

# D R A F T

## SUMMARY

Imposes disclosure and notice requirements relating to amounts owed under retail installment contracts for sale or lease of motor vehicles that are not commercial vehicles or commercial motor vehicles. Imposes specified restrictions related to payments owed under contracts.

Creates unlawful trade practice for violation of Act.

Becomes operative on July 1, 2014.

Applies to sales and leases that occur on or after operative date.

## A BILL FOR AN ACT

Relating to retail installment contracts for motor vehicles; creating new provisions; and amending ORS 646.608.

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

## DEFINITIONS

### **SECTION 1. As used in sections 1 to 7 of this 2013 Act:**

(1) “Ancillary item” includes extended or additional warranties, theft deterrent devices, security systems, vehicle service contracts, automobile club memberships, roadside assistance programs, road hazard protection programs and undercoating, rustproofing or other surface protection products.

(2) “Buyer” means a person that buys or leases a motor vehicle under a retail installment contract.

(3) “Cash price” means the amount for which a seller would sell and transfer to a buyer unqualified title to a motor vehicle if the motor vehicle were sold for cash at the seller’s place of business on the date

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 that the contract is executed.

2 (4) “Down payment” means:

3 (a) A payment that a buyer pays or agrees to pay to a seller upon  
4 or prior to the seller delivering a motor vehicle to the buyer; or

5 (b) If a buyer defers the payment, a payment that is not subject to  
6 a finance charge.

7 (5) “Finance charge” means any amount that a creditor directly or  
8 indirectly charges a buyer as incidental to, or as a condition of, the  
9 extension of credit.

10 (6)(a) “Motor vehicle” has the meaning given that term in ORS  
11 801.360.

12 (b) “Motor vehicle” does not include commercial vehicles, as defined  
13 in ORS 801.210, or commercial motor vehicles, as defined in ORS  
14 801.208.

15 (7) “Purchase order” means a written or electronic instrument used  
16 to sell a motor vehicle pending execution of a retail installment con-  
17 tract.

18 (8) “Retail installment contract” means:

19 (a) A contract, entered into in this state between a buyer and a  
20 seller for the sale of a motor vehicle, under which the buyer has a  
21 possessory right to the motor vehicle and either:

22 (A) Title to the motor vehicle vests in the buyer upon the payment  
23 of all or a part of the price of the motor vehicle or the performance  
24 of some other condition; or

25 (B) A lien on the motor vehicle vests in the seller as a security for  
26 the payment of all or a part of the price of the motor vehicle or the  
27 performance of some other condition.

28 (b) A contract for the bailment or lease of a motor vehicle between  
29 a buyer and a seller under which the buyer:

30 (A) Has the right to use the motor vehicle;

31 (B) Must pay a sum substantially equivalent to or in excess of the

1 value of the motor vehicle; and

2 (C) Will become for no additional consideration, or has the option  
3 to become for nominal consideration, the owner of the motor vehicle  
4 upon full compliance with the terms of the contract.

5 (9) "Seller" means a person:

6 (a) That is engaged in the business of selling or leasing motor ve-  
7 hicles under retail installment contracts; and

8 (b) That sells or leases a motor vehicle under a retail installment  
9 contract.

10  
11 **DISCLOSURE AND NOTICE REQUIREMENTS**  
12

13 **SECTION 2.** A retail installment contract and purchase order must  
14 disclose the following amounts:

15 (1) Under the heading "Itemization of Charges":

16 (a) The cash price of the motor vehicle less fees and charges inci-  
17 dental to the selling or leasing of the motor vehicle, taxes imposed on  
18 the sale or lease of the motor vehicle and any remaining amount owed  
19 on property being offered in exchange for payment toward the motor  
20 vehicle.

21 (b) Any fees, listed separately, charged by the seller, including:

22 (A) Any fee charged by the seller for document preparation;

23 (B) Any fee charged by the seller for registering or transferring  
24 ownership of the motor vehicle; and

25 (C) Any fees, listed separately, charged by the seller and that are  
26 required by this state for the sale, certification or operation of a motor  
27 vehicle.

28 (c) Any taxes, listed separately, imposed on the sale or lease.

29 (d) Any amounts, listed separately, charged for ancillary items.

30 (e) The sum of the amounts required to be disclosed under this  
31 subsection.

1       **(2) Any fees, listed separately, not charged by the seller and that**  
2       **are required by this state for the sale, certification or operation of a**  
3       **motor vehicle.**

4       **(3) Under the heading “Insurance Premiums,” the aggregate**  
5       **amount of insurance premiums to be paid under the retail installment**  
6       **contract.**

7       **(4) The sum of the amounts described in subsections (1)(e) and (3)**  
8       **of this section.**

9       **(5) Under the heading “Itemization of Down Payment”:**

10      **(a) The value of any property being offered in exchange for payment**  
11      **toward the motor vehicle.**

12      **(b) The remaining amount owed on any property being offered in**  
13      **exchange for payment toward the motor vehicle.**

14      **(c) The net value of any property being offered in exchange for**  
15      **payment toward the motor vehicle.**

16      **(d) The amount, if any, of a manufacturer’s rebate applied or to be**  
17      **applied to the purchase of the motor vehicle.**

18      **(e) Any additional amount of a down payment paid or to be paid**  
19      **by the buyer.**

20      **(f) The sum of the amounts described in paragraphs (c), (d) and (e)**  
21      **of this subsection. If the sum is zero or greater than zero, the amount**  
22      **shall be listed under the heading “Down Payment.” If the sum is less**  
23      **than zero, the amount shall be listed as a positive number under the**  
24      **heading “Amount Owed on Exchanged Property.”**

25      **(6) Under the heading “Finance Charge Assessed on Date of Con-**  
26      **tract,” the amount of any finance charge that is assessed on the date**  
27      **on which the buyer and the seller enter into the retail installment**  
28      **contract.**

29      **(7) Under the heading “Unpaid Balance”:**

30      **(a) The difference between:**

31      **(A) The sum described in subsection (4) of this section plus the**

1 charges disclosed under subsection (6) of this section; and

2 (B) The sum calculated under subsection (5)(f) of this section; or

3 (b) If the sum calculated under subsection (5)(f) of this section is  
4 less than zero, the aggregate of the sum described in subsection (4)  
5 of this section, the charges disclosed under subsection (6) of this sec-  
6 tion and the positive value of the sum calculated under subsection  
7 (5)(f) of this section.

8 (8) Any other amount required to be disclosed under Regulation Z,  
9 12 C.F.R. part 226.

10 **SECTION 3.** In addition to the disclosure requirements of section 2  
11 of this 2013 Act:

12 (1) A retail installment contract must contain a brief and easily  
13 understandable explanation of any finance charge assessed on the date  
14 on which the buyer and the seller enter into the retail installment  
15 contract.

16 (2) If payment of all or a portion of a down payment is deferred, the  
17 seller must include the deferred payment in the payment schedule re-  
18 quired to be disclosed under Regulation Z, 12 C.F.R. part 226.

19 (3) If a down payment includes property being offered in exchange  
20 for payment toward a motor vehicle, the retail installment contract  
21 or purchase order must contain a brief description of the property.

22 (4) If the terms of a retail installment contract include the sale of  
23 an ancillary item, the retail installment contract must:

24 (a) Identify the difference between the amount of a payment under  
25 the retail installment contract and the amount that the payment  
26 would be if the terms of the retail installment contract did not include  
27 the ancillary item;

28 (b) Identify the difference between the overall amount due under  
29 the retail installment contract and the overall amount that would be  
30 due if the terms of the retail installment contract did not include the  
31 ancillary item; and

(c) Clearly state that the buyer is not required to purchase the ancillary item.

(5) If the terms of a retail installment contract include the provision of insurance coverage for the buyer, the retail installment contract must include an itemized explanation of terms that relate to the provision of insurance coverage. The explanation must identify the type of insurance coverage, the premium charged for the insurance coverage and, if the insurance coverage expires before the date of the last scheduled payment under the retail installment contract, the date on which the insurance coverage expires.

**SECTION 4.** A retail installment contract must contain notice in substantially the following form in at least 12-point type that is bold-faced:

---

**NOTICE TO BUYER**

**Do not sign this agreement before you read it or if it contains any blank spaces to be filled in. There should be no blank spaces.**

**If you do not pay the amounts that you owe under this agreement, your motor vehicle may be repossessed and you may have to pay an additional amount.**

**If you have a complaint concerning this agreement, you should try to resolve it with the seller. If you cannot resolve your complaint with the seller, you may contact the Oregon Department of Justice.**

**After you sign this contract, the seller may not change the financing or payment terms unless you agree in writing to the change. You do not have to agree to any change. It is an unlawful practice under ORS 646.608 for the seller to make a change without your written approval.**

(Buyer's Initials)

**RESTRICTIONS RELATED TO PAYMENTS OWED  
UNDER RETAIL INSTALLMENT CONTRACTS**

**SECTION 5. (1) Except as provided in subsection (3) of this section, a seller may not accept or solicit compensation for procuring, providing for or arranging the financing of a motor vehicle.**

**(2) Except as provided in subsection (3) of this section, a seller or other person that finances a motor vehicle may not receive, and a person may not offer, consideration for the sale, assignment or transfer of a retail installment contract.**

**(3)(a) A seller may charge a buyer a fee of up to \$250 for procuring, providing for or arranging the financing of a motor vehicle and a seller or other person that finances a motor vehicle may charge a buyer a fee of up to \$250 for the sale, assignment or transfer of a retail installment contract.**

**(b) A buyer may be charged no more than one fee under this subsection for each retail installment contract to which the buyer is a party.**

**SECTION 6. (1) A seller may enter into an agreement with a buyer that conditions the seller's execution of a manufacturer's certificate of origin or a motor vehicle's certificate of title on the buyer obtaining financing for the motor vehicle.**

**(2) A buyer may cancel an agreement entered into under this section at any time before a financing agreement becomes final.**

**(3) In the event that a buyer cancels an agreement under this section:**

**(a) The seller shall return to the buyer any down payment and any property that was offered in exchange for payment toward the motor**

1 **vehicle; and**

2 **(b) The buyer shall return to the seller the motor vehicle in the**  
3 **same condition as the seller delivered the motor vehicle to the buyer,**  
4 **excepting normal wear and tear, within 24 hours of canceling the**  
5 **agreement.**

6 **SECTION 7. (1) In the event that a buyer is delinquent in making**  
7 **a scheduled payment, a retail installment contract may provide for the**  
8 **imposition of a charge.**

9 **(2)(a) A retail installment contract may not provide for the im-**  
10 **sition of a charge under this section that exceeds five percent of the**  
11 **amount of the scheduled payment, except that a retail installment**  
12 **contract may impose a reasonable collection fee; and**

13 **(b) A seller or a person to which a seller assigns a retail installment**  
14 **contract may not impose a charge on a payment made pursuant to an**  
15 **agreement to extend or defer a scheduled payment.**

16  
17 **ENFORCEMENT**  
18

19 **SECTION 8. ORS 646.608, as amended by section 6, chapter 52, Oregon**  
20 **Laws 2012, is amended to read:**

21 **646.608. (1) A person engages in an unlawful practice when in the course**  
22 **of the person's business, vocation or occupation the person does any of the**  
23 **following:**

24 **(a) Passes off real estate, goods or services as those of another.**

25 **(b) Causes likelihood of confusion or of misunderstanding as to the**  
26 **source, sponsorship, approval, or certification of real estate, goods or ser-**  
27 **vices.**

28 **(c) Causes likelihood of confusion or of misunderstanding as to affiliation,**  
29 **connection, or association with, or certification by, another.**

30 **(d) Uses deceptive representations or designations of geographic origin in**  
31 **connection with real estate, goods or services.**



1 (e) Represents that real estate, goods or services have sponsorship, ap-  
2 proval, characteristics, ingredients, uses, benefits, quantities or qualities that  
3 they do not have or that a person has a sponsorship, approval, status, qual-  
4 ification, affiliation, or connection that the person does not have.

5 (f) Represents that real estate or goods are original or new if they are  
6 deteriorated, altered, reconditioned, reclaimed, used or secondhand.

7 (g) Represents that real estate, goods or services are of a particular  
8 standard, quality, or grade, or that real estate or goods are of a particular  
9 style or model, if they are of another.

10 (h) Disparages the real estate, goods, services, property or business of a  
11 customer or another by false or misleading representations of fact.

12 (i) Advertises real estate, goods or services with intent not to provide  
13 them as advertised, or with intent not to supply reasonably expectable public  
14 demand, unless the advertisement discloses a limitation of quantity.

15 (j) Makes false or misleading representations of fact concerning the rea-  
16 sons for, existence of, or amounts of price reductions.

17 (k) Makes false or misleading representations concerning credit avail-  
18 ability or the nature of the transaction or obligation incurred.

19 (L) Makes false or misleading representations relating to commissions or  
20 other compensation to be paid in exchange for permitting real estate, goods  
21 or services to be used for model or demonstration purposes or in exchange  
22 for submitting names of potential customers.

23 (m) Performs service on or dismantles any goods or real estate when not  
24 authorized by the owner or apparent owner thereof.

25 (n) Solicits potential customers by telephone or door to door as a seller  
26 unless the person provides the information required under ORS 646.611.

27 (o) In a sale, rental or other disposition of real estate, goods or services,  
28 gives or offers to give a rebate or discount or otherwise pays or offers to pay  
29 value to the customer in consideration of the customer giving to the person  
30 the names of prospective purchasers, lessees, or borrowers, or otherwise  
31 aiding the person in making a sale, lease, or loan to another person, if

1 earning the rebate, discount or other value is contingent upon occurrence  
2 of an event subsequent to the time the customer enters into the transaction.

3 (p) Makes any false or misleading statement about a prize, contest or  
4 promotion used to publicize a product, business or service.

5 (q) Promises to deliver real estate, goods or services within a certain pe-  
6 riod of time with intent not to deliver them as promised.

7 (r) Organizes or induces or attempts to induce membership in a pyramid  
8 club.

9 (s) Makes false or misleading representations of fact concerning the of-  
10 fering price of, or the person's cost for real estate, goods or services.

11 (t) Concurrent with tender or delivery of any real estate, goods or ser-  
12 vices fails to disclose any known material defect or material nonconformity.

13 (u) Engages in any other unfair or deceptive conduct in trade or com-  
14 merce.

15 (v) Violates any of the provisions relating to auction sales, auctioneers  
16 or auction marts under ORS 698.640, whether in a commercial or noncom-  
17 mercial situation.

18 (w) Manufactures mercury fever thermometers.

19 (x) Sells or supplies mercury fever thermometers unless the thermometer  
20 is required by federal law, or is:

21 (A) Prescribed by a person licensed under ORS chapter 677; and

22 (B) Supplied with instructions on the careful handling of the thermometer  
23 to avoid breakage and on the proper cleanup of mercury should breakage  
24 occur.

25 (y) Sells a thermostat that contains mercury unless the thermostat is la-  
26 beled in a manner to inform the purchaser that mercury is present in the  
27 thermostat and that the thermostat may not be disposed of until the mercury  
28 is removed, reused, recycled or otherwise managed to ensure that the mer-  
29 cury does not become part of the solid waste stream or wastewater. For  
30 purposes of this paragraph, "thermostat" means a device commonly used to  
31 sense and, through electrical communication with heating, cooling or venti-

1 lation equipment, control room temperature.

2 (z) Sells or offers for sale a motor vehicle manufactured after January 1,  
3 2006, that contains mercury light switches.

4 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

5 (bb) Violates ORS 646A.070 (1).

6 (cc) Violates any requirement of ORS 646A.030 to 646A.040.

7 (dd) Violates the provisions of ORS 128.801 to 128.898.

8 (ee) Violates ORS 646.883 or 646.885.

9 (ff) Violates ORS 646.569.

10 (gg) Violates the provisions of ORS 646A.142.

11 (hh) Violates ORS 646A.360.

12 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

13 (jj) Violates ORS 646.563.

14 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

15 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any  
16 rule adopted pursuant thereto.

17 (mm) Violates ORS 646A.210 or 646A.214.

18 (nn) Violates any provision of ORS 646A.124 to 646A.134.

19 (oo) Violates ORS 646A.095.

20 (pp) Violates ORS 822.046.

21 (qq) Violates ORS 128.001.

22 (rr) Violates ORS 646.649 (2) to (4).

23 (ss) Violates ORS 646A.090 (2) to (4).

24 (tt) Violates ORS 87.686.

25 (uu) Violates ORS 646.651.

26 (vv) Violates ORS 646A.362.

27 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or  
28 646A.054.

29 (xx) Violates ORS 180.440 (1) or 180.486 (1).

30 (yy) Commits the offense of acting as a vehicle dealer without a certif-  
31 icate under ORS 822.005.

(zz) Violates ORS 87.007 (2) or (3).

(aaa) Violates ORS 92.405 (1), (2) or (3).

(bbb) Engages in an unlawful practice under ORS 646.648.

(ccc) Violates ORS 646A.365.

(ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

(eee) Sells a gift card in violation of ORS 646A.276.

(fff) Violates ORS 646A.102, 646A.106 or 646A.108.

(ggg) Violates ORS 646A.430 to 646A.450.

(hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.

(iii) Violates a provision of ORS 646A.702 to 646A.720.

(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration described in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the subject of the violation.

(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.

(LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on January 1, 2010.

(mmm) Violates a provision of ORS 646A.480 to 646A.495.

(nnn) Violates ORS 646A.082.

(ooo) Violates ORS 646.647.

(ppp) Violates ORS 646A.115.

(qqq) Violates a provision of ORS 646A.405.

(rrr) Violates ORS 646A.092.

(sss) Violates a provision of ORS 646.644.

(ttt) Violates a provision of ORS 646A.295.

(uuu) Violates section 3, chapter 52, Oregon Laws 2012.

**(vvv) Violates a provision of sections 1 to 7 of this 2013 Act.**

(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

(3) In order to prevail in an action or suit under ORS 646.605 to 646.652,

a prosecuting attorney need not prove competition between the parties or actual confusion or misunderstanding.

(4) An action or suit may not be brought under subsection (1)(u) of this section unless the Attorney General has first established a rule in accordance with the provisions of ORS chapter 183 declaring the conduct to be unfair or deceptive in trade or commerce.

(5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

## OPERATIVE DATE AND APPLICABILITY

**SECTION 9. Sections 1 to 7 of this 2013 Act and the amendments to ORS 646.608 by section 8 of this 2013 Act become operative on July 1, 2014.**

**SECTION 10. Sections 1 to 7 of this 2013 Act and the amendments to ORS 646.608 by section 8 of this 2013 Act apply to the sale or leasing of motor vehicles, as defined in section 1 of this 2013 Act, that occurs on or after the operative date specified in section 9 of this 2013 Act.**

## UNIT CAPTIONS

**SECTION 11. The unit captions used in this 2013 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2013 Act.**