



Oregon

Kate Brown, Governor

Department of Transportation

Director's Office

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Salem, OR 97301

September 15, 2019

Co-Chair Senator Lee Beyer
Co-Chair Representative Caddy McKeown
Interim Joint Committee on Transportation

RE: HB 2017 (2017) §111a Report to the Interim Joint Committee on Transportation

Co-Chairs Beyer and McKeown:

House Bill 2017 (Transportation Funding Package), passed during the 2017 legislative session, requires ODOT to report on particular enforcement activity by the Driver and Motor Vehicles Services Division (DMV). Section 111a requires the following:

Not later than September 15, 2019, and September 15, 2021, the Department of Transportation shall submit reports in the manner required under ORS 192.245 to the Joint Committee on Transportation established under section 26 of this 2017 Act describing in detail the enforcement by the department of the provisions of ORS chapter 822 governing the certification of vehicle dealers.

Enclosed is the first of the two required reports. DMV's regulatory work regarding vehicle dealers is intertwined with similar work for vehicle dismantlers, so the report includes information on both regulatory responsibilities.

To meet the requirements of ORS 192.245, in addition to sending this report to members and staff of the Interim Joint Committee on Transportation, an electronic copy is being provided to all members of the Legislature and to Legislative Administration.

CC: Co-Vice Chair Sen. Brian Boquist
Co-Vice Chair Rep. Ron Noble
Sen. Cliff Bentz
Sen. Lew Frederick
Sen. Sara Gelser
Rep. Paul Evans
Rep. Lynn Findley
Rep. Rick Lewis
Rep. Susan McLain
Rep. Brad Witt
Patrick Brennan, LPRO

ODOT Report in Compliance with HB 2017 §111(a)

DMV Enforcement of Vehicle Dealer Certification
under ORS chapter 822

Submitted September 15, 2019

BACKGROUND

The inspection of regulated businesses was authorized by the Oregon Legislature in 1977, which resulted in DMV establishing the Dealer Investigations unit. The unit is a part of the Business Regulation and Fraud Prevention Section. The statutorily created Oregon Dealer Advisory Committee (ODAC) provides advice to DMV Business Regulation section (ORS 802.370). DMV must consult with the committee before adopting certain rules, and before taking disciplinary action against a dealer. The committee meets quarterly, and its members include representatives across the spectrum of vehicle-related businesses.

Vehicle dealers – businesses that sell cars, trucks, recreational vehicles, trailers, and ATVs – are required to obtain certification from DMV. To obtain certification a dealer applies and demonstrates their physical location is approved by the local zoning authority, has acquired a surety bond of at least \$50,000, has adequate liability insurance, and completed the required dealer education training. The law requires dealer certification and regulation due to the potential harm these businesses can cause consumers. Protections include ensuring there is a bond to cover certain consumer losses, and protecting against the sale of vehicles that are stolen, unsafe, or misrepresented (e.g. odometer rollback).

Certified vehicle dealers are agents of DMV, authorized to collect DMV fees and prepare and submit vehicle title and registration paperwork to DMV on a customer's behalf. Regulation ensures the agent relationship is appropriately carried out and the Highway Fund is kept whole.

Certified dealers are required by ORS Chapter 822 to maintain records of their transactions and to make their records available for inspection. The statutes authorize DMV to inspect dealers to ensure compliance with record keeping and location requirements, and (where appropriate) to impose sanctions. The statutes authorize probation, suspension, revocation, or cancellation of the certification, as well as civil monetary penalties. ORS 822 also authorizes DMV to investigate persons who engage in dealer activity without a valid certificate, and to impose civil penalties upon those found in violation.

ENFORCEMENT BY THE DEPARTMENT

Dealer Investigations unit is led by a manager and is staffed by an Administrative Specialist and eight Compliance Specialists (“Investigators”). The manager, specialist, and three of the investigators are housed at DMV headquarters in Salem. Three investigators are housed in the Portland metropolitan area, one in Eugene, and one in Medford. In addition to vehicle dealers, the unit also regulates vehicle dismantlers.

There are approximately 3,000 certified dealers and dismantlers in Oregon with about 90% operating as dealers. Each investigator is assigned a geographic area of the state and is responsible for inspecting the certified dealers and dismantlers in their area. They are also responsible for investigating consumer complaints of both certified and non-certified dealers and dismantlers. The manager, in addition to leading the program and staff, also conducts routine inspections and investigations.

The primary purpose of the investigator position is to ensure that certified vehicle dealers and dismantlers comply with Oregon law so as to protect consumers and ensure the dealers are appropriately carrying out the duties of an agent to DMV. Investigators perform on-site inspections of vehicle records, and compare vehicle records to vehicles on the lot. They review records to ensure the business is collecting correct fees, paperwork and fees are being submitted to DMV within statutory timeframes, lienholders and consignors are being paid within appropriate timeframes, and the dealership is in compliance with all other regulations. Again, the overriding concern is protecting consumers and the Highway Fund.

During inspection of certified dismantlers, the investigators are reviewing vehicle inventories and records to ensure the business is not dealing in stolen vehicles, is obtaining proper ownership documents for each vehicle, and is submitting required reports to DMV within established timeframes. (With passage of SB 792 [2019] starting January 1, investigators will inspect dismantler locations more frequently, include inspecting for specific environmental issues, and report those to DEQ.)

Investigators also respond to complaints from the public, certified dealers, certified dismantlers, other government agencies, and industry related businesses concerning potential violations of Oregon law by regulated businesses. The merits of a complaint are evaluated. If the allegations in the complaint are determined to be within DMV's regulatory authority, then the complaint is assigned to an investigator. Where appropriate, complaints may be referred to the Department of Justice Consumer Protection group, law enforcement, or a District Attorney.

Upon receipt of a complaint, the investigator interviews witnesses and the parties involved, inspects business records, and gathers evidence to establish facts that may support or refute alleged violations. The investigator prepares reports including findings, analysis, evaluation, exhibits, and recommended action. Recommended action can include sanctions against the certification or civil penalties. The reports may be used in litigation (administrative hearings, criminal or civil court), where the investigator may be called to testify.

To ensure compliance with certification requirements in ORS 822, investigators are responsible for identifying individuals who buy, sell, or advertise vehicles for sale without having a dealer certificate, and those persons who transact in vehicles for the purpose of a dismantling business without a dismantler certificate.

Investigators provide information to the public, certified vehicle dealers, and other vehicle-related businesses, relating to the application of laws, rules and policies of the Business Regulation and Fraud Prevention Section. Investigators regularly make presentations about the program to industry groups and other stakeholders. Investigators also participate in dealer education trainings to aid in compliance.

The Oregon Legislature funded a new investigator position in the 2017 session, which was intended to focus on investigating those performing dealer work without a certificate in violation of ORS Chapter 822. The vehicle dealer industry advocated for this position because non-certified dealers and dismantlers have a negative impact upon their businesses directly and also indirectly when unlicensed dealers behave badly and contribute to a poor reputation for the

industry. The new investigator, who had prior regulatory and law enforcement experience, was in place by January 2018.

This additional investigator monitors auto auctions, social media and other websites used for buying and selling vehicles and vehicle parts, and physical locations where vehicles are parked for sale. The purpose is to identify sales activity by those acting as a dealer or dismantler without a certificate. The investigator receives complaints about unlicensed activity from members of the public, certified dealers and dismantlers, governmental agencies, and others. The investigator performs all the activities during an investigation of non-certified persons, as described previously.

The investigator issues warnings to persons suspected of acting as a dealer or dismantler without a valid certificate, if the investigator is unable to establish that the person knew or should have known a certificate was required. Some individuals have previously held a certificate, or otherwise should have reasonably known of the requirement. In those cases the investigator will forego a warning and move to sanction.

The investigator assists law enforcement and local code compliance units with suspected dealer and dismantler activity by persons without the appropriate certification. The investigator also assists other DMV investigators with complex investigations.

From January 2018 through July 2019, staff received a total of 527 complaints against certified dealers and dismantlers, and 357 against those operating without the appropriate dealer or dismantler certificate. They conducted 1,909 inspections of certified dealers and 213 inspections of certified dismantlers. They also conducted 269 other investigations into certified dealer activity and 20 other investigations into certified dismantler activity. The program issued a total of 129 requests for civil penalties and 73 sanctions against certified dealers. There were also five requests for civil penalties and two sanctions against certified dismantlers for a total of \$264,200 in civil penalties assessed. Of those charged, 42 have defaulted on the civil penalties (\$145,500), which have since been referred to ODOT Financial Services for collection. The other civil penalties have been paid, are on established payment plans, or are not yet fully processed and imposed.

A total of 66 requests for civil penalties were assessed against those operating without a dealer or dismantler certificate for a total of \$576,200 in civil penalties assessed. Of those charged, 29 have defaulted on the civil penalties (\$445,000), which have since been referred to ODOT Financial Services for collection. The other civil penalties have been paid, are on established payment plans, or are not yet fully processed and imposed.

Of the statistics cited, the investigator in the position funded by the 2017 session received a total of 235 complaints about those operating without a dealer or dismantler certificate. He requested 45 civil penalties against those operating without a dealer or dismantler certificate for a total of \$390,000 in civil penalties assessed.

Anecdotal evidence suggests that some people who are given warnings or assessed civil penalties for non-certified work do not leave the vehicle business. Experience shows that many of the

people who fail to obtain a certificate are reluctant to apply because they are unable to qualify for, or afford, the required surety bond. They may also have legal issues that prevent them from obtaining a certificate. Some find a friend or family member to obtain a certificate, or they continue their activity by working under another certified dealer or dismantler's business. This number is difficult to quantify, since dealers are not required to report on who they employ. Investigators also find non-certified persons acquiring vehicles through certified dealers. The investigator appropriately pursues both the non-certified individual and the certified business for potentially illegal activity.

CONCLUSION

DMV regulates vehicle dealers by requiring certification, inspecting certified dealers, and investigating dealers that operate without certification. The law allows DMV to sanction with civil monetary penalties, plus sanction certified dealers by taking action against their certification. The addition of an investigator during the 2017 session has resulted in a significant number of investigations and sanctions against dealers for illegal behavior. ODOT will report again in 2021, and anticipates having trend data to show the results of enforcement practices.