate under this subsection if the additional place of business opened will be operated under a different business name than that indicated on the current certificate. Any business that a vehicle dealer operates under a separate business

name must be operated under a separate certificate and the dealer must apply for and pay the fees for a regular dealer certificate for the business.

(b) A supplemental certificate issued under this subsection is subject to the fee for supplemental certificate under ORS 822.700.

(3) The holder of a vehicle dealer certificate may move a place of business or change a business name by obtaining a corrected certificate from the department. For purposes of this subsection, "place of business" includes a recreational vehicle service facility as defined in ORS 822.082. The following apply to a corrected certificate issued under this subsection:

(a) The department shall prescribe the form for application for a corrected certificate.

(b) A person applying for a corrected certificate shall pay the fee for the corrected certificate established in ORS 822.700.

(4) The department may establish by rule the requirements a holder of a vehicle dealer certificate must meet to display a vehicle at a location other than the dealer's place of business for the purpose of advertising without first obtaining a supplemental certificate from the department. In addition to any requirements established by the department by rule, all of the following apply:

(a) The dealer must have a signed agreement with the owner of the property or the person using the property where the vehicle is to be displayed stating that the vehicle is for an advertising promotion only and that the processing of any documents or other activities required to purchase a vehicle must be done at the dealer's place of business.

(b) The vehicle on display must be clearly marked with the dealer's name and contact information and a notice that the vehicle is displayed only for the purpose of advertising and may be purchased only at the dealer's place of business.

(c) Displaying the vehicle must not violate any zoning laws or ordinances.

(d) The dealer or the dealer's employees may not remain with the vehicle except for the purpose of moving the vehicle in or out of the display area.

[(4)] **(5) A vehicle dealer certificate is valid for a three-year period and may be renewed as provided by the department. The department shall only renew a certificate if the applicant for renewal does all of the following:**

(a) Pays the required fee for renewal under ORS 822.700.

(b) Delivers to the department a bond that meets the requirements under ORS 822.030.

(c) Delivers to the department a certificate of insurance that meets the requirements under ORS 822.033.

(d) Provides the names of all partners or corporate officers.

(e) Certifies completion of the education requirements of ORS 822.027 (1) if the person is a dealer subject to the education requirements.

(f) If the dealer offers new recreational vehicles for sale under the certificate, certifies that the dealer maintains a recreational vehicle service facility as listed in the dealer certificate application described in ORS 822.025.

[(5)] **(6) The department may adopt suitable rules for the issuance and renewal of certificates under this section and ORS 822.020.**

SECTION 2. ORS 822.040, as amended by section 129, chapter 655, Oregon Laws 2003, is amended to read:

822.040. (1) The holder of a current, valid vehicle dealer certificate issued under ORS 822.020 may exercise the following privileges under the certificate:

(a) A dealer is authorized, without violating ORS 803.025 or 803.300, to use and operate over and along the highways of this state all vehicles displaying the dealer's plates whether registered or not or whether or not a title is issued for the vehicle subject to the following:

(A) This paragraph does not authorize dealers to use or operate vehicles under dealer plates unless the vehicles are actually owned or controlled by the dealer and in actual use by the dealer, members of the dealer's firm, any salesperson thereof or any person authorized by the dealer. Vehicles operated under dealer plates may be used for the same purposes as are any other vehicles

registered in this state that are registered by payment of the fee under ORS 803.420. This paragraph is subject to the limitations under ORS 822.045.

(B) Vehicles registered or titled in another state, country, province, territory or the District of Columbia are subject to the provisions under ORS 803.300 and 803.305 applicable to such vehicles.

(b) A dealer is entitled to receive dealer plates or devices and replacement or additional dealer plates or devices. As many additional dealer plates as may be desired may be obtained upon the filing of a formal application for additional plates with the Department of Transportation. The plates issued to dealers shall require the payment of fees as provided under ORS 805.250.

(c) The person is not subject to the prohibitions and penalties under ORS 822.005 as long as the holder's vehicle dealer business is conducted in a location approved under the certificate.

(d) The dealer shall be considered the owner of vehicles manufactured or dealt in by the dealer, before delivery and sale of the vehicles, and of all vehicles in the dealer's possession and operated or driven by the dealer or the dealer's employees.

(2) The holder of a vehicle dealer certificate may open additional places of business under the same business name by obtaining a supplemental certificate from the department under this subsection. The following all apply to a supplemental certificate issued under this subsection:

(a) The department shall not issue a supplemental certificate under this subsection if the additional place of business opened will be operated under a different business name than that indicated on the current certificate. Any business that a vehicle dealer operates under a separate business name must be operated under a separate certificate and the dealer must apply for and pay the fees for a regular dealer certificate for the business.

(b) A supplemental certificate issued under this subsection is subject to the fee for supplemental certificate under ORS 822.700.

(3) The holder of a vehicle dealer certificate may move a place of business or change a business name by obtaining a corrected certificate from the department. For purposes of this subsection, "place of business" includes a recreational vehicle service facility as defined in ORS 822.082. The following apply to a corrected certificate issued under this subsection:

(a) The department shall prescribe the form for application for a corrected certificate.

(b) A person applying for a corrected certificate shall pay the fee for the corrected certificate established in ORS 822.700.

(4) The department may establish by rule the requirements a holder of a vehicle dealer certificate must meet to display a vehicle at a location other than the dealer's place of business for the purpose of advertising without first obtaining a supplemental certificate from the department. In addition to any requirements established by the department by rule, all of the following apply:

(a) The dealer must have a signed agreement with the owner of the property or the person using the property where the vehicle is to be displayed stating that the vehicle is for an advertising promotion only and that the processing of any documents or other activities required to purchase a vehicle must be done at the dealer's place of business.

(b) The vehicle on display must be clearly marked with the dealer's name and contact information and a notice that the vehicle is displayed only for the purpose of advertising and may be purchased only at the dealer's place of business.

(c) Displaying the vehicle must not violate any zoning laws or ordinances.

(d) The dealer or the dealer's employees may not remain with the vehicle except for the purpose of moving the vehicle in or out of the display area.

[(4)] **(5) A vehicle dealer certificate is valid for a three-year period and may be renewed as provided by the department. The department shall only renew a certificate if the applicant for renewal does all of the following:**

(a) Pays the required fee for renewal under ORS 822.700.

(b) Delivers to the department a bond that meets the requirements under ORS 822.030.

(c) Delivers to the department a certificate of insurance that meets the requirements under ORS 822.033.

(d) Provides the names of all partners or corporate officers.

(e) Certifies completion of the education requirements of ORS 822.027 (1) if the person is a dealer subject to the education requirements.

(f) If the dealer offers new recreational vehicles for sale under the certificate, certifies that the dealer maintains a recreational vehicle service facility as listed in the dealer certificate application described in ORS 822.025.

[5] (6) The department may adopt suitable rules for the issuance and renewal of certificates under this section and ORS 822.020.

SECTION 3. 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:

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

(B) A description of the vehicle or camper.

(C) 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.

(D) 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 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 improper dealer movement of a manufactured structure if the dealer moves a manufactured structure on the highways of this state without first obtaining a trip permit under ORS 803.600 and 820.560.

(g) 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.

(h) 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 registration plate or device on any vehicle not owned or controlled by the dealer.

(i) 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.

(j) 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.

(k) 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 consumer, 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 purchasing dealer fails to satisfy the interest of the selling dealer.

(L) 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.

(m) 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.

(n) 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.

(o) 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 shall not be considered to have committed the offense described in subsection (1)(k) 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 shall not be considered to have committed the offense described in subsection (1)(L) 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, improper dealer movement of a manufactured structure, is a Class B traffic violation.

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

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

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

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

(k) The offense described in this section, failure to provide clear title, is a Class A misdemeanor.

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

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

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

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

SECTION 4. ORS 822.045, as amended by section 131, chapter 655, Oregon Laws 2003, 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:

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

(B) A description of the vehicle or camper.

(C) 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.

(D) 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 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 registration 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 consumer, 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 purchasing dealer fails to satisfy the interest of the selling dealer.

(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 li-

censed 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 shall not be considered to have committed the offense described in subsection (1)(j) 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 shall not be 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 5. The amendments to ORS 822.040 and 822.045 by sections 1 to 4 of this 2005 Act apply to displays of vehicles for advertising purposes on or after the effective date of this 2005 Act.

Passed by House April 25, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate May 16, 2005

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President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M,....., 2005

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Secretary of State