Chapter 823

2011 EDITION

Carrier Regulation Generally

GENERAL PROVISIONS

823.005 Definitions for ORS chapters 823 to 826

DEPARTMENT POWERS AND DUTIES REGARDING CARRIERS

823.007 Employee statements of pecuniary interests in motor carriers; rules

823.009 General powers of department regarding motor carriers and railroads

823.011 Authority to adopt rules

823.012 Suspension of laws during emergency

823.013 Validity of rules, orders, acts and regulations of department; construction of laws

823.015 Service of notice or other legal process

INVESTIGATIONS, HEARINGS, RULINGS

823.021 Investigating management of carriers

823.023 Right of entry onto premises of any carrier or of business tendering hazardous materials for shipment

823.025 Maintaining and producing records; expenses incurred in out-of-state examinations; rules

823.027 Duty to furnish information to department

823.029 Failure to furnish requested information

823.031 Investigating complaints against carriers

823.033 Investigations and orders on department's own motion; request for hearing by aggrieved party

823.035 Representation by nonattorney

823.037 Declaratory rulings

DESTRUCTION OF EQUIPMENT

823.051 Interference with department equipment

HAZARDOUS MATERIALS GENERALLY

823.061 Applicability of hazardous material safety regulations; rules

823.063 Notice and opportunity to correct hazardous material violations

AGENCY ABANDONMENT

823.071 Definitions for ORS 823.073 and 823.075

823.073 Common carrier not to abandon agencies or withdraw agent without approval of department

823.075 Petitioning department for authority to abandon agency or withdraw agent

ENFORCEMENT AND REMEDIES

823.081 Enforcement of laws relating to carriers

823.083 Enjoining violation of carrier laws

823.085 Liability for damages to injured person

823.087 Effect of carrier laws on common law and other statutory rights of action, duties and liabilities

RECEIPTS AND BILLS OF LADING

823.101 Duty of carrier to issue bill of lading on intrastate shipments; liability of carrier to holder for damage to shipment

823.103 Limitations on carrier's power to set time for filing of claim or starting action

823.105 Prohibitions

823.107 Existing remedies not affected

PENALTIES

823.991 Penalties

GENERAL PROVISIONS

823.005 Definitions for ORS chapters 823 to 826. As used in ORS chapters 823, 824, 825 and 826:

(1) "Customer" includes the patrons, passengers, shippers and users of the service of a motor carrier.

(2) "Rate" means any fare, charge, joint rate, schedule or groups of rates or other remuneration or compensation for service.

(3) "Service" is used in its broadest and most inclusive sense and includes equipment and facilities related to providing the service or the product served. [1995 c.733 §11]

DEPARTMENT POWERS AND DUTIES REGARDING CARRIERS

823.007 Employee statements of pecuniary interests in motor carriers; rules. (1) Each employee of the Department of Transportation who performs functions concerning economic regulation of motor carriers shall file with the department a statement regarding holdings of the employee and the holdings of the employee's spouse and minor children of any pecuniary interest in any business or activity subject to the department's economic regulation of motor carriers. Supplementary statements shall be filed as such pecuniary interests are acquired or divested. The statements shall be in such form as the department prescribes. If the department determines that an employee or spouse or minor child of the employee holds any such pecuniary interest that may interfere with the impartial discharge of the employee's duties, the department shall order divestiture of the interest.

(2) The department shall determine by rule what constitutes a function concerning economic regulation of motor carriers for purposes of this section.

(3) Nothing in subsections (1) and (2) of this section is intended to authorize any act otherwise prohibited by law. [1995 c.733 §§12,14]

823.009 General powers of department regarding motor carriers and railroads. (1) In addition to the powers and duties now or hereafter transferred to or vested in the Department of Transportation, the department shall represent the customers of any motor carrier or railroad, and the public generally, in all controversies respecting rates, valuations, service and all matters of which the department has jurisdiction regarding motor carriers and railroads. In respect thereof, the department shall make use of its jurisdiction and powers to protect such customers, and the public generally, from unjust and unreasonable exactions and practices and to obtain for them adequate service at fair and reasonable rates.

(2) The department is vested with power and jurisdiction to supervise and regulate every motor carrier and railroad in this state, and to do all things necessary and convenient in the exercise of such power and jurisdiction.

(3) The department may participate in any proceeding before any public officer, commission or body of the United States or any state or other jurisdiction for the purpose of representing the public generally and the customers of the services of any motor carrier or railroad operating or providing service to or within this state.

(4) The department may make joint investigations, hold joint hearings within or without this state and issue concurrent orders in conjunction or concurrence with any official, board, commission or agency of any state or of the United States. [1995 c.733 §15; 1997 c.275 §9]

823.010 [1983 c.338 §756; 1985 c.16 §361; 1989 c.782 §1; 1993 c.371 §1; renumbered 682.015 in 1995]

823.011 Authority to adopt rules. The Department of Transportation may adopt and amend reasonable and proper rules and regulations relative to all statutes regarding motor carriers and railroads administered by the department and may adopt and publish reasonable and proper rules to govern proceedings and to regulate the mode and manner of all investigations of motor carriers and railroads subject to regulation by the department. [1995 c.733 §16]

823.012 Suspension of laws during emergency. (1) If the Director of Transportation determines that an emergency, as defined in ORS 401.025, has occurred or is imminent, the director may suspend operation of one or more of the following statutes involving motor carriers for the purpose of expediting the movement of persons or property:

(a) ORS 818.400, compliance with commercial vehicle enforcement requirements related to commercial vehicle weight, size, load, conformation or equipment.

(b) ORS 825.100, certificate or permit requirement for commercial transportation of persons or property.

(c) ORS 825.104, registration requirement for for-hire or private carrier engaged in interstate operations.

(d) ORS 825.160, requirement for person operating as motor carrier to have policy of public liability and property damage insurance.

(e) ORS 825.162, requirement for person operating as for-hire carrier of freight or express to have cargo insurance.

(f) ORS 825.250, requirement to stop and submit to an inspection of the driver, the cargo or the vehicle or combination of vehicles.

(g) ORS 825.252, safety regulations for for-hire and private carriers.

(h) ORS 825.258, rules for transportation of hazardous waste, hazardous material and PCB.

(i) ORS 825.450, weight receipts issued by Department of Transportation for motor vehicles subject to weight-mile tax.

(j) ORS 825.470, temporary pass for single trip or short-time operation of vehicle.

(k) ORS 825.474, assessment of tax for use of highways.

(L) ORS 826.031, registration of certain vehicles not already registered with state.

(2) A suspension under this section may occur prior to a declaration of a state of emergency under ORS 401.165, but may not exceed 72 hours unless a state of emergency is declared under ORS 401.165. If a state of emergency is declared under ORS 401.165, the suspension shall last until the state of emergency is terminated as provided under ORS 401.204.

(3) The director may designate by rule a line of succession of deputy directors or other employees of the department who may suspend operations of statutes under this section in the event the director is not available. Any suspension by a person designated by the director under this subsection has the same force and effect as if issued by the director, except that, if the director can be reached, the suspension must be affirmed by the director when the director is reached. If the director does not set aside a suspension within 24 hours of being reached, the suspension shall be considered affirmed by the director. [2005 c.172 §2; 2007 c.465 §7]

Note: 823.012 was added to and made a part of the Oregon Vehicle Code by legislative action but was not added to ORS chapter 823 or any series therein. See Preface to Oregon Revised Statutes for further explanation.

823.013 Validity of rules, orders, acts and regulations of department; construction of laws. (1) A substantial compliance with the requirements of the laws administered by the Department of Transportation regarding motor carriers and railroads is sufficient to give effect to all the rules, orders, acts and regulations of the department and they shall not be declared inoperative, illegal or void for any omission of a technical nature in respect thereto.

(2) The provisions of such laws shall be liberally construed with a view to the public welfare, efficient facilities and substantial justice between customers and motor carriers or railroads. [1995 c.733 §17]

823.015 Service of notice or other legal process. The service or delivery of any notice, order, form or other document or legal process required to be made by the Department of Transportation in connection with any statute governing motor carriers or railroads may be made by mail. If by mail, service or delivery is made when the required material is deposited in the post office, in a sealed envelope with postage paid, addressed to the person on whom it is to be served or delivered, at the address as it last appears in the records of the department. [1995 c.733 §18]

823.020 [Formerly 485.500; 1989 c.782 §2; 1991 c.67 §224; 1991 c.909 §1; 1993 c.371 §2; renumbered 682.025 in 1995]

INVESTIGATIONS, HEARINGS, RULINGS

823.021 Investigating management of carriers. The Department of Transportation may inquire into the management of the business of all motor carriers and railroads, and shall keep informed as to the manner and method in which the business is conducted. The department has the right to obtain from any motor carrier or railroad all necessary information to enable the department to perform its duties related to motor carriers and railroads. [1995 c.733 §19]

823.023 Right of entry onto premises of any carrier or of business tendering hazardous materials for shipment. (1) The Department of Transportation or authorized representatives may enter upon any premises, or any equipment, rolling stock or facilities operated or occupied by any motor carrier or railroad for the purpose of making any inspection, examination or test reasonably required in the administration of ORS chapters 823, 824, 825 and 826, and to set up and use on such premises, equipment, rolling stock or facilities any apparatus or appliance and occupy reasonable space therefor.

(2) The department or authorized representatives shall, upon demand, have the right to inspect the books, accounts, papers, records and memoranda of any motor carrier or railroad and to examine under oath any officer, agent or employee of such motor carrier or railroad in relation to its business and affairs.

(3) Any person who on behalf of the department makes demand of a motor carrier or railroad for an examination, inspection or test shall, upon request therefor, produce a certificate under the seal of the department showing authority to make such examination, inspection or test.

(4) The department or authorized representatives shall, upon demand, have the right to enter any premises of a business that the department has reasonable cause to believe tendered for shipment, by motor or rail, any hazardous material and to make any examination, inspection or test reasonably required to determine compliance with the health and safety regulations administered or enforced by the department. Any person, who on behalf of the department demands to make an examination, inspection or test, shall produce upon request a certificate under the seal of the department showing authority to make the examination, inspection or test.

(5) Nothing in this section authorizes the department to use any information developed thereunder for any purpose inconsistent with any statute governing motor carriers or railroads and administered by the department or to make a disclosure thereof for other than regulatory purposes. [1995 c.733 §20; 1995 c.737 §11; 1997 c.249 §237]

823.025 Maintaining and producing records; expenses incurred in out-of-state examinations; rules. (1) The Department of Transportation may require by rule, or by order or subpoena to be served on any motor carrier or railroad, the maintaining within this state or the production within this state at such time and place as the department may designate, of any books, accounts, papers or records kept by such motor carrier or railroad in any office or place within or without this state, or verified copies in lieu thereof, if the department so orders, in order that an examination thereof may be made by the department or under direction of the department.

(2) When a motor carrier or railroad keeps and maintains its books, accounts, papers or records outside the state, the department may examine such documents and shall be reimbursed by the motor carrier or railroad for all expenses incurred in making such out-of-state examination. [1995 c.733 §21]

823.027 Duty to furnish information to department. (1) Every motor carrier and railroad shall furnish to the Department of Transportation all information required by the department to carry into effect the provisions of ORS chapters 823, 824, 825 and 826 and shall make specific answers to all questions submitted by the department.

(2) If a motor carrier or railroad is unable to furnish any information required under subsection (1) of this section for any reason beyond its control, it is a good and sufficient reason for such failure. The answer or information shall be verified under oath and returned to the department at the department's office within the period fixed by the department. [1995 c.733 §22; 1997 c.249 §238]

823.029 Failure to furnish requested information. No officer, agent or employee of any motor carrier or railroad shall:

(1) Fail or refuse to provide any information or document required by the Department of Transportation;

(2) Fail or refuse to answer any question therein propounded;

(3) Knowingly or willfully give a false answer to any such question or evade the answer to any such question where the fact inquired of is within the person's knowledge;

(4) Upon proper demand, fail or refuse to exhibit to the department or any person authorized to examine the same, any book, paper, account, record or memorandum of the motor carrier or railroad that is in possession or under the control of the person;

(5) Fail to properly use and keep a system of accounting or any part thereof, as prescribed by the department; or

(6) Refuse to do any act or thing in connection with such system of accounting when so directed by the department or authorized representative. [1995 c.733 §23]

823.030 [Formerly 485.505; 1989 c.782 §3; renumbered 682.035 in 1995]

823.031 Investigating complaints against carriers. (1) The Department of Transportation may investigate any complaint filed against a person whose business or activities are regulated by one or more of the statutes regarding motor carriers or railroads, jurisdiction for the enforcement or regulation of which is conferred upon the department.

(2) Any hearing held as a result of a complaint or investigation under subsection (1) of this section shall be a contested case hearing, in the manner provided in ORS 183.413 to 183.497. [1995 c.733 §§35,36]

823.033 Investigations and orders on department's own motion; request for hearing by aggrieved party. (1) Whenever the Department of Transportation believes that any rate subject to regulation by the department may be unreasonable or unjustly discriminatory, or that any service subject to regulation by the department is unsafe or inadequate, or is not afforded, or that an investigation of any matter relating to any motor carrier, railroad or other person should be made, or relating to any person to determine if such person is subject to the department's regulatory jurisdiction, the department may on its own motion summarily investigate any such matter, with or without notice.

(2) The department may, after making an investigation on the department's motion, provide notice to the motor carrier, railroad or other person of the department's proposed action or may, without notice or hearing, make such findings and orders as the department deems justified or required by the results of such investigation.

(3) Any party aggrieved by a notice of proposed action or by an order entered pursuant to subsection (2) of this section may request the department to hold a hearing pursuant to ORS 183.413 to 183.497.

(4) An order issued under this section prior to a hearing shall be stayed pending the outcome of the hearing unless the department finds that the order is necessary to protect the public health, safety or environment. [1995 c.733 §37; 1997 c.275 §10]

823.035 Representation by non-attorney. (1) Notwithstanding ORS 9.320 and 823.031 (2), an individual who is not an attorney may represent that individual or other persons who consent to such representation at any proceeding before the Department of Transportation involving the regulation of transportation matters pursuant to ORS chapter 825.

(2) Notwithstanding ORS 9.320 and 823.031 (2), an individual who is not an attorney may represent that individual or labor organizations, railroads, motor carriers or government agencies who consent to such representation in any proceeding before the department involving the regulation of transportation matters pursuant to ORS 824.020 to 824.042, 824.050 to 824.110 and 824.200 to 824.256.

(3) Any compromises, agreements, admissions, stipulations, statements of fact or other such action taken by the representative at any such proceeding is binding on those represented to the same extent as if done by an attorney. A person so represented may not thereafter claim that any such proceeding was legally defective because the person was not represented by an attorney.

(4) As used in this section, "attorney" has the meaning for that term provided in ORS 9.005. [1995 c.733 §36a]

823.037 Declaratory rulings. On petition of any interested person, the Department of Transportation may issue a declaratory ruling with respect to the applicability to any person, property, or state of facts of any rule or statute regarding motor carriers or railroads that is enforceable by the department. A declaratory ruling is binding between the department and the petitioner on the state of facts alleged, unless it is modified, vacated or set aside by the Court of Appeals. However, the department may review the ruling and modify, vacate or set it aside if requested by the petitioner or other party to the proceeding. Binding rulings provided by this section are subject to review in the Court of Appeals in the manner provided in ORS 183.480 for the review of orders in contested cases. [1995 c.733 §34]

823.040 [Formerly 485.510; repealed by 1989 c.782 §40]

823.050 [1983 c.338 §976; repealed by 1989 c.782 §40]

DESTRUCTION OF EQUIPMENT

823.051 Interference with department equipment. No person shall destroy, injure or interfere with any apparatus or appliance owned or operated by or in charge of the Department of Transportation, or any apparatus or appliance sealed by the department. [1995 c.733 §24]

823.060 [Formerly 485.515; 1989 c.782 §4; 1991 c.67 §225; 1993 c.371 §3; renumbered 682.045 in 1995]

HAZARDOUS MATERIALS GENERALLY

823.061 Applicability of hazardous material safety regulations; rules. The federal hazardous material safety regulations adopted, implemented or enforced by the Department of Transportation shall be applicable to any person who transports, or causes to be transported, by motor or rail, a hazardous material. The department shall define hazardous material by rule. The definition shall be consistent with federal definitions of the term. [1995 c.737 §10]

823.063 Notice and opportunity to correct hazardous material violations. (1) The Department of Transportation may not impose penalties specified in ORS chapters 823, 824, 825 and 826, against a person who causes hazardous materials to be transported unless the person has received prior written notice of the violation and five days to correct the violation.

(2) No prior written notice or five-day correction period shall be required under subsection (1) of this section for:

(a) Subsequent violations of a like nature occurring within five years of the violation for which the person received notice.

(b) Any violation that causes substantial harm to human health or the environment. [1995 c.737 §15]

823.070 [Formerly 485.520; 1989 c.782 §5; 1991 c.67 §226; 1993 c.371 §4; renumbered 682.047 in 1995]

AGENCY ABANDONMENT

823.071 Definitions for ORS 823.073 and 823.075. As used in ORS 823.073 and 823.075, the following terms have the following meanings:

(1) "Agency" means any place provided by a for-hire carrier for the accommodation of the public in the receipt, delivery, billing or routing of freight, or in the loading or discharge of passengers, at which an agent is provided to serve the public.

(2) "Agent" means the person in charge of the transaction of business with the public at any station or agency.

(3) "Common carrier" means any railroad as defined in ORS 824.020, and any for-hire carrier by motor vehicle as defined in ORS 825.005 if the carrier transports persons. [Formerly 756.380]

823.073 Common carrier not to abandon agencies or withdraw agent without approval of department. No common carrier shall abandon any of its agencies, or withdraw the agent therefrom, without the prior written authority of the Department of Transportation. If the primary business of the agent or agency is not that of a common carrier, the loss of the use of such agent or agency without the fault of the carrier shall not be considered a violation of this section, provided that the carrier shall give to the department notice of such loss immediately upon being informed thereof and secure another agent or agency within a reasonable period of time. [Formerly 756.385]

823.075 Petitioning department for authority to abandon agency or withdraw agent. (1) Any common carrier may petition the Department of Transportation for authority to abandon any agency or to withdraw the agent from an agency.

(2) Upon receipt of a petition to abandon or withdraw under this section, the department shall give written notice of the petition to all known current customers of such agency. If the petition requests authority to abandon or withdraw any agency or agent involved in transportation services using motor buses, the department shall provide notice of the petition for authority and of rights to protest by publication in addition to any written notice required by this subsection. When notice by publication is required under this subsection, such notice must be published in a newspaper of general circulation in the county where the affected agency is located.

(3) If any customer files with the department a written protest to the abandonment of the agency or the withdrawal of the agent therefrom within 30 days from the date written notice is given, the department shall schedule a hearing to be held within 30 days from the filing of such protest. If notice by publication is required under subsection (2) of this section then protest may be filed, as provided under this subsection, within 30 days after the written notice or published notice, whichever is later.

(4) If a hearing is provided under this section, the hearing shall be held at some convenient place in the county in which such agency is located.

(5) Where a common carrier seeks to move the location of its agent or agency from one point within a city to another point within such city the department may approve such move without a hearing. [Formerly 756.390]

823.080 [Formerly 485.525; 1989 c.782 §6; renumbered 682.075 in 1995]

ENFORCEMENT AND REMEDIES

823.081 Enforcement of laws relating to carriers. (1) The Department of Transportation shall inquire into any neglect or violation of any law of this state, or any law or ordinance of any municipality thereof, relating to motor carriers or railroads by any motor carrier or railroad doing business therein, its officers, agents or employees and shall enforce all laws of this state relating to motor carriers and railroads and may enforce all such laws and ordinances of a municipality. The department shall report all violations of any such laws or ordinances to the Attorney General.

(2) The Attorney General, district attorney of each county, all state, county and city police officers and police officers commissioned by a university under ORS 352.383 shall assist the department in the administration and enforcement of all laws related to motor carriers and railroads administered by the department, and they, as well as assistants and employees of the department, shall inform against and diligently prosecute all persons whom they have reasonable cause to believe guilty of the violation of any such laws or of the rules, regulations, orders, decisions or requirements of the department made pursuant thereto.

(3) Upon the request of the department, the Attorney General or the district attorney of the proper county shall aid in any investigation, hearing or trial, and shall institute and prosecute all necessary suits, actions or proceedings for the enforcement of those laws and ordinances referred to in subsection (1) of this section.

(4) Any forfeiture or penalty provided for in any law regarding motor carriers or railroads administered by the department shall be recovered by an action brought thereon in the name of the State of Oregon in any court

of appropriate jurisdiction or as provided in ORS 183.745. [1995 c.733 §25; 2011 c.506 §52]

823.083 Enjoining violation of carrier laws. (1) Whenever it appears to the Department of Transportation that any motor carrier, railroad or any other person subject to the jurisdiction of the department is engaged or about to engage in any acts or practices that constitute a violation of any statute regarding motor carriers or railroads administered by the department, or any rule, regulation, requirement, order, term or condition issued thereunder, the department may apply to any circuit court of the state where such motor carrier, railroad or any other person subject to the jurisdiction of the department operates for the enforcement of such statute, rule, regulation, requirement, order, term or condition.

(2) Such court, without bond, has jurisdiction to enforce obedience thereto by injunction, or by other processes, mandatory or otherwise, restraining such motor carrier, railroad or any other person subject to the jurisdiction of the department, or its officers, agents, employees and representatives from further violations of such statute, rule, regulation, requirement, order, term or condition, and enjoining upon them obedience thereto.

(3) The provisions of this section are in addition to and not in lieu of any other enforcement provisions contained in any statute administered by the department. [1995 c.733 §26]

823.085 Liability for damages to injured person. (1) Any motor carrier or railroad that does, or causes or permits to be done, any matter, act or thing prohibited by ORS chapters 823, 824, 825 and 826, or omits to do any act, matter or thing required to be done by ORS chapters 823, 824, 825 and 826, is liable to the person injured thereby in the amount of damages sustained in consequence of such violation. If the party seeking damages alleges and proves that the wrong or omission was the result of gross negligence or willful misconduct, the motor carrier or railroad is liable to the person injured thereby in treble the amount of damages sustained in consequence of the violation. The court may award reasonable attorney fees to the prevailing party in an action under this section.

(2) Any recovery under this section does not affect recovery by the state of the penalty, forfeiture or fine prescribed for such violation.

(3) This section does not apply with respect to the liability of any motor carrier or railroad for personal injury or property damage. [1995 c.733 §§27,99; 1997 c.249 §239]

823.087 Effect of carrier laws on common law and other statutory rights of action, duties and liabilities. (1) The remedies and enforcement procedures provided in ORS chapters 823, 824, 825 and 826 do not release or waive any right of action by the state or by any person for any right, penalty or forfeiture that may arise under any law of this state or under an ordinance of any municipality thereof.

(2) All penalties and forfeitures accruing under said statutes and ordinances are cumulative and a suit for and recovery of one, shall not be a bar to the recovery of any other penalty.

(3) The duties and liabilities of the motor carriers or railroads shall be the same as are prescribed by the common law, and the remedies against them the same, except where otherwise provided by the Constitution or statutes of this state, and the provisions of ORS chapters 823, 824, 825 and 826 are cumulative thereto. [1995 c.733 §28; 1997 c.249 §240]

823.090 [Formerly 485.530; 1989 c.782 §7; 1993 c.371 §5; renumbered 682.085 in 1995]

823.100 [Formerly 485.535; 1989 c.782 §8; 1991 c.331 §141; 1993 c.371 §6; renumbered 682.105 in 1995]

RECEIPTS AND BILLS OF LADING

823.101 Duty of carrier to issue bill of lading on intrastate shipments; liability of carrier to holder for damage to shipment. (1) Any for-hire carrier, railroad or transportation company receiving property for transportation wholly within this state, from one point in this state to another point in this state, shall issue in accordance with the applicable provisions of ORS chapter 77 a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage or injury to such property caused by it, or by any common carrier to which such property may be delivered, or over whose line or lines such property may pass, when transported on a through bill of lading. No contract, receipt, rule, regulation or other limitation of any character whatsoever shall exempt such for-hire carrier, railroad or transportation company from such liability.

(2) Any for-hire carrier, railroad or transportation company so receiving property for transportation wholly within this state shall be liable to the lawful holder of such receipt or bill of lading, or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage or injury to such property caused by it, or by any common carrier to which such property may be delivered, or over whose line such property may pass when transported on a through bill of lading, notwithstanding any limitation of

liability or limitation of the amount of recovery, or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule or regulation, or in any tariff filed with the Department of Transportation; and any such limitation, irrespective of the manner or form in which it is sought to be made, is unlawful and void.

(3) The provisions of subsection (2) of this section respecting liability for full actual loss, damage or injury, shall not apply:

(a) To baggage carried on passenger trains or boats, or trains or boats carrying passengers.

(b) To property, except ordinary livestock, concerning which the carrier is expressly authorized or required by order of the Department of Transportation to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property. "Ordinary livestock" includes all cattle, swine, sheep, goats, horses and mules, except such as are chiefly used for breeding, racing, show purposes or other special uses.

(4) The Department of Transportation may make the order referred to in subsection (3)(b) of this section in cases where rates dependent upon and varying with declared or agreed values would, in the opinion of the department, be just and reasonable under the circumstances and conditions surrounding the transportation. Any tariff schedule filed with the department pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon. [Formerly 771.010; 1997 c.249 §241]

823.103 Limitations on carrier's power to set time for filing of claim or starting action. A for-hire carrier, railroad or transportation company referred to in ORS 823.101 may not provide by rule, contract, regulation or otherwise a period for filing claims described in ORS 823.101 shorter than the following:

(1) Nine months after delivery of property or after reasonable time for delivery has elapsed for filing of claims in writing, except that if the carrier is a for-hire carrier of household goods, three months.

(2) Two years for the institution of suits. The period for institution of suits shall be computed from the day when notice is given by the carrier to the claimant that the carrier has disallowed all or any part of the claim specified in the notice. [Formerly 771.020; 1997 c.249 §242; 2003 c.754 §12]

823.105 Prohibitions. No common carrier subject to ORS 823.101 to 823.107, its director or officer, receiver, trustee, lessee, agent or person acting for or employed by it, shall, alone or with any other person, willfully do or cause to be done, or willingly suffer or permit to be done, any act, matter or thing prohibited or declared to be unlawful in ORS 823.101 to 823.107, or aid or abet therein, or willfully omit or fail to do any act, matter or thing required to be done by ORS 823.101 to 823.107 or cause or willingly suffer or permit any act, matter or thing so directed or required by ORS 823.101 to 823.107 to be done, or not to be so done, or aid or abet any such omission or failure. [Formerly 771.040]

823.107 Existing remedies not affected. Nothing in ORS 823.101 to 823.107 shall deprive any holder of a receipt or bill of lading of any remedy or right of action which the holder has under existing law. [Formerly 771.050]

823.110 [Formerly 485.540; renumbered 682.107 in 1995]

823.120 [Formerly 485.545; 1989 c.782 §9; 1991 c.331 §142; 1995 c.41 §8; renumbered 682.109 in 1995]

823.130 [Formerly 485.550; 1989 c.782 §10; renumbered 682.135 in 1995]

823.140 [Formerly 485.555; 1989 c.782 §11; 1991 c.909 §2; renumbered 682.145 in 1995]

823.145 [1989 c.782 §14; 1991 c.703 §42; 1991 c.909 §3; renumbered 682.155 in 1995]

823.150 [Formerly 485.560; 1987 c.90 §1; 1989 c.782 §12; 1991 c.909 §4; 1993 c.371 §7; renumbered 682.157 in 1995]

823.160 [Formerly 485.565; 1989 c.782 §15; 1991 c.67 §227; 1993 c.371 §8; renumbered 682.175 in 1995]

823.165 [1989 c.782 §15a; 1991 c.734 §103; 1993 c.371 §9; renumbered 682.185 in 1995]

823.170 [Formerly 485.570; 1989 c.782 §16; renumbered 682.195 in 1995]

823.180 [Formerly 485.573; 1989 c.722 §3; renumbered 682.205 in 1995]

823.190 [Formerly 485.575; 1989 c.782 §18; renumbered 682.215 in 1995]

823.200 [Formerly 485.577; 1987 c.660 §26; 1989 c.782 §19; 1993 c.371 §10; renumbered 682.225 in 1995]

823.204 [1989 c.782 §27; renumbered 682.235 in 1995]

823.205 [1989 c.782 §28; 1991 c.909 §5; renumbered 682.245 in 1995]

823.210 [Formerly 485.580; 1989 c.782 §20; 1991 c.909 §6; 1993 c.371 §11; renumbered 682.255 in 1995]

823.215 [Formerly 677.675; 1991 c.67 §228; 1991 c.909 §7; renumbered 682.265 in 1995]

823.220 [Formerly 485.585; 1989 c.722 §2; 1989 c.782 §21; renumbered 682.275 in 1995]

823.230 [Formerly 485.590; 1989 c.782 §22; renumbered 682.285 in 1995]

823.240 [Formerly 485.595; 1989 c.782 §23; renumbered 682.295 in 1995]

823.250 [1987 c.845 §1; 1989 c.782 §24; renumbered 682.305 in 1995]

823.300 [1989 c.722 §8; renumbered 682.315 in 1995]

823.305 [1989 c.722 §5; renumbered 682.325 in 1995]

823.310 [1989 c.722 §7; renumbered 682.335 in 1995]

823.315 [1989 c.722 §6; renumbered 682.345 in 1995]

823.320 [1991 c.958 §1; renumbered 682.355 in 1995]

PENALTIES

823.990 [Formerly 485.992; 1989 c.782 §25; 1993 c.371 §12; renumbered 682.991 in 1995]

823.991 Penalties. (1) Any motor carrier or railroad that fails to comply with an order or subpoena issued pursuant to ORS 823.025 shall pay a civil penalty, for each day it so fails, of not less than $50 nor more than $500.

(2) Except where a penalty is otherwise provided by law, any motor carrier or railroad shall pay a civil penalty of not less than $100 nor more than $10,000 for each time that the motor carrier or railroad:

(a) Violates any statute regarding motor carriers or railroads, as appropriate, administered by the Department of Transportation;

(b) Does any act prohibited, or fails to perform any duty enjoined upon the motor carrier or railroad;

(c) Fails to obey any lawful requirement or order made by the department; or

(d) Fails to obey any judgment made by any court upon the application of the department.

(3) Violation of ORS 823.029 is punishable after issuance of a final order by the department, by a civil penalty of not less than $1,000 for each offense. A penalty of not less than $500 nor more than $1,000 shall be recovered from the motor carrier or railroad for each such offense when such officer, agent or employee acted in obedience to the direction, instruction or request of the motor carrier or railroad, or any general officer thereof.

(4) Violation of ORS 823.029 is a Class A violation.

(5) Violation of ORS 823.051 is a Class C misdemeanor. Any motor carrier or railroad that knowingly permits the violation of ORS 823.051 shall forfeit, upon conviction, not more than $1,000 for each offense.

(6) In construing and enforcing this section, the act, omission or failure of any officer, agent or other person acting for or employed by any motor carrier or railroad shall in every case be deemed to be the act, omission or failure of such motor carrier or railroad. With respect to any violation of any statute administered by the department regarding motor carriers or railroads, any penalty provision applying to such a violation by a motor carrier or railroad shall apply to such a violation by any other person.

(7) Except as provided in ORS 824.019 and 825.326, and except when provided by law that a penalty, forfeiture or other sum be paid to the aggrieved party, all penalties or forfeitures collected from persons subject to the regulatory authority of the department under ORS chapters 823, 824, 825 and 826 shall be paid into the General Fund and credited to the Motor Carrier Account if collected from a motor carrier and to the Railroad Fund created under ORS 824.014 (1) if collected from a railroad.

(8) Violation of ORS 823.105 is punishable, after issuance of a final order by the department, by a civil penalty of not more than $5,000 for each offense.

(9) Violation of ORS 823.105 is a specific fine violation punishable by a fine of not more than $5,000 for each offense.

(10) Civil penalties under this section shall be imposed in the manner provided by ORS 183.745. [Subsections (1) to (6) of 1995 Edition enacted as 1995 c.733 §38; subsection (7) of 1995 Edition formerly 771.990; 1997 c.249 §243; 1997 c.275 §11; 1999 c.1051 §230; 2001 c.909 §5; 2003 c.576 §567; 2003 c.754 §11; 2011 c.597 §306]