

House Bill 2801

Sponsored by Representative SOSA, Senator PATTERSON, Representative HOLVEY; Representatives BYNUM, GAMBIA, GRAYBER, HUDSON, LIVELY, MARSH, NERON, VALDERRAMA, Senators CAMPOS, DEMBROW, GORSEK, PROZANSKI, SOLLMAN (at the request of Oregon Consumer Justice) (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits seller from selling or leasing motor vehicle if sale or lease is contingent upon lender's agreement to purchase retail installment contract or lease agreement.

Provides that if seller sells retail installment contract or lease agreement to lender, lender must provide final approval of funding within 14 days after buyer takes possession of motor vehicle. Provides that if lender does not agree to buy retail installment contract or lease agreement or agrees to buy on terms other than exact terms that seller and buyer agreed to, seller must retain retail installment contract or lease agreement, must notify buyer of seller's retention and may not thereafter sell, assign, transfer or delegate any of the benefits, duties or obligations of the contract or agreement.

Provides that seller's failure to comply with provisions of Act deprives seller of right to collect payment due under contract or agreement and right to repossess motor vehicle.

A BILL FOR AN ACT

1
2 Relating to conditions for financing a purchase of a motor vehicle; creating new provisions; and
3 amending ORS 646.608 and 646A.090.

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

5 **SECTION 1.** ORS 646A.090 is amended to read:

6 646A.090. (1) As used in this section:

7 (a) "Buyer" means a person that purchases [*or leases*] a motor vehicle **or is the lessee in a**
8 **lease transaction for a motor vehicle.**

9 (b) "Final approval of funding" means a lender's irrevocable agreement to purchase a retail in-
10 stallment contract or lease agreement from a seller according to the exact terms that the seller and
11 buyer have negotiated.

12 (c) "Lender" means a person that purchases a retail installment contract or lease agreement for
13 a motor vehicle.

14 (d) "Motor vehicle" means a motor vehicle, as defined in ORS 801.360, that is sold or leased in
15 this state for personal, family or household purposes.

16 (e) "Seller" means a person that holds a current, valid vehicle dealer certificate issued under
17 ORS 822.020 or renewed under ORS 822.040.

18 (2) A seller may **not** offer to sell or lease a motor vehicle to a buyer or prospective buyer under
19 a retail installment contract or lease agreement that is [*subject to*] **contingent upon** a lender's
20 agreement to purchase the retail installment contract or lease agreement into which the buyer en-
21 ters.

22 [*(3) In any transaction described in subsection (2) of this section.*]

23 [*(a) If, within 14 days after a buyer takes possession of a motor vehicle, a lender does not agree*
24 *to purchase a retail installment contract or lease agreement on the exact terms that the seller and the*
25 *buyer negotiate and the seller does not receive final approval of funding from the lender, the seller shall*

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 return to the buyer all items of value the seller received from the buyer as part of the transaction;
2 and]

3 [(b) If the seller has accepted a trade-in motor vehicle from the buyer, the seller may not sell or
4 lease the buyer's trade-in motor vehicle before the seller receives final approval of funding from the
5 lender.]

6 [(4) In any transaction described in subsection (2) of this section, if the buyer has accepted a motor
7 vehicle from the seller that is subject to a retail installment contract or lease agreement, and a lender
8 does not agree to purchase the retail installment contract or lease agreement on the exact terms the
9 seller and the buyer negotiated, the buyer shall return to the seller all items of value the buyer received
10 from the seller as part of the transaction. The seller may charge the buyer only for amounts that the
11 retail installment contract or lease agreement provides in writing that the seller may charge. The retail
12 installment contract or lease agreement may provide only for these amounts:]

13 [(a) The fair market value of damage to, excessive wear and tear on or loss of the motor vehicle
14 that occurs between the date the buyer takes possession of the motor vehicle and the date the buyer
15 returns the motor vehicle to the seller's custody; and]

16 [(b) If, within 14 days after the date on which the buyer takes possession of the motor vehicle, the
17 seller sends notice to the buyer by first class mail or written electronic communication that a lender
18 has not agreed to purchase the retail installment contract or lease agreement, a reasonable charge per
19 mile for the use of the motor vehicle. The charge may not exceed the rate per mile allowed under federal
20 law as a deduction for federal income tax purposes for an ordinary and necessary business expense.]

21 [(5) If the buyer makes a reasonable attempt to return the vehicle within five days after the seller
22 sends a notice under subsection (4)(b) of this section, but the seller is not available to accept the return,
23 the seller may not charge the buyer under subsection (4)(b) of this section.]

24 [(6)(a) Subject to paragraph (b) of this subsection, a seller has an affirmative defense to a claim
25 or charge of violating subsection (3)(a) of this section by showing that the buyer failed to return the
26 motor vehicle after the seller sent the notice described in subsection (4)(b) of this section.]

27 [(b) A seller shall retain proof of the date on which the seller sent to the buyer the notice described
28 in subsection (4)(b) of this section.]

29 **(3)(a) If, after selling or leasing a motor vehicle to a buyer, the seller sells the retail in-**
30 **stallment contract or lease agreement for the motor vehicle to a lender, the seller must re-**
31 **ceive final approval of funding from the lender within 14 days after the buyer takes**
32 **possession of the motor vehicle. If the lender does not provide final approval of funding with**
33 **the 14-day period or if the lender does not agree to purchase the retail installment contract**
34 **or lease agreement on the exact terms that the seller and buyer negotiated:**

35 **(A) The seller shall retain the retail installment contract or lease agreement and, except**
36 **as provided in paragraph (c) of this subsection, thereafter may not sell, assign, delegate or**
37 **otherwise transfer any of the benefits, duties or obligations due under the retail installment**
38 **contract or lease agreement; and**

39 **(B) The seller shall notify the buyer in writing by first class mail that a lender has not**
40 **agreed to purchase the retail installment contract or lease agreement and that the seller**
41 **will retain the retail installment contract or lease agreement.**

42 **(b) The seller must send the notice described in paragraph (a)(B) of this subsection not**
43 **less than 10 days before the buyer must make a payment under the retail installment con-**
44 **tract or lease agreement. The notice must include the name and address of the person to**
45 **which the buyer must make payments, the amount of each monthly payment, the number**

1 of payments due under the contract or agreement and the date on which the first payment
 2 is due.

3 (c) A seller may contract with another person to collect payments from a buyer on the
 4 seller's behalf and otherwise service a retail installment contract or lease agreement the
 5 seller retained under paragraph (a)(A) of this subsection, but a contract between the seller
 6 and the other person may not impose additional duties or obligations on the buyer and does
 7 not relieve the seller of any duty or obligation to the buyer under the retail installment
 8 contract or lease agreement, notwithstanding any term or condition set forth in the contract
 9 between the seller and the other person.

10 (4)(a) If a buyer does not make a payment that, under the terms of a retail installment
 11 contract or lease agreement, is due before the seller sends a notice under subsection
 12 (3)(a)(B) of this section or in fewer than 10 days after the buyer receives the notice, the
 13 seller must credit the buyer's account as though the seller had received the payment and
 14 may not thereafter collect the amount of the missed payment from the buyer.

15 (b) If a seller refuses a buyer's payment under a retail installment contract or lease
 16 agreement the seller retained, or should have retained, as provided in subsection (3)(a)(A)
 17 of this section, the seller must credit the buyer's account as though the buyer had made the
 18 payment and may not thereafter collect the amount of the payment that the seller refused.

19 (5) A seller that does not comply with this section breaches the retail installment con-
 20 tract or lease agreement and may not enforce any term or condition that provides for col-
 21 lecting any payments or repossessing the motor vehicle that is the subject of the retail
 22 installment contract or lease agreement. A buyer may assert the seller's failure to comply
 23 with this section as an affirmative defense in any action to repossess the motor vehicle or
 24 collect a payment due under the retail installment contract or lease agreement.

25 **SECTION 2.** ORS 646.608 is amended to read:

26 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,
 27 vocation or occupation the person does any of the following:

28 (a) Passes off real estate, goods or services as the real estate, goods or services of another.

29 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
 30 proval, or certification of real estate, goods or services.

31 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
 32 ciation with, or certification by, another.

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

35 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
 36 ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have
 37 or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the
 38 person does not have.

39 (f) Represents that real estate or goods are original or new if the real estate or goods are de-
 40 teriorated, altered, reconditioned, reclaimed, used or secondhand.

41 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
 42 or that real estate or goods are of a particular style or model, if the real estate, goods or services
 43 are of another.

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

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

4 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,
 5 or amounts of price reductions.

6 (k) Makes false or misleading representations concerning credit availability or the nature of the
 7 transaction or obligation incurred.

8 (L) Makes false or misleading representations relating to commissions or other compensation to
 9 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
 10 stration purposes or in exchange for submitting names of potential customers.

11 (m) Performs service on or dismantles any goods or real estate if the owner or apparent owner
 12 of the goods or real estate does not authorize the service or dismantling.

13 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
 14 vides the information required under ORS 646.611.

15 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
 16 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
 17 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
 18 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
 19 discount or other value is contingent upon an event occurring after the time the customer enters
 20 into the transaction.

21 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
 22 cize a product, business or service.

23 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
 24 not to deliver the real estate, goods or services as promised.

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

26 (s) Makes false or misleading representations of fact concerning the offering price of, or the
 27 person's cost for real estate, goods or services.

28 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
 29 known material defect or material nonconformity.

30 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

31 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,
 32 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-
 33 ation.

34 (w) Manufactures mercury fever thermometers.

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

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

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

40 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
 41 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
 42 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
 43 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
 44 graph, "thermostat" means a device commonly used to sense and, through electrical communication
 45 with heating, cooling or ventilation equipment, control room temperature.

- 1 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
2 mercury light switches.
- 3 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 4 (bb) Violates ORS 646A.070 (1).
- 5 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 6 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 7 (ee) Violates ORS 646.883 or 646.885.
- 8 (ff) Violates ORS 646.569.
- 9 (gg) Violates the provisions of ORS 646A.142.
- 10 (hh) Violates ORS 646A.360.
- 11 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 12 (jj) Violates ORS 646.563.
- 13 (kk) Violates ORS 759.680 or any rule adopted pursuant thereto.
- 14 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
15 thereto.
- 16 (mm) Violates ORS 646A.210 or 646A.214.
- 17 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 18 (oo) Violates ORS 646A.095.
- 19 (pp) Violates ORS 822.046.
- 20 (qq) Violates ORS 128.001.
- 21 (rr) Violates ORS 646A.800 (2) to (4).
- 22 (ss) Violates ORS 646A.090 [(2) to (5)].
- 23 (tt) Violates ORS 87.686.
- 24 (uu) Violates ORS 646A.803.
- 25 (vv) Violates ORS 646A.362.
- 26 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 27 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 28 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 29 (zz) Violates ORS 87.007 (2) or (3).
- 30 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 31 (bbb) Engages in an unlawful practice under ORS 646.648.
- 32 (ccc) Violates ORS 646A.365.
- 33 (ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858.
- 34 (eee) Sells a gift card in violation of ORS 646A.276.
- 35 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 36 (ggg) Violates ORS 646A.430 to 646A.450.
- 37 (hhh) Violates a provision of ORS 744.318 to 744.384.
- 38 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 39 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
40 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
41 subject of the violation.
- 42 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 43 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
44 U.S.C. 3901 et seq., as in effect on January 1, 2010.
- 45 (mmm) Violates a provision of ORS 646A.480 to 646A.495.

1 (nnn) Violates ORS 646A.082.

2 (ooo) Violates ORS 646.647.

3 (ppp) Violates ORS 646A.115.

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

5 (rrr) Violates ORS 646A.092.

6 (sss) Violates a provision of ORS 646.644.

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

8 (uuu) Violates ORS 646A.564.

9 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
10 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
11 do so or unless the person is an active member of the Oregon State Bar.

12 (www) Violates ORS 702.012, 702.029 or 702.054.

13 (xxx) Violates ORS 646A.806.

14 (yyy) Violates ORS 646A.810 (2).

15 (zzz) Violates ORS 443.376.

16 (aaaa) Violates a provision of ORS 646A.770 to 646A.787.

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

19 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-
20 cuting attorney need not prove competition between the parties or actual confusion or misunder-
21 standing.

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

25 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or
26 suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attor-
27 ney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney
28 fees.

29 **SECTION 3. The amendments to ORS 646A.090 by section 1 of this 2023 Act apply to retail**
30 **installment contracts and lease agreements into which a seller and buyer enter on or after**
31 **the effective date of this 2023 Act.**

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