

House Bill 3178

Sponsored by Representative SOSA, Senator TAYLOR; Representative LIVELY, Senators CAMPOS, FREDERICK, PATTERSON (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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: Tells a person who sells or leases a car to a buyer on the basis that a lender will finance the sale or lease that the person must get the lender to agree in two days or the person must cancel the contract or do the financing. Tells the person to make a good faith try to get financing from the lender. Tells the person to let the buyer know what the buyer's rights are under the Act. (Flesch Readability Score: 71.9).

Requires in a transaction for a motor vehicle that is contingent upon a lender purchasing the retail installment contract or lease agreement negotiated between the seller and a buyer that the lender purchase the retail installment contract or lease agreement within two days after the transaction concludes or, if the sale of the retail installment contract or lease agreement does not occur, that the seller either void the transaction or agree to finance the transaction.

Requires the seller to make good faith efforts to sell the retail installment contract or lease agreement to a qualified lender.

Requires the seller to provide the buyer with a notice outlining the buyer's rights under the Act before concluding the transaction.

Makes the seller liable to the buyer for damages if the seller sells the buyer's trade-in motor vehicle before selling the retail installment contract or lease agreement.

A BILL FOR AN ACT

1
2 Relating to conditions for financing a transaction involving a motor vehicle; creating new pro-
3 visions; and 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 **a motor vehicle from a seller** or leases a motor
8 vehicle **from a lessor**.

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 **from a seller** a retail installment contract or lease
13 agreement for 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.

18 (2) A seller may offer to sell or lease a motor vehicle to a buyer or prospective buyer under a
19 retail installment contract or lease agreement that is subject to a lender's agreement to purchase
20 the retail installment contract or lease agreement into which the buyer enters.

21 (3) In any transaction described in subsection (2) of this section:

22 **(a) A seller shall provide to a buyer before concluding the transaction a conspicuous**

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 written notice, separate from all other documents that the seller provides to the buyer, that
 2 states in the English language and in the six languages that are most commonly spoken and
 3 written in this state by persons with limited proficiency in English:

4 (A) The terms upon which the seller will spot deliver the motor vehicle that is the subject
 5 of the transaction;

6 (B) That the buyer has a right to cancel the transaction if a lender does not agree to
 7 purchase the retail installment contract or lease agreement, on the exact terms that the
 8 seller and buyer negotiated, within two days after the buyer takes possession of the motor
 9 vehicle;

10 (C) That the buyer may contact the Attorney General or the attorney referral service
 11 of the Oregon State Bar if the seller refuses to comply with paragraph (c) of this subsection;
 12 and

13 (D) Contact information for the office of the Attorney General and the attorney referral
 14 service of the Oregon State Bar.

15 (b) A seller shall make good faith efforts to sell the retail installment contract or lease
 16 agreement to a qualified lender on the exact terms that the seller and buyer negotiated.

17 [(a)] (c) If, within [14] four days after a buyer takes possession of a motor vehicle, a lender does
 18 not agree to purchase a retail installment contract or lease agreement on the exact terms that the
 19 seller and the buyer negotiate and the seller does not receive final approval of funding from the
 20 lender, the seller shall [return to the buyer all items of value the seller received from the buyer as part
 21 of the transaction; and]:

22 (A) Unconditionally accept the retail installment contract or lease agreement after sat-
 23 isfying, removing or waiving any conditions on the seller's acceptance or performance, in-
 24 cluding financing, assignment, lease approval and delivery and finance the transaction under
 25 the exact terms to which the seller and buyer previously agreed; or

26 (B) Reject the retail installment contract or the lease agreement and thereby void the
 27 transaction.

28 (d) If the seller chooses to void the transaction as described in paragraph (c)(B) of this
 29 subsection, the seller shall:

30 (A) Send, within two days after the period described in paragraph (c) of this subsection
 31 expires, a notice by first class mail and written electronic communication stating that a
 32 lender has not agreed to purchase the retail installment contract or lease agreement and
 33 that the seller has chosen to void the transaction; and

34 (B) Return to the buyer all items of value the seller received from the buyer as part of
 35 the transaction.

36 (e) If the seller neither affirmatively accepts the retail installment contract as provided
 37 in paragraph (c)(A) of this subsection nor expressly rejects and voids the transaction as
 38 provided in paragraph (c)(B) of this subsection, the seller has chosen to accept the retail
 39 installment contract as provided in paragraph (c)(A) of this subsection.

40 [(b)] (f) If the seller has accepted a trade-in motor vehicle from the buyer, the seller may not
 41 sell or lease the buyer's trade-in motor vehicle before the seller receives final approval of funding
 42 from the lender. If before receiving final approval of funding from the lender the seller sells
 43 the trade-in motor vehicle, or pays off an outstanding loan balance that the buyer owes on
 44 the trade-in motor vehicle, the seller is liable to the buyer for the greater of:

45 (A) Any outstanding loan balance the buyer owes on the trade-in motor vehicle;

- 1 **(B) The trade-in value of the trade-in motor vehicle;**
- 2 **(C) The fair market value of the trade-in motor vehicle; or**
- 3 **(D) Any payment the seller received from selling the trade-in motor vehicle.**

4 **(g) If the seller voids the transaction under paragraph (c)(B) of this subsection, instead**
 5 **incurring the liability described in paragraph (f)(A) of this subsection, the seller must finance**
 6 **the balance of the amount the buyer owes on the trade-in motor vehicle on the same terms**
 7 **and conditions that applied to the loan the buyer originally had for the trade-in motor vehi-**
 8 **cle. If the seller and buyer dispute the fair market value of the trade-in motor vehicle under**
 9 **paragraph (f)(C) of this subsection, the seller must tender to the buyer an amount that is**
 10 **equivalent to any undisputed portion of the value of the trade-in motor vehicle pending a**
 11 **resolution of the dispute.**

12 (4) In any transaction described in subsection (2) of this section **or in instances in which the**
 13 **seller voids a transaction as provided in subsection (3)(c)(B) of this section**, if the buyer has
 14 accepted a motor vehicle from the seller that is subject to a retail installment contract or lease
 15 agreement, and a lender does not agree to purchase the retail installment contract or lease agree-
 16 ment on the exact terms the seller and the buyer negotiated, the buyer shall return to the seller all
 17 items of value the buyer received from the seller as part of the transaction. The seller may charge
 18 the buyer only for *[amounts that the retail installment contract or lease agreement provides in writing*
 19 *that the seller may charge. The retail installment contract or lease agreement may provide only for*
 20 *these amounts:]*

21 *[(a)]* the fair market value of damage to, excessive wear and tear on or loss of the motor vehicle
 22 that occurs between the date the buyer takes possession of the motor vehicle and the date the buyer
 23 returns the motor vehicle to the seller's custody¹; **and**, **and only if the retail installment contract**
 24 **or lease agreement provides for the charge in writing.**

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

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

33 *[(6)(a)]* **(5)(a)** Subject to paragraph (b) of this subsection, a seller has an affirmative defense to
 34 a claim or charge of violating subsection *[(3)(a)]* **(3)(c)** of this section by showing that the buyer
 35 failed to return the motor vehicle after the seller sent the notice described in subsection *[(4)(b)]*
 36 **(3)(d)(A)** of this section.

37 (b) A seller shall retain proof of the date on which the seller sent to the buyer the notice de-
 38 scribed in subsection *[(4)(b)]* **(3)(d)(A)** of this section.

39 **SECTION 2.** ORS 646.608, as amended by section 6, chapter 410, Oregon Laws 2023, is amended
 40 to read:

41 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,
 42 vocation or occupation the person does any of the following:

- 43 (a) Passes off real estate, goods or services as the real estate, goods or services of another.
- 44 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
 45 proval, or certification of real estate, goods or services.

- 1 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
 2 ciation with, or certification by, another.
- 3 (d) Uses deceptive representations or designations of geographic origin in connection with real
 4 estate, goods or services.
- 5 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
 6 ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have
 7 or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the
 8 person does not have.
- 9 (f) Represents that real estate or goods are original or new if the real estate or goods are de-
 10 teriorated, altered, reconditioned, reclaimed, used or secondhand.
- 11 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
 12 or that real estate or goods are of a particular style or model, if the real estate, goods or services
 13 are of another.
- 14 (h) Disparages the real estate, goods, services, property or business of a customer or another
 15 by false or misleading representations of fact.
- 16 (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or
 17 services as advertised, or with intent not to supply reasonably expectable public demand, unless the
 18 advertisement discloses a limitation of quantity.
- 19 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,
 20 or amounts of price reductions.
- 21 (k) Makes false or misleading representations concerning credit availability or the nature of the
 22 transaction or obligation incurred.
- 23 (L) Makes false or misleading representations relating to commissions or other compensation to
 24 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
 25 stration purposes or in exchange for submitting names of potential customers.
- 26 (m) Performs service on or dismantles any goods or real estate if the owner or apparent owner
 27 of the goods or real estate does not authorize the service or dismantling.
- 28 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
 29 vides the information required under ORS 646.611.
- 30 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
 31 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
 32 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
 33 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
 34 discount or other value is contingent upon an event occurring after the time the customer enters
 35 into the transaction.
- 36 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
 37 cize a product, business or service.
- 38 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
 39 not to deliver the real estate, goods or services as promised.
- 40 (r) Organizes or induces or attempts to induce membership in a pyramid club.
- 41 (s) Makes false or misleading representations of fact concerning the offering price of, or the
 42 person's cost for real estate, goods or services.
- 43 (t) Concurrent with tender or delivery of any real estate, goods or services, fails to disclose any
 44 known material defect or material nonconformity.
- 45 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

- 1 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,
 2 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-
 3 ation.
- 4 (w) Manufactures mercury fever thermometers.
- 5 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
 6 law, or is:
- 7 (A) Prescribed by a person licensed under ORS chapter 677; and
- 8 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
 9 on the proper cleanup of mercury should breakage occur.
- 10 (y) Sells a thermostat that contains mercury, unless the thermostat is labeled in a manner to
 11 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
 12 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
 13 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
 14 graph, “thermostat” means a device commonly used to sense and, through electrical communication
 15 with heating, cooling or ventilation equipment, control room temperature.
- 16 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
 17 mercury light switches.
- 18 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 19 (bb) Violates ORS 646A.070 (1).
- 20 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 21 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 22 (ee) Violates ORS 646.883 or 646.885.
- 23 (ff) Violates ORS 646.569 or 646A.374.
- 24 (gg) Violates the provisions of ORS 646A.142.
- 25 (hh) Violates ORS 646A.360.
- 26 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 27 (jj) Violates ORS 646.563.
- 28 (kk) Violates ORS 759.680 or any rule adopted pursuant thereto.
- 29 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
 30 thereto.
- 31 (mm) Violates ORS 646A.210 or 646A.214.
- 32 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 33 (oo) Violates ORS 646A.095.
- 34 (pp) Violates ORS 822.046.
- 35 (qq) Violates ORS 128.001.
- 36 (rr) Violates ORS 646A.800 (2) to (4).
- 37 (ss) Violates ORS 646A.090 [(2) to (5)].
- 38 (tt) Violates ORS 87.686.
- 39 (uu) Violates ORS 646A.803.
- 40 (vv) Violates ORS 646A.362.
- 41 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 42 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 43 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 44 (zz) Violates ORS 87.007 (2) or (3).
- 45 (aaa) Violates ORS 92.405 (1), (2) or (3).

- 1 (bbb) Engages in an unlawful practice under ORS 646.648.
- 2 (ccc) Violates ORS 646A.365.
- 3 (ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858.
- 4 (eee) Sells a gift card in violation of ORS 646A.276.
- 5 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 6 (ggg) Violates ORS 646A.430 to 646A.450.
- 7 (hhh) Violates a provision of ORS 744.318 to 744.384.
- 8 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 9 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 10 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 11 subject of the violation.
- 12 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 13 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 14 U.S.C. 3901 et seq., as in effect on January 1, 2010.
- 15 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 16 (nnn) Violates ORS 646A.082.
- 17 (ooo) Violates ORS 646.647.
- 18 (ppp) Violates ORS 646A.115.
- 19 (qqq) Violates a provision of ORS 646A.405.
- 20 (rrr) Violates ORS 646A.092.
- 21 (sss) Violates a provision of ORS 646.644.
- 22 (ttt) Violates a provision of ORS 646A.295.
- 23 (uuu) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
- 24 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
- 25 do so or unless the person is an active member of the Oregon State Bar.
- 26 (vvv) Violates ORS 702.012, 702.029 or 702.054.
- 27 (www) Violates ORS 646A.806.
- 28 (xxx) Violates ORS 646A.810 (2).
- 29 (yyy) Violates ORS 443.376.
- 30 (zzz) Violates a provision of ORS 646A.770 to 646A.787.
- 31 (aaaa) Violates ORS 815.077.

32 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-

33 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

34 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-

35 cuting attorney need not prove competition between the parties or actual confusion or misunder-

36 standing.

37 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-

38 torney General has first established a rule in accordance with the provisions of ORS chapter 183

39 declaring the conduct to be unfair or deceptive in trade or commerce.

40 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or

41 suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attor-

42 ney, relief is limited to an injunction, and the prevailing party may be awarded reasonable attorney

43 fees.

44 **SECTION 3. The amendments to ORS 646A.090 by section 1 of this 2025 Act apply to retail**

45 **installment contracts and lease agreements into which a seller and buyer enter on or after**

1 **the effective date of this 2025 Act.**

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