

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

DMV Enforcement of Vehicle Dealer Certification
under ORS chapter 822

Submitted September 15, 2021

EXECUTIVE SUMMARY

The Keep Oregon Moving Act (HB 2017) of 2017 required ODOT to report on DMV's enforcement activity, under ORS Chapter 822, regarding vehicle dealers. This is the second of the two required reports. The law requires vehicle dealers to be certified by DMV, including proof of a surety bond, liability insurance, and dealer education. The main goal of the regulation is consumer protection. In addition, certified dealers act as agents of DMV by completing paperwork and filing fees on behalf of their customers, so the regulation is to ensure that work is being done appropriately. DMV also regulates vehicle dismantlers, with a significant focus on combatting theft. The statutorily created Oregon Dealer Advisory Committee provides advice to DMV in administering regulations, including enforcement (ORS 802.370).

There are approximately 3,000 certified dealers and dismantlers in Oregon; at least 90% of those are dealers. DMV's enforcement is completed by one working manager and nine investigators, who are sited around the state. They investigate consumer complaints, locate and investigate unlicensed dealers, and perform routine compliance checks of certified dealers. Investigators educate dealers and issue consequences, including warnings, civil penalties, or action against the certificate itself. Illegal dealer operations not only harm the industry by directly undercutting their business, but also by driving negative perceptions of the industry.

From August 2019 through July 2021, DMV received 694 complaints against certified businesses and 431 against uncertified businesses; and conducted 2473 inspections of certified dealers, 439 inspections of certified dismantlers, and 385 other investigations into certified businesses. The program sought 164 sanctions or civil penalties on certified dealers, and 9 sanctions or civil penalties against certified dismantlers. For dealers without certification (operating illegally), DMV sought 75 civil penalties. Businesses that lose their certification, or are sanctioned for operating without certification, do not always leave the business. Some reemerge in new locations, have a friend or family member obtain a certificate and operate under that, or operate under the cover of a certified business's certification.

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 Vehicle Programs Section. The statutorily created Oregon Dealer Advisory Committee provides advice to DMV Business Regulation section (ORS 802.370). DMV must consult 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 has completed required dealer education training. The law requires dealer certification and regulation due to the potential harm they 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).

In addition, certified vehicle dealers are agents of DMV authorized to collect fees and prepare and submit vehicle title and registration paperwork to DMV on a customer's behalf. Dealers who do so are allowed by statute to collect a fee from the customer up to \$115, or \$150 if they use the service of an integrator of which a portion goes to the integrator (ORS 822.043). 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 is led by a working Manager and is staffed by an Administrative Specialist and nine Compliance Specialists ("Investigators"). The manager, specialist, and four 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; at least 90% of those are 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 against certified dealers, non-certified (illegal) 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. An additional role is to ensure the dealers are appropriately carrying out their duties as agents of DMV. Investigators perform on-site inspections of vehicle records. They compare vehicle records to vehicles in dealer inventory. They review records to ensure the business is collecting correct fees, title and registration 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 inventory vehicles 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) effective January 1, 2020, an additional investigator position was established, dedicated to the regulation of certified dismantlers. Each certified dismantler location is required to be inspected annually, including inspection for specific environmental issues, and the reporting of violations 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 and if the allegations in the complaint are determined to be within DMV's regulatory authority, the complaint is assigned to an investigator. Where appropriate, complaints may be referred to the Department of Justice Consumer Protection Section, law enforcement, the local District Attorney, or other appropriate jurisdiction authority.

Upon receipt of a complaint, the investigator conducts interviews of 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, analyses, evaluation, exhibits, and recommended action. Recommended action can include civil penalties and/or sanctions against the certification and principal owners of the business. 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 DMV. Investigators regularly make presentations on the program to industry groups and other stakeholders. Investigators also participate in dealer education trainings to aid in compliance.

At the request of the industry, the 2017 Oregon Legislature funded a new investigator position to focus on investigating those engaging in dealer activity without a certificate in violation of ORS Chapter 822. The vehicle dealer industry had advocated for the addition of this position because non-certified dealers and dismantlers have a negative impact on their businesses directly, but 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 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, for the purpose of identifying 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, etc. 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 it does not appear 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 jurisdiction 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 August 2019 through July 2021, staff received a total of 694 complaints against certified dealers and dismantlers, and 431 against those operating without the appropriate dealer or dismantler certificate. They conducted 2473 inspections of certified dealers and 439 inspections of certified dismantlers; 328 other investigations into certified dealer activity, and 57 other investigations into certified dismantler activity. The program issued a total of 121 requests for civil penalties and 43 sanctions against certified dealers, and 6 requests for civil penalties and 3 sanctions against certified dismantlers, for a total of \$306,550 in civil penalties assessed. Of those charged, 31 have defaulted on the civil penalties (\$113,250), 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 75 requests for civil penalties were against those operating without a dealer or dismantler certificate, for a total of \$969,500 in civil penalties assessed. Of those charged, 34 have defaulted on the civil penalties (\$660,000), 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 308 complaints about those operating without a dealer or dismantler certificate, in addition to the uncertified dealers he identified through proactive work. He requested 51 of the civil penalties against those operating without a dealer or dismantler certificate, for a total of \$831,500 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 have legal issues that

may 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's or dismantler's business. This number is difficult to quantify, as 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 primary purpose of the program is consumer protection, and to ensure dealers are acting appropriately as legal agents of DMV. The law allows DMV to assess civil monetary penalties, and/or 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 uncertified dealers for illegal behavior.