

# Senate Bill 538

Sponsored by Senator WALKER

## 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**.

Provides consumer in vehicle transaction with right to rescind or cancel transaction within three business days of transaction date. Requires certain actions and disclosures for valid vehicle transaction. Specifies requirements for rescission or cancellation notice. Requires vehicle dealer to return payment, property or other thing of value exchanged for possession of vehicle upon receipt of rescission or cancellation notice. Authorizes vehicle dealer to charge or withhold from payment, property or thing of value amount equivalent to rental value of vehicle and entire amount of expenses incurred for repair of vehicle.

Specifies form and contents of notice to consumer of right to rescind or cancel transaction. Requires vehicle dealer to retain original notice and provide copy to consumer.

voids any contract or agreement that purports to waive consumer right to rescission or cancellation. Authorizes Department of Transportation to adopt rules to implement and enforce Act.

Punishes violation of provisions of Act by maximum of one year's imprisonment, \$6,250 fine, or both. Permits Department of Transportation to impose civil penalty of not more than \$1,000 for violation of provisions of Act.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to transactions for vehicles; creating new provisions; amending ORS 822.045; and declaring  
3 an emergency.

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

5 **SECTION 1. Sections 2 to 8 of this 2007 Act are added to and made a part of the Oregon**  
6 **Vehicle Code.**

7 **SECTION 2. As used in sections 2 to 8 of this 2007 Act:**

8 (1) "Consumer" means an individual resident of this state who acquires a vehicle for the  
9 individual's own use.

10 (2) "Vehicle dealer" means a person required to hold a certificate under ORS 822.005.

11 **SECTION 3. (1) A consumer who acquires a vehicle from a vehicle dealer by means of a**  
12 **sale or conditional sale, lease, exchange, trade or other transaction may for any reason**  
13 **rescind or cancel the transaction within three business days after the transaction date. For**  
14 **purposes of this subsection, a "business day" is a day during which the vehicle dealer con-**  
15 **ducts business at the dealer's regular or customary days and hours of business.**

16 (2) For purposes of this section, the transaction described in subsection (1) of this section  
17 occurs and is valid when:

18 (a) The consumer tenders to the vehicle dealer cash or a check, draft or other form of  
19 payment, or property or any other thing of value, or the consumer executes a contract,  
20 agreement or other evidence of indebtedness in favor of the vehicle dealer;

21 (b) The vehicle dealer transfers possession of the vehicle to the consumer; and

22 (c) The vehicle dealer provides the consumer with the vehicle dealer's current valid ad-  
23 dress for receiving notices of rescission or cancellation. Unless the vehicle dealer designates  
24 a particular address in this state, the vehicle dealer's address for the purposes of this section

**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 is the address of the location at which the transaction occurred or the vehicle dealer's  
2 principal business address in this state, if different.

3 (3) Before completing the transaction described in subsection (1) of this section, a vehicle  
4 dealer shall form a good-faith belief that the consumer understands the consumer's rights  
5 under this section and the terms of the transaction, including the terms of any payment,  
6 exchange or financing arrangement connected with the transaction.

7 **SECTION 4.** (1) The rescission or cancellation described in section 3 of this 2007 Act is  
8 effective when the consumer delivers notice of the consumer's intent to rescind or cancel  
9 the transaction to the vehicle dealer at the vehicle dealer's address. The rescission or can-  
10 cellation notice must be in writing but need not take any particular form, and is sufficient  
11 if the notice indicates the consumer's intent to rescind or cancel the transaction.

12 (2) The consumer may deliver notice of the consumer's intent to rescind or cancel by  
13 certified mail, return receipt requested. Notice delivered in this manner is effective on the  
14 date that the consumer deposits the notice, correctly addressed and postage prepaid, with  
15 the United States Postal Service.

16 (3) Subject to subsections (4) and (5) of this section, the vehicle dealer, upon receipt of  
17 a notice of rescission or cancellation, shall immediately return to the consumer any pay-  
18 ment, property or thing of value received from the consumer in exchange for the consumer's  
19 possession of the vehicle. If the consumer paid the vehicle dealer by check, the vehicle dealer  
20 need not return the amount of the payment until after the check is finally paid as provided  
21 in ORS 74.2130.

22 (4) The vehicle dealer, as compensation for wear and tear, depreciation and other ex-  
23 penses associated with the consumer's possession of the vehicle, may charge or withhold a  
24 reasonable sum from any payment, property or thing of value that the vehicle dealer must  
25 return to the consumer in accordance with subsection (3) of this section. The vehicle dealer  
26 may charge or withhold the sum at a rate equivalent to the prevailing market rate for day-  
27 to-day rental of a vehicle of like model, age and condition. The amount that the vehicle  
28 dealer may withhold under this subsection is equal to the applicable daily rental rate multi-  
29 plied by the number of days, not exceeding three, that the vehicle remained in the consum-  
30 er's possession.

31 (5) The vehicle dealer may charge or withhold from any payment, property or thing of  
32 value that the vehicle dealer must return to the consumer in accordance with subsection (3)  
33 of this section the entire amount of any expense associated with the repair of the vehicle  
34 that the consumer returns in a damaged condition under subsection (7) of this section.

35 (6) If the consumer, in exchange for possession of the vehicle, executed a contract,  
36 agreement or other evidence of indebtedness in favor of the vehicle dealer, the vehicle dealer  
37 may withhold the amounts described in subsection (4) or (5) of this section from any payment  
38 made in connection with the debt and shall remit the remainder of the payment to the con-  
39 sumer. If the amount for which the vehicle dealer may seek compensation or reimbursement  
40 under subsection (4) or (5) of this section exceeds the amount of the consumer's payment,  
41 the vehicle dealer shall prepare and deliver a separate charge to the consumer for the excess  
42 amount. Notwithstanding section 5 of this 2007 Act, the consumer is liable for the amount  
43 the vehicle dealer charges in accordance with this subsection.

44 (7) Upon receiving from the vehicle dealer the consumer's payment, property or other  
45 thing of value originally exchanged for possession of the vehicle, less any sum withheld in

1 accordance with subsection (4) or (5) of this section, the consumer shall return the vehicle  
2 to the vehicle dealer in substantially the same condition in which the consumer originally  
3 received the vehicle and shall transfer all rights to possession of the vehicle to the vehicle  
4 dealer.

5 **SECTION 5.** (1) A rescission or cancellation made and delivered in accordance with sec-  
6 tion 4 of this 2007 Act voids:

7 (a) Any contract, agreement or other offer to purchase or conditionally purchase, lease,  
8 exchange, trade or otherwise transfer possession of a vehicle; and

9 (b) Any evidence of indebtedness associated with a transaction described in paragraph (a)  
10 of this subsection.

11 (2) If a consumer gives notice of the consumer's intent to rescind or cancel the trans-  
12 action described in section 3 of this 2007 Act, the consumer shall return the consumer's copy  
13 of any evidence of indebtedness to the vehicle dealer. The vehicle dealer shall cancel the ev-  
14 idence of indebtedness. The consumer shall incur no further liability with respect to the  
15 canceled evidence of indebtedness following the consumer's rescission or cancellation. This  
16 subsection does not affect the consumer's liability for any charge a vehicle dealer may make  
17 in accordance with section 4 (6) of this 2007 Act.

18 **SECTION 6.** (1) The written contract or agreement for the sale or conditional sale, lease,  
19 exchange, trade or other transfer of a vehicle between a vehicle dealer and a consumer shall  
20 contain, either upon the first page of the writing or on a separate sheet attached to the  
21 writing, the following notice prominently displayed in at least 8-point type:

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**NOTICE**

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27 **BY SIGNING THIS AGREEMENT YOU ARE AGREEING TO (CIRCLE ONE)**  
28 **PURCHASE/LEASE/EXCHANGE/TRADE THE VEHICLE IDENTIFIED IN THIS AGREE-**  
29 **MENT. YOU HAVE THREE BUSINESS DAYS AFTER SIGNING THIS AGREEMENT TO**  
30 **CANCEL THE AGREEMENT BY DELIVERING WRITTEN NOTICE TO THE VEHICLE**  
31 **DEALER AT THE ADDRESS SHOWN IN THE SPACE BELOW. THE DATE BY WHICH YOU**  
32 **MUST DELIVER NOTICE OF YOUR INTENT TO CANCEL THIS AGREEMENT IS**  
33 **\_\_\_\_\_ THIS AGREEMENT IS NOT VALID UNTIL THE VEHICLE DEALER HAS**  
34 **PROVIDED YOU WITH AN ADDRESS IN THIS STATE WHERE YOU MAY DELIVER ANY**  
35 **CANCELLATION NOTICE.**

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1 **BEFORE SIGNING THIS AGREEMENT, OR BEFORE THE THREE-DAY CANCELLATION**  
2 **PERIOD ENDS, YOU SHOULD CAREFULLY EXAMINE THE CONDITION OF THE VEHI-**  
3 **CLE AND THE PAYMENT OR FINANCING TERMS OF THIS AGREEMENT.**

4  
5 **I UNDERSTAND MY RIGHTS UNDER THIS AGREEMENT AND BY SIGNING IN THE**  
6 **SPACE PROVIDED, I CERTIFY THAT I HAVE RECEIVED THIS NOTICE AND THE AD-**  
7 **DRESS OF THE VEHICLE DEALER.**

8  
9 \_\_\_\_\_  
10 **(SIGNATURE)**  
11 \_\_\_\_\_  
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13 **(2) The vehicle dealer shall keep the original signed notice described in this section and**  
14 **provide the consumer with a copy of the notice at the time or immediately after the con-**  
15 **sumer executes any contract or agreement with respect to a vehicle.**

16 **SECTION 7. Any condition, stipulation or provision in a contract, agreement or other**  
17 **legal document provided in connection with a transaction described in section 3 of this 2007**  
18 **Act that binds a consumer to waive the legal rights granted in section 3, 4, 5 or 6 of this 2007**  
19 **Act is contrary to public policy and void.**

20 **SECTION 8. The Department of Transportation, in accordance with ORS 183.325 to**  
21 **183.410, may adopt rules to implement and enforce the provisions of sections 2 to 8 of this**  
22 **2007 Act.**

23 **SECTION 9. ORS 822.045 is amended to read:**

24 822.045. (1) A vehicle dealer improperly conducts a vehicle dealer business and is subject to the  
25 penalties under this section if the vehicle dealer commits any of the following offenses:

26 (a) A vehicle dealer commits the offense of failure to obtain a supplemental vehicle dealer cer-  
27 tificate if the vehicle dealer opens any additional place of business using the same business name  
28 as a place of business approved under a vehicle dealer certificate without first obtaining a supple-  
29 mental dealer certificate under ORS 822.040.

30 (b) A vehicle dealer commits the offense of failure to obtain a corrected vehicle dealer certif-  
31 icate if the dealer moves a place of business or changes the business name without first obtaining  
32 a corrected dealer certificate under ORS 822.040.

33 (c) A vehicle dealer commits the offense of failure to maintain proper vehicle dealer records if  
34 the dealer does not keep records or books with all of the following information concerning any used  
35 or secondhand vehicles or campers the dealer deals with:

36 (A) A record of the purchase, sale or exchange or of the dealer's receipt for purpose of sale.

37 (B) A description of the vehicle or camper.

38 (C) The name and address of the seller, the purchaser and the alleged owner or other person  
39 from whom the vehicle or camper was purchased or received or to whom it was sold or delivered.

40 (D) For motor vehicles, the vehicle identification number and any other numbers or identifica-  
41 tion marks as may be thereon and a statement that a number has been obliterated, defaced or  
42 changed, if such is a fact.

43 (E) For trailers and campers, the vehicle identification number and any other numbers or iden-  
44 tification marks as may be thereon.

45 (F) A duly assigned certificate of title or other primary ownership record or a bill of sale from

1 the registered owner of the vehicle or camper from the time of delivery to the dealer until the dealer  
2 disposes of the vehicle or camper. If title is issued for the vehicle in a form other than a certificate,  
3 or if the primary ownership record is in a form other than a document, a dealer shall keep records  
4 in accordance with rules adopted by the Department of Transportation for the purpose of complying  
5 with this subparagraph.

6 (d) A vehicle dealer commits the offense of failure to allow administrative inspection if the  
7 dealer refuses to allow the department to conduct an inspection under ORS 822.035 at any time  
8 during normal business hours.

9 (e) A vehicle dealer commits the offense of failure to allow police inspection if the dealer refuses  
10 to allow any police officer to conduct an inspection under ORS 810.480 at any time during normal  
11 business hours.

12 (f) A vehicle dealer commits the offense of illegal use of dealer vehicle for hire if the dealer  
13 allows any vehicle operated under vehicle dealer registration to be loaned or rented with or without  
14 driver for hire or direct compensation.

15 (g) A vehicle dealer commits the offense of improper use of dealer plates or devices if the dealer  
16 or employee of the dealer causes or permits the display or use of any special vehicle dealer regis-  
17 tration plate or device on any vehicle not owned or controlled by the dealer.

18 (h) A person commits the offense of improper display of dealer plates if the person operates over  
19 and along the highways of this state any unregistered vehicle owned or controlled by the dealer and  
20 any dealer plates issued are not displayed in the manner provided in ORS 803.540 for the display  
21 of registration plates.

22 (i) A vehicle dealer commits the offense of failure to exhibit the dealer certificate if the dealer  
23 fails to permanently exhibit the certificate at the place of business of the person at all times while  
24 the certificate is in force.

25 (j) Except as provided in subsection (2) of this section, a vehicle dealer commits the offense of  
26 failure to provide clear title if:

27 (A) Within 15 days of transfer of any interest in a vehicle or camper to the dealer by a con-  
28 sumer, the dealer fails to satisfy:

29 (i) The interest of any person from whom the dealer purchased or obtained the vehicle or  
30 camper;

31 (ii) The interest of any person from whom the person described in sub-subparagraph (i) of this  
32 subparagraph leased the vehicle or camper; and

33 (iii) All security interests in the vehicle or camper entered into prior to the time of transfer.

34 (B) Within 15 days of receiving clear title to a vehicle or camper from another dealer, the pur-  
35 chasing dealer fails to satisfy the interest of the selling dealer.

36 (k) Except as provided in subsection (3) of this section, a vehicle dealer commits the offense of  
37 failure to furnish certificate of title or application for title if, within 90 calendar days of transfer  
38 of any interest in a vehicle or camper by the dealer, the dealer has failed to:

39 (A) Furnish the certificate of title or other primary ownership record for the vehicle or camper  
40 and any release thereon or, if title has been issued or is to be issued in a form other than a certif-  
41 icate, any information or documents required by rule of the department, to the security interest  
42 holder next named, if any, otherwise to the lessor or, if none, to the purchaser; or

43 (B) Submit to the department in a manner that complies with any applicable statutes and rules,  
44 an application for title on behalf of the person to whom the title is to be furnished or whose name  
45 is to be shown on the title record.

1 (L) A vehicle dealer commits the offense of failure to maintain bond or letter of credit coverage  
 2 if the dealer permits a bond or letter of credit to lapse during the period that the bond or letter of  
 3 credit is required under ORS 822.020 or 822.040 or if the dealer fails to purchase a bond or letter  
 4 of credit required by ORS 822.030.

5 (m) A person commits the offense of acting as a vehicle dealer while under revocation, cancel-  
 6 lation or suspension if the person conducts business as a vehicle dealer in this state and the person's  
 7 vehicle dealer certificate is revoked, canceled or suspended, regardless of whether the person is li-  
 8 censed as a vehicle dealer in another jurisdiction. This paragraph does not apply if the person has  
 9 other current, valid dealer certificates issued in this state.

10 (n) A vehicle dealer commits the offense of improper display of a vehicle for advertising pur-  
 11 poses if the dealer displays a vehicle at a location other than the dealer's place of business for the  
 12 purpose of advertising and the dealer does not comply with the provisions of ORS 822.040 (4).

13 **(o) A vehicle dealer commits the offense of failure to conduct a proper vehicle trans-**  
 14 **action if the dealer:**

15 **(A) Fails to keep the original of and provide a copy of the notice described in section 6**  
 16 **of this 2007 Act or fails to provide the vehicle dealer's address for delivery of notices of**  
 17 **rescission or cancellation to any person to whom the vehicle dealer transfers possession of**  
 18 **a vehicle in exchange for payment, property or any other thing of value;**

19 **(B) Fails to honor the rescission or cancellation period set forth in section 3 of this 2007**  
 20 **Act;**

21 **(C) Fails to return any payment, property or other thing of value received in exchange**  
 22 **for possession of a vehicle, less any withholding or charge authorized under section 4 (4) or**  
 23 **(5) of this 2007 Act, upon receipt of a notice of rescission or cancellation and receipt of the**  
 24 **vehicle; or**

25 **(D) Fails to cancel any instrument or evidence of indebtedness received in exchange for**  
 26 **possession of a vehicle upon receipt of a notice of rescission or cancellation and receipt of**  
 27 **the vehicle.**

28 (2) A dealer shall not be considered to have committed the offense described in subsection (1)(j)  
 29 of this section if the dealer fails to satisfy an interest in a vehicle or camper that arises from an  
 30 inventory financing security interest for which the dealer is the debtor.

31 (3) A dealer shall not be considered to have committed the offense described in subsection (1)(k)  
 32 of this section if the dealer demonstrates that:

33 (a) The dealer has made a good faith effort to comply; and

34 (b) The dealer's inability to provide title is due to circumstances beyond the dealer's control.

35 (4) The offenses described in this section are subject to the following penalties:

36 (a) The offense described in this section, failure to obtain a supplemental vehicle dealer certif-  
 37 icate, is a Class A misdemeanor.

38 (b) The offense described in this section, failure to obtain a corrected vehicle dealer certificate,  
 39 is a Class A misdemeanor.

40 (c) The offense described in this section, failure to maintain proper vehicle dealer records, is a  
 41 Class A misdemeanor.

42 (d) The offense described in this section, failure to allow administrative inspection, is a Class  
 43 A misdemeanor.

44 (e) The offense described in this section, failure to allow police inspection, is a Class A  
 45 misdemeanor.

1 (f) The offense described in this section, illegal use of dealer vehicle for hire, is a Class B traffic  
2 violation.

3 (g) The offense described in this section, improper use of dealer plates or devices, is a Class D  
4 traffic violation.

5 (h) The offense described in this section, improper display of dealer plates, is a Class B traffic  
6 violation.

7 (i) The offense described in this section, failure to exhibit the dealer certificate, is a Class A  
8 misdemeanor.

9 (j) The offense described in this section, failure to provide clear title, is a Class A misdemeanor.

10 (k) The offense described in this section, failure to furnish certificate of title or application for  
11 title, is a Class A misdemeanor.

12 (L) The offense described in this section, failure to maintain bond or letter of credit coverage,  
13 is a Class A misdemeanor.

14 (m) The offense described in this section, acting as a vehicle dealer while under revocation,  
15 cancellation or suspension, is a Class A misdemeanor.

16 (n) The offense described in this section, improper display of a vehicle for advertising purposes,  
17 is a Class A misdemeanor.

18 (o) **The offense described in this section, failure to conduct a proper vehicle transaction,  
19 is a Class A misdemeanor.**

20 **SECTION 10. Sections 2 to 8 of this 2007 Act and the amendments to ORS 822.045 by  
21 section 9 of this 2007 Act apply to vehicle dealers engaged in business on or after the effec-  
22 tive date of this 2007 Act and to all vehicle transactions on or after the effective date of this  
23 2007 Act.**

24 **SECTION 11. This 2007 Act being necessary for the immediate preservation of the public  
25 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect  
26 on its passage.**