

Enrolled
Senate Bill 515

Sponsored by Senator BONAMICI; Senators DEVLIN, DINGFELDER, HASS, MORRISETTE, MORSE, PROZANSKI, ROSENBAUM, Representatives GILLIAM, HOLVEY, TOMEI, WINGARD

CHAPTER

AN ACT

Relating to warranties on motor vehicles; creating new provisions; amending ORS 646.608, 646A.400, 646A.402, 646A.404, 646A.406, 646A.408, 646A.412, 646A.414 and 646A.416; and declaring an emergency.

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

SECTION 1. ORS 646A.400 is amended to read:
646A.400. As used in ORS 646A.400 to 646A.418:

(1) **“Collateral charge” means a charge, fee or cost to the consumer related to the sale or lease of a motor vehicle, such as:**

- (a) **A sales, property or use tax;**
- (b) **A license, registration or title fee;**
- (c) **A finance charge;**
- (d) **A prepayment penalty;**
- (e) **A charge for undercoating, rustproofing or factory or dealer installed options; and**
- (f) **The cost of an aftermarket item purchased within 20 days after delivery of the motor vehicle.**

[(1)] (2) **“Consumer” means:**

(a) The purchaser or lessee, other than for purposes of resale, of a new motor vehicle normally used for personal, family or household purposes;

(b) Any person to whom a new motor vehicle used for personal, family or household purposes is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle; and

(c) Any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

(3)(a) **“Motor home” means a motor vehicle that is a new or demonstrator vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab or van that becomes an integral part of the completed vehicle, and that is designed to provide temporary living quarters for recreational, camping or travel use.**

(b) **“Motor home” does not include a trailer, camper, van or vehicle manufactured by an entity that primarily manufactures motor vehicles other than motor homes as defined in this subsection.**

(c) **“Motor home” does not include “living facility components,” which means those items designed, used or maintained primarily for the living quarters portion of the motor home,**

including but not limited to the flooring, plumbing fixtures, appliances, water heater, fabrics, door and furniture hardware, lighting fixtures, generators, roof heating and air conditioning units, cabinets, countertops, furniture and audio-visual equipment.

[2)] (4) “Motor vehicle” means a passenger motor vehicle as defined in ORS 801.360 **that is purchased in this state or is purchased outside this state but registered in this state.**

SECTION 2. ORS 646A.402 is amended to read:

646A.402. The remedy under the provisions of ORS 646A.400 to 646A.418 is available to a consumer if:

(1) A new motor vehicle does not conform to applicable manufacturer’s express warranties;

(2) The consumer reports each nonconformity to the manufacturer, [its] **the manufacturer’s** agent or [its] **the manufacturer’s** authorized dealer, for the purpose of repair or correction, during the **two-year** period [of one year] following the date of original delivery of the motor vehicle to the consumer or during the period ending on the date on which the mileage on the motor vehicle reaches [12,000] **24,000** miles, whichever period ends [earlier] **first**; and

(3) The manufacturer has received direct written notification from or on behalf of the consumer and has had an opportunity to correct the alleged defect. “Notification” under this subsection includes, but is not limited to, a request by the consumer for an informal dispute settlement procedure under ORS 646A.408.

SECTION 3. ORS 646A.404 is amended to read:

646A.404. (1) If the manufacturer or [its] agents or authorized dealers **of the manufacturer** are unable to conform the motor vehicle to [any] **an** applicable manufacturer’s express warranty by repairing or correcting [any] **a** defect or condition that substantially impairs the use, market value or safety of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall:

(a) Replace the motor vehicle with a new motor vehicle; or

(b) Accept return of the vehicle from the consumer and refund to the consumer the full purchase or lease price **and collateral charges** paid, [including taxes, license and registration fees and any similar collateral charges excluding interest,] less a reasonable allowance for the consumer’s use of the motor vehicle. **In lieu of refunding, as part of the collateral charges paid, the cost of an aftermarket item purchased within 20 days after delivery of the motor vehicle, the manufacturer may remove the aftermarket item from the motor vehicle, if the aftermarket item can be removed from the motor vehicle without damage, and return the aftermarket item to the consumer.**

(2) Refunds [shall] **must** be made to the consumer and lienholder, if any, as [their] **the** interests **of the consumer and lienholder** may appear. [A reasonable allowance for use is that amount directly attributable to use by the consumer prior to the first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the vehicle is not out of service by reason of repair.]

(3)(a) As used in this section, “reasonable allowance for the consumer’s use of the motor vehicle” means:

(A) For a motor vehicle that is not a motorcycle or a motor home, an amount of money equivalent to the motor vehicle mileage as described in paragraph (b) of this subsection, multiplied by the combined amount of the cash price or lease price of the motor vehicle and the amount of any collateral charges paid by the consumer, and divided by 120,000.

(B) For a motorcycle, an amount of money equivalent to the motor vehicle mileage as described in paragraph (b) of this subsection, multiplied by the combined amount of the cash price or lease price of the motorcycle and the amount of any collateral charges paid by the consumer, and divided by 25,000.

(C) For a motor home, an amount of money equivalent to the motor vehicle mileage as described in paragraph (b) of this subsection, multiplied by the combined amount of the cash price or lease price of the motor home and the amount of any collateral charges paid by the consumer, and divided by 90,000.

(b) The motor vehicle mileage for the purposes of the calculation described in paragraph (a) of this subsection is the motor vehicle's mileage at the time the manufacturer takes an action described in subsection (1) of this section, less 10 miles for mileage that the motor vehicle traveled during any period in which the consumer did not have use of the motor vehicle because the manufacturer or an agent or authorized dealer of the manufacturer was repairing the motor vehicle.

[(3)] (4) It *[shall be]* is an affirmative defense to *[any]* a claim under ORS 646A.400 to 646A.418 **that:**

(a) *[That]* An alleged nonconformity does not substantially impair such use, market value or safety; or

(b) *[That]* A nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of the motor vehicle *[by the consumer]*.

SECTION 4. ORS 646A.406 is amended to read:

646A.406. (1) It *[shall be]* is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable manufacturer's express warranties if, during the **two-year** period *[of one year]* following the date of original delivery of the motor vehicle to a consumer or during the period ending on the date on which the mileage on the motor vehicle reaches *[12,000]* **24,000** miles, whichever period ends *[earlier]* **first:**

[(a) The same nonconformity has been subject to repair or correction four or more times by the manufacturer or its agent or authorized dealer, but such nonconformity continues to exist; or]

[(b) The vehicle is out of service by reason of repair or correction for a cumulative total of 30 or more business days.]

(a) The manufacturer or an agent or authorized dealer of the manufacturer has subjected the nonconformity to repair or correction three or more times and has had an opportunity to cure the defect alleged, but the nonconformity continues to exist;

(b) The motor vehicle is out of service by reason of repair or correction for a cumulative total of 30 or more calendar days or 60 or more calendar days if the vehicle is a motor home; or

(c) The manufacturer or an agent or authorized dealer of the manufacturer has subjected a nonconformity that is likely to cause death or serious bodily injury to repair or correction at least one time and has made a final attempt to repair or correct the nonconformity, but the nonconformity continues to exist.

(2) A repair or correction for purposes of subsection (1) of this section includes a repair that must take place after the expiration of the earlier of either period.

(3) The period ending on the date on which the mileage on the motor vehicle reaches *[12,000]* **24,000** miles, the *[one-year]* **two-year** period and the 30-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike, fire, flood or other natural disaster.

(4) *[In no event shall]* The presumption described in subsection (1) of this section **does not** apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and has had an opportunity to cure the defect alleged.

SECTION 5. ORS 646A.408 is amended to read:

646A.408. *[If the manufacturer has established or participates in an informal dispute settlement procedure that substantially complies with the provisions of 16 C.F.R. part 703, as from time to time amended, and causes the consumer to be notified of the procedure, ORS 646A.404 concerning refunds or replacement shall not apply to any consumer who has not first resorted to the procedure. A decision resulting from arbitration pursuant to the informal dispute settlement procedure shall be binding on the manufacturer.]* **If a manufacturer, for the purpose of settling disputes that arise under ORS 646A.400 to 646A.418, establishes or participates in an informal dispute settlement procedure that substantially complies with the provisions of 16 C.F.R. part 703, as in effect on the effective date of this 2009 Act, and causes a consumer to be notified of the procedure, ORS 646A.404 does not apply to a consumer who has not first resorted to the procedure. A deci-**

sion resulting from arbitration pursuant to the informal dispute settlement procedure is binding on the manufacturer but is not binding on the consumer.

SECTION 6. ORS 646A.412 is amended to read:

646A.412. (1) If a consumer brings an action in court under ORS 646A.400 to 646A.418 against a manufacturer and the consumer is granted one of the remedies specified in ORS 646A.404 (1) by the court, the consumer shall also be awarded up to three times the amount of any damages, not to exceed \$50,000 over and above the amount due the consumer under ORS 646A.404 (1), if the court finds that the manufacturer did not act in good faith.

(2) **Except as provided in subsection (3) of this section,** the court may award reasonable attorney fees [*to the prevailing party*], **fees for expert witnesses and costs to a consumer who prevails** in an appeal or action under [*this section.*] **ORS 646A.400 to 646A.418. If a court finds that a consumer brought an action under ORS 646A.400 to 646A.418 in bad faith or solely for the purposes of harassment, the court may award a prevailing manufacturer reasonable attorney fees.**

(3) **The court may award reasonable attorney fees, fees for expert witnesses and costs to the prevailing party in an appeal or action under ORS 646A.400 to 646A.418 that involves a motor home.**

SECTION 7. ORS 646A.414 is amended to read:

646A.414. (1) **Except as provided in section 10 of this 2009 Act,** nothing in ORS 646A.400 to 646A.418 creates a cause of action by a consumer against a vehicle dealer.

(2) A manufacturer may not join a dealer as a party in [*any*] a proceeding brought under ORS 646A.400 to 646A.418, nor may the manufacturer try to collect from a dealer [*any*] damages assessed against the manufacturer in a proceeding brought under ORS 646A.400 to 646A.418.

SECTION 8. ORS 646A.416 is amended to read:

646A.416. [*Any action brought under ORS 646A.400 to 646A.418 shall be commenced within one year following whichever period ends earlier:*] **An action brought under ORS 646A.400 to 646A.418 must be commenced within one year after whichever of the following periods ends earlier:**

(1) The period ending on the date on which the mileage on the motor vehicle reaches [*12,000*] **24,000** miles; [*or*]

(2) The **two-year** period [*of one year*] following the date of the original delivery of the motor vehicle to the consumer[.]; **or**

(3) **The period that ends after an extension of time provided under ORS 646A.406 (3).**

SECTION 9. Section 10 of this 2009 Act is added to and made a part of ORS 646A.400 to 646A.418.

SECTION 10. (1) A manufacturer that takes an action with respect to a motor vehicle under ORS 646A.404 (1)(a) or (b) shall request the Department of Transportation to:

(a) Title the motor vehicle in the manufacturer's name; and

(b) Inscribe on the certificate of title for the motor vehicle and in the department's records concerning the motor vehicle the notation "Lemon Law Buyback."

(2) A person that acquires a motor vehicle in order to sell, lease or otherwise transfer the motor vehicle and that knows or should have known that the manufacturer took an action with respect to the motor vehicle under ORS 646A.404 (1)(a) or (b) or that the certificate of title for the motor vehicle is inscribed with the notation specified in subsection (1) of this section, before selling, leasing or otherwise transferring the motor vehicle shall:

(a) Provide the buyer, lessee or transferee with a notice that states:

This vehicle was repurchased by its manufacturer in accordance with Oregon's consumer warranty law because of a defect in the vehicle. The title to this vehicle has been permanently inscribed with the notation "Lemon Law Buyback."

(b) Obtain the signature of the buyer, lessee or transferee on the notice in a space provided for that purpose under a statement in which the buyer, lessee or transferee acknowledges receiving and understanding the notice.

(3) Failure to comply with the requirements of subsection (1) or (2) of this section is an unlawful practice under ORS 646.608 and a person that fails to comply with the requirements is subject to the causes of action and remedies provided in ORS 646.632 and 646.638.

(4) The Director of Transportation may adopt rules to prescribe the form and content of the notice required under this section and to require the disclosure of other information the director deems necessary to inform a buyer, lessee or transferee of the condition of a motor vehicle that is subject to the provisions of this section or information that is otherwise material to a sale, lease or transfer of the motor vehicle.

SECTION 11. ORS 646.608, as amended by section 8, chapter 19, Oregon Laws 2008, and section 5, chapter 31, Oregon Laws 2008, is amended to read:

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

- (a) Passes off real estate, goods or services as those of another.
- (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.
- (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.
- (d) Uses deceptive representations or designations of geographic origin in connection with real estate, goods or services.
- (e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.
- (f) Represents that real estate or goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.
- (g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if they are of another.
- (h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.
- (i) Advertises real estate, goods or services with intent not to provide them as advertised, or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.
- (j) Makes false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.
- (k) Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred.
- (L) Makes false or misleading representations relating to commissions or other compensation to be paid in exchange for permitting real estate, goods or services to be used for model or demonstration purposes or in exchange for submitting names of potential customers.
- (m) Performs service on or dismantles any goods or real estate when not authorized by the owner or apparent owner thereof.
- (n) Solicits potential customers by telephone or door to door as a seller unless the person provides the information required under ORS 646.611.
- (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate, discount or other value is contingent upon occurrence of an event subsequent to the time the customer enters into the transaction.

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

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

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

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

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

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

(v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under ORS 698.640, whether in a commercial or noncommercial situation.

(w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

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

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

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

(ee) Violates ORS 646.883 or 646.885.

(ff) Violates any provision of ORS 646A.020.

(gg) Violates ORS 646.569.

(hh) Violates the provisions of ORS 646A.142.

(ii) Violates ORS 646A.360.

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

(kk) Violates ORS 646.563.

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

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

(nn) Violates ORS 646A.210 or 646A.214.

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

(pp) Violates ORS 646A.254.

(qq) Violates ORS 646A.095.

(rr) Violates ORS 822.046.

(ss) Violates ORS 128.001.

(tt) Violates ORS 646.649 (2) to (4).

(uu) Violates ORS 646A.090 (2) to (4).

(vv) Violates ORS 87.686.

(ww) Violates ORS 646.651.

(xx) Violates ORS 646A.362.

(yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

- (zz) Violates ORS 180.440 (1).
- (aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- (bbb) Violates ORS 87.007 (2) or (3).
- (ccc) Violates ORS 92.405 (1), (2) or (3).
- (ddd) Engages in an unlawful practice under ORS 646.648.
- (eee) Violates ORS 646A.365.
- (fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- (ggg) Sells a gift card in violation of ORS 646A.276.
- (hhh) Violates ORS 646A.102, 646A.106 or 646A.108.
- (iii) Violates ORS 646A.430 to 646A.450.
- (jjj) Violates a provision of sections 2 to 6, chapter 19, Oregon Laws 2008.
- (kkk) Violates section 2, chapter 31, Oregon Laws 2008, 30 or more days after a recall notice, warning or declaration described in section 2, chapter 31, Oregon Laws 2008, is issued for the children's product, as defined in section 1, chapter 31, Oregon Laws 2008, that is the subject of the violation.

(LLL) Violates a provision of section 10 of this 2009 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)(zz) 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.

SECTION 12. (1) Section 10 of this 2009 Act and the amendments to ORS 646.608, 646A.400, 646A.402, 646A.404, 646A.406, 646A.408, 646A.412, 646A.414 and 646A.416 by sections 1 to 8 and 11 of this 2009 Act become operative 90 days following the effective date of this 2009 Act.

(2) The Director of Transportation may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the director to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the director by section 10 of this 2009 Act and the amendments to ORS 646.608, 646A.400, 646A.402, 646A.404, 646A.406, 646A.408, 646A.412, 646A.414 and 646A.416 by sections 1 to 8 and 11 of this 2009 Act.

(3) Section 10 of this 2009 Act and the amendments to ORS 646.608, 646A.400, 646A.402, 646A.404, 646A.406, 646A.408, 646A.412, 646A.414 and 646A.416 by sections 1 to 8 and 11 of this 2009 Act apply to express warranties on new motor vehicles that are sold, leased or otherwise transferred on or after the operative date specified in subsection (1) of this section.

SECTION 13. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by Senate May 11, 2009

Repassed by Senate June 5, 2009

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Secretary of Senate

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President of Senate

Passed by House June 3, 2009

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Speaker of House

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State