

Senate Bill 515

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

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**.

Changes period in which remedy is available to consumer for motor vehicle that does not conform to manufacturer's warranty. Removes requirement that consumer must offer manufacturer opportunity to cure after notifying manufacturer of nonconformity. Specifies charges that are refundable if consumer returns motor vehicle to manufacturer for refund or replacement. Specifies calculation for determining consumer's reasonable use of motor vehicle in period before consumer returns motor vehicle to manufacturer. Requires disclosure of reason consumer returned motor vehicle to manufacturer in subsequent sale, lease or transfer of motor vehicle. Provides that failure to make disclosure is subject to enforcement as unlawful trade practice.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to warranties on motor vehicles; creating new provisions; amending ORS 646.608, 646A.400,
3 646A.402, 646A.404, 646A.406, 646A.408, 646A.412, 646A.414 and 646A.416; and declaring an
4 emergency.

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

6 **SECTION 1.** ORS 646A.400 is amended to read:

7 646A.400. As used in ORS 646A.400 to 646A.418:

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

10 (a) **A sales, property or use tax;**

11 (b) **An arbitration or mediation service fee;**

12 (c) **A license, registration or title fee;**

13 (d) **A finance charge;**

14 (e) **A prepayment penalty;**

15 (f) **A premium or other cost for credit disability or credit life insurance that is not oth-**
16 **erwise refundable;**

17 (g) **A cost for any other insurance, prorated for time out of service;**

18 (h) **A charge for transportation or dealer preparation;**

19 (i) **A charge for a service contract, undercoating, rustproofing or factory or dealer in-**
20 **stalled options;**

21 (j) **The cost of an aftermarket item purchased within 20 days after delivery of the motor**
22 **vehicle; and**

23 (k) **Attorney fees and costs.**

24 [(1)] (2) **"Consumer" means:**

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

27 (b) **Any person to whom a new motor vehicle used for personal, family or household purposes**

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 transferred for the same purposes during the duration of an express warranty applicable to such
2 motor vehicle; and

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

5 [(2)] (3) “Motor vehicle” means a passenger motor vehicle as defined in ORS 801.360 **that is**
6 **purchased in this state or is purchased outside this state but registered in this state.**

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

8 646A.402. The remedy under the provisions of ORS 646A.400 to 646A.418 is available to a con-
9 sumer if:

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

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

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

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

21 646A.404. (1) If the manufacturer or [its] agents or authorized dealers **of the manufacturer** are
22 unable to conform the motor vehicle to [any] **an** applicable manufacturer’s express warranty by re-
23 pairing or correcting [any] **a** defect or condition that substantially impairs the use, market value or
24 safety of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer
25 shall:

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

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

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

40 (3) **As used in this section, “reasonable allowance for the consumer’s use of the motor**
41 **vehicle” means an amount of money equivalent to the motor vehicle’s mileage at the time**
42 **the consumer first presents the motor vehicle to the manufacturer or an agent or authorized**
43 **dealer of the manufacturer for correction of a nonconformity, multiplied by the cash pur-**
44 **chase or lease price of the motor vehicle and divided by 120,000.**

45 [(3)] (4) It [shall be] **is** an affirmative defense to [any] **a** claim under ORS 646A.400 to 646A.418

1 **that:**

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

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

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

7 646A.406. (1) It [*shall be*] **is** presumed that a reasonable number of attempts have been under-
8 taken to conform a motor vehicle to the applicable manufacturer's express warranties if, during the
9 **two-year** period [*of one year*] following the date of original delivery of the motor vehicle to a con-
10 sumer or during the period ending on the date on which the mileage on the motor vehicle reaches
11 [*12,000*] **24,000** miles, whichever period ends [*earlier*] **later:**

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

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

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

19 (3) The period ending on the date on which the mileage on the motor vehicle reaches [*12,000*]
20 **24,000** miles, the [*one-year*] **two-year** period and the 30-day period shall be extended by any period
21 of time during which repair services are not available to the consumer because of a war, invasion,
22 strike, fire, flood or other natural disaster.

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

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

27 646A.408. If [*the*] **a manufacturer, for the purpose of settling disputes that arise under ORS**
28 **646A.400 to 646A.418**, [*has established*] **establishes** or participates in an informal dispute settlement
29 procedure that substantially complies with the provisions of 16 C.F.R. part 703, as [*from time to time*
30 *amended*] **in effect on the effective date of this 2009 Act**, [*and causes the consumer to be notified*
31 *of the procedure, ORS 646A.404 concerning refunds or replacement shall not apply to any consumer*
32 *who has not first resorted to the procedure.*] **a consumer may participate in the informal dispute**
33 **settlement procedure but is not required to do so in order to bring an action under ORS**
34 **646A.400 to 646A.418.** A decision resulting from arbitration pursuant to the informal dispute
35 settlement procedure [*shall be*] **is binding on the manufacturer but is not binding on the**
36 **consumer.**

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

38 646A.412. (1) If a consumer brings an action in court under ORS 646A.400 to 646A.418 against
39 a manufacturer and the consumer is granted one of the remedies specified in ORS 646A.404 (1) by
40 the court, the consumer shall also be awarded up to three times the amount of any damages, not to
41 exceed \$50,000 over and above the amount due the consumer under ORS 646A.404 (1), if the court
42 finds that the manufacturer did not act in good faith.

43 (2) The court may award reasonable attorney fees [*to the prevailing party*], **fees for expert**
44 **witnesses and costs to a consumer who prevails** in an appeal or action under [*this section.*] **ORS**
45 **646A.400 to 646A.418. If a court finds that a consumer brought an action under ORS 646A.400**

1 to 646A.418 in bad faith or solely for the purposes of harassment, the court may award a
2 prevailing manufacturer reasonable attorney fees.

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

4 646A.414. (1) **Except as provided in section 10 of this 2009 Act**, nothing in ORS 646A.400 to
5 646A.418 creates a cause of action by a consumer against a vehicle dealer.

6 (2) A manufacturer may not join a dealer as a party in *[any]* a proceeding brought under ORS
7 646A.400 to 646A.418, nor may the manufacturer try to collect from a dealer *[any]* damages assessed
8 against the manufacturer in a proceeding brought under ORS 646A.400 to 646A.418.

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

10 646A.416. *[Any]* **An** action brought under ORS 646A.400 to 646A.418 *[shall]* **must** be commenced
11 within *[one year following]* **two years after** whichever **of the following periods** *[period]* ends *[ear-*
12 *lier]* **later**:

13 (1) The period ending on the date on which the mileage on the motor vehicle reaches *[12,000]*
14 **24,000** miles; *[or]*

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

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

18 **SECTION 9.** Section 10 of this 2009 Act is added to and made a part of ORS 646A.400 to
19 646A.418.

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

22 (a) **Title the motor vehicle in the manufacturer’s name; and**

23 (b) **Inscribe on the certificate of title for the motor vehicle and in the department’s re-**
24 **ords concerning the motor vehicle the notation “Lemon Law Buyback.”**

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

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

31 _____
32
33 **This vehicle was repurchased by its manufacturer in accordance with Oregon’s consumer**
34 **warranty law because of a defect in the vehicle. The title to this vehicle has been perma-**
35 **mently inscribed with the notation “Lemon Law Buyback.”**
36 _____

37
38 (b) **Obtain the signature of the buyer, lessee or transferee on the notice in a space pro-**
39 **vided for that purpose under a statement in which the buyer, lessee or transferee acknowl-**
40 **edges receiving and understanding the notice.**

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

44 (4) **The Director of Transportation may adopt rules to prescribe the form and content**
45 **of the notice required under this section and to require the disclosure of other information**

1 **the director deems necessary to inform a buyer, lessee or transferee of the condition of a**
2 **motor vehicle that is subject to the provisions of this section or information that is other-**
3 **wise material to a sale, lease or transfer of the motor vehicle.**

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

6 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
7 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
39 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
40 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
41 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
42 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
43 tomer enters into the transaction.

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

- 1 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
 2 not to deliver them as promised.
- 3 (r) Organizes or induces or attempts to induce membership in a pyramid club.
- 4 (s) Makes false or misleading representations of fact concerning the offering price of, or the
 5 person's cost for real estate, goods or services.
- 6 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
 7 known material defect or material nonconformity.
- 8 (u) Engages in any other unfair or deceptive conduct in trade or commerce.
- 9 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
 10 ORS 698.640, whether in a commercial or noncommercial situation.
- 11 (w) Manufactures mercury fever thermometers.
- 12 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
 13 law, or is:
- 14 (A) Prescribed by a person licensed under ORS chapter 677; and
- 15 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
 16 on the proper cleanup of mercury should breakage occur.
- 17 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
 18 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
 19 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
 20 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
 21 graph, "thermostat" means a device commonly used to sense and, through electrical communication
 22 with heating, cooling or ventilation equipment, control room temperature.
- 23 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
 24 mercury light switches.
- 25 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 26 (bb) Violates ORS 646A.070 (1).
- 27 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 28 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 29 (ee) Violates ORS 646.883 or 646.885.
- 30 (ff) Violates any provision of ORS 646A.020.
- 31 (gg) Violates ORS 646.569.
- 32 (hh) Violates the provisions of ORS 646A.142.
- 33 (ii) Violates ORS 646A.360.
- 34 (jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 35 (kk) Violates ORS 646.563.
- 36 (LL) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 37 (mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
 38 thereto.
- 39 (nn) Violates ORS 646A.210 or 646A.214.
- 40 (oo) Violates any provision of ORS 646A.124 to 646A.134.
- 41 (pp) Violates ORS 646A.254.
- 42 (qq) Violates ORS 646A.095.
- 43 (rr) Violates ORS 822.046.
- 44 (ss) Violates ORS 128.001.
- 45 (tt) Violates ORS 646.649 (2) to (4).

- 1 (uu) Violates ORS 646A.090 (2) to (4).
2 (vv) Violates ORS 87.686.
3 (ww) Violates ORS 646.651.
4 (xx) Violates ORS 646A.362.
5 (yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
6 (zz) Violates ORS 180.440 (1).
7 (aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
8 (bbb) Violates ORS 87.007 (2) or (3).
9 (ccc) Violates ORS 92.405 (1), (2) or (3).
10 (ddd) Engages in an unlawful practice under ORS 646.648.
11 (eee) Violates ORS 646A.365.
12 (fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
13 (ggg) Sells a gift card in violation of ORS 646A.276.
14 (hhh) Violates ORS 646A.102, 646A.106 or 646A.108.
15 (iii) Violates ORS 646A.430 to 646A.450.
16 (jjj) Violates a provision of sections 2 to 6, chapter 19, Oregon Laws 2008.
17 (kkk) Violates section 2, chapter 31, Oregon Laws 2008, 30 or more days after a recall notice,
18 warning or declaration described in section 2, chapter 31, Oregon Laws 2008, is issued for the chil-
19 dren's product, as defined in section 1, chapter 31, Oregon Laws 2008, that is the subject of the vi-
20 olation.

21 **(LLL) Violates a provision of section 10 of this 2009 Act.**

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

24 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
25 need not prove competition between the parties or actual confusion or misunderstanding.

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

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

32 **SECTION 12. (1) Section 10 of this 2009 Act and the amendments to ORS 646.608,**
33 **646A.400, 646A.402, 646A.404, 646A.406, 646A.408, 646A.412, 646A.414 and 646A.416 by sections**
34 **1 to 8 and 11 of this 2009 Act become operative 90 days following the effective date of this**
35 **2009 Act.**

36 **(2) The Director of Transportation may take any action before the operative date speci-**
37 **fied in subsection (1) of this section that is necessary to enable the director to exercise, on**
38 **and after the operative date specified in subsection (1) of this section, all the duties, func-**
39 **tions and powers conferred on the director by section 10 of this 2009 Act and the amend-**
40 **ments to ORS 646.608, 646A.400, 646A.402, 646A.404, 646A.406, 646A.408, 646A.412, 646A.414 and**
41 **646A.416 by sections 1 to 8 and 11 of this 2009 Act.**

42 **(3) Section 10 of this 2009 Act and the amendments to ORS 646.608, 646A.400, 646A.402,**
43 **646A.404, 646A.406, 646A.408, 646A.412, 646A.414 and 646A.416 by sections 1 to 8 and 11 of this**
44 **2009 Act apply to express warranties on new motor vehicles that are sold, leased or otherwise**
45 **transferred on or after the operative date specified in subsection (1) of this section.**

1 **SECTION 13.** This 2009 Act being necessary for the immediate preservation of the public
2 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
3 on its passage.
4
