

Senate Bill 722

Sponsored by COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS PROTECTION

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**.

Imposes disclosure and notice requirements relating to amounts owed for sale or lease of motor vehicles that are not commercial vehicles or commercial motor vehicles. Imposes specified restrictions related to payments owed under retail installment contract.

Creates unlawful trade practice for violation of Act.

Becomes operative on July 1, 2012.

Applies to sales and leases that occur on or after operative date.

A BILL FOR AN ACT

1
2 Relating to retail installment contracts for motor vehicles; creating new provisions; and amending
3 ORS 646.608.

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

DEFINITIONS

SECTION 1. As used in sections 1 to 8 of this 2011 Act:

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9 (1) "Ancillary item" includes extended or additional warranties, theft deterrent devices,
10 security systems, vehicle service contracts, automobile club memberships, roadside assist-
11 ance programs, road hazard protection programs and undercoating, rustproofing or other
12 surface protection products.

13 (2) "Buyer" means a person that buys or leases a motor vehicle under a retail installment
14 contract.

15 (3) "Cash price" means the amount for which a seller would sell and transfer to a buyer
16 unqualified title to a motor vehicle if the motor vehicle were sold for cash at the seller's
17 place of business on the date that the contract is executed.

18 (4) "Down payment" means:

19 (a) A payment that a buyer pays or agrees to pay to a seller upon or prior to the seller
20 delivering a motor vehicle to the buyer; or

21 (b) If a buyer defers the payment, a payment that is not subject to a finance charge.

22 (5) "Finance charge" means any amount that a creditor directly or indirectly charges a
23 buyer as incident to, or as a condition of, the extension of credit.

24 (6) "Motor vehicle" has the meaning given that term in ORS 801.360. "Motor vehicle" does
25 not include commercial vehicles, as defined in ORS 801.210, or commercial motor vehicles,
26 as defined in ORS 801.208.

27 (7) "Purchase order" means a written or electronic instrument used to sell a motor ve-
28 hicle pending execution of a retail installment contract.

29 (8) "Retail installment contract" means:

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 (a) A contract, entered into in this state, for the sale of a motor vehicle between a buyer
2 and a seller under which the buyer has a possessory right to the motor vehicle and either:

3 (A) Title to the motor vehicle vests in the buyer upon the payment of all or a part of the
4 price of the motor vehicle or the performance of some other condition; or

5 (B) A lien on the motor vehicle vests in the seller as a security for the payment of all
6 or a part of the price of the motor vehicle or the performance of some other condition.

7 (b) A contract for the bailment or lease of a motor vehicle between a buyer and a seller
8 under which the buyer:

9 (A) Has the right to use the motor vehicle;

10 (B) Must pay a sum substantially equivalent to or in excess of the aggregate value of the
11 motor vehicle; and

12 (C) Will become for no additional consideration, or has the option to become for nominal
13 consideration, the owner of the motor vehicle upon full compliance with the terms of the
14 contract.

15 (9) "Seller" means a person:

16 (a) That is engaged in the business of selling or leasing motor vehicles under retail in-
17 stallment contracts; and

18 (b) That sells or leases a motor vehicle under a retail installment contract.

19
20 **DISCLOSURE AND NOTICE REQUIREMENTS**

21
22 **SECTION 2.** A retail installment contract and purchase order must disclose the following
23 amounts:

24 (1) Under the heading "Itemization of Charges":

25 (a) The cash price of the motor vehicle less fees and charges incidental to the selling or
26 leasing of the motor vehicle, taxes imposed on the sale or lease of the motor vehicle and any
27 remaining credit or lease balance on property being offered in exchange for payment toward
28 the motor vehicle.

29 (b) Any fees, listed separately, charged by the seller, including:

30 (A) Any fee charged by the seller for document preparation;

31 (B) Any fee charged by the seller for registering or transferring ownership of the motor
32 vehicle; and

33 (C) Any fees charged by the seller and required by the state for the sale, certification
34 or operation of a motor vehicle.

35 (c) Any taxes, listed separately, imposed on the sale or lease.

36 (d) Any amount, listed separately, charged for an ancillary item.

37 (e) The sum of the amounts required to be disclosed under this subsection.

38 (2) Any fees, listed separately, not charged by the seller and required by this state for
39 the sale, certification or operation of a motor vehicle.

40 (3) Under the heading "Insurance Premiums," the aggregate amount of insurance pre-
41 miums to be paid under the retail installment contract.

42 (4) The sum of the fees, taxes and amounts in subsections (1) and (3) of this section.

43 (5) Under the heading "Itemization of Down Payment":

44 (a) The value of any property being offered in exchange for payment toward the motor
45 vehicle.

1 (b) The remaining credit or lease balance on any property being offered in exchange for
2 payment toward the motor vehicle.

3 (c) The net value of any property being offered in exchange for payment toward the mo-
4 tor vehicle.

5 (d) Any portion of a down payment that a buyer defers until not later than the due date
6 of the second scheduled installment payment.

7 (e) The amount, if any, of a manufacturer's rebate applied or to be applied to the pur-
8 chase of the motor vehicle.

9 (f) The remaining amount of the down payment paid or to be paid by the buyer.

10 (g) The sum of the amounts required to be disclosed under this subsection. If the sum
11 is zero or greater than zero, the amount shall be listed under the heading "Down
12 Payment." If the sum is less than zero, the amount shall be listed as a positive number under
13 the heading "Amount Owed on Exchanged Property."

14 (6) Under the heading "Finance Charge Assessed on Date of Contract," the amount of
15 any finance charge that is assessed on the date on which the buyer and the seller enter into
16 the retail installment contract.

17 (7) Under the heading "Unpaid Balance," the difference between the sum in subsection
18 (4) of this section and the sum of the values and amounts in subsections (5) and (6) of this
19 section or, if the sum of the values and amounts in subsections (5) and (6) of this section is
20 less than zero, the aggregate of the sum in subsection (4) of this section and the sum of the
21 values and amounts in subsections (5) and (6) of this section.

22 (8) Any other amount required to be disclosed under Regulation Z, 12 C.F.R. part 226.

23 **SECTION 3.** In addition to the disclosure requirements of section 2 of this 2011 Act:

24 (1) A retail installment contract must contain a brief and easily understandable expla-
25 nation of any finance charge assessed as of the date on which the buyer and the seller enter
26 into the retail installment contract.

27 (2) If payment of all or a portion of a down payment is deferred, the seller shall include
28 the deferred payment in the payment schedule required to be disclosed under Regulation Z,
29 12 C.F.R. part 226.

30 (3) If a down payment includes property being offered in exchange for payment toward
31 a motor vehicle, the retail installment contract or purchase order shall contain a brief de-
32 scription of the property.

33 (4) If the terms of a retail installment contract include the sale of an ancillary item, the
34 retail installment contract must:

35 (a) Identify the difference between the amount of a payment under the retail installment
36 contract and the amount that the payment would be if the terms of the retail installment
37 contract did not include the ancillary item; and

38 (b) Clearly state that the buyer is not required to purchase the ancillary item.

39 (5) If the terms of a retail installment contract include the provision of insurance cov-
40 erage for the buyer, the retail installment contract must include an itemized explanation of
41 terms that relate to the provision of insurance coverage. The explanation must identify the
42 type of insurance coverage, the premium charged for the insurance coverage and, if the in-
43 surance coverage expires before the date of the last scheduled payment under the retail in-
44 stallment contract, the date on which the insurance coverage expires.

45 **SECTION 4.** (1) A retail installment contract must contain notice in substantially the

1 following form in at least 12-point type that is boldfaced:

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3
4 **NOTICE TO BUYER**

5
6 **Do not sign this agreement before you read it or if it contains any blank spaces to be**
7 **filled in. There should be no blank spaces.**

8 **If you do not pay the amounts that you owe under this agreement, your motor vehicle**
9 **may be repossessed and you may have to pay an additional amount.**

10 **If you have a complaint concerning this agreement, you should try to resolve it with the**
11 **seller. If you cannot resolve your complaint with the seller, you may contact the Oregon**
12 **Department of Justice.**

13 **After the agreement is signed, the seller may not change the financing or payment terms**
14 **unless you agree in writing to the change. You do not have to agree to any change. It is an**
15 **unlawful practice under ORS 646.608 for the seller to make a change without your approval.**

16
17 _____
18 (Signature of buyer)
19 _____

20
21 **RESTRICTIONS RELATED TO PAYMENTS OWED**
22 **UNDER RETAIL INSTALLMENT CONTRACTS**

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24
25 **SECTION 5. (1) A seller may not accept or solicit compensation for procuring, providing**
26 **for or arranging the financing of a motor vehicle.**

27 **(2) A seller or other person that finances a motor vehicle may not receive, and a person**
28 **may not offer, consideration for the sale, assignment or transfer of a retail installment**
29 **contract.**

30 **(3) Notwithstanding subsections (1) and (2) of this section, a seller may charge a buyer**
31 **a fee of up to \$250 for procuring, providing for or arranging the financing of a motor vehicle**
32 **and a seller or other person that finances a motor vehicle may charge a buyer a fee of up**
33 **to \$250 for the sale, assignment or transference of a retail installment contract.**

34 **SECTION 6. (1) A seller may enter into an agreement with a buyer that conditions the**
35 **seller's execution of a manufacturer's certificate of origin or a motor vehicle's certificate**
36 **of title on the buyer obtaining financing for the motor vehicle.**

37 **(2) A buyer may cancel an agreement entered into under this section at any time before**
38 **a financing agreement becomes final.**

39 **(3) In the event that a buyer cancels an agreement under this section:**

40 **(a) The seller shall return any down payment and property that was offered in exchange**
41 **for the motor vehicle to the buyer; and**

42 **(b) The buyer shall return the motor vehicle to the seller in the same condition as the**
43 **seller delivered the motor vehicle to the buyer, excepting normal wear and tear, within 24**
44 **hours of canceling the agreement.**

45 **SECTION 7. If the terms of a retail installment contract include the provision of insur-**

1 **ance coverage for the buyer, the retail installment contract may not provide for the impo-**
2 **sition of a finance charge on any insurance premium to be paid more than one year in**
3 **advance of the payment date.**

4 **SECTION 8. (1) In the event that a buyer is delinquent in making a scheduled payment,**
5 **a retail installment contract may provide for the imposition of a charge.**

6 **(2) Notwithstanding subsection (1) of this section:**

7 **(a) A retail installment contract may not provide for the imposition of a charge under**
8 **this section that exceeds five percent of the amount of the scheduled payment, except that**
9 **a retail installment contract may impose a reasonable collection fee; and**

10 **(b) A seller or a person to which a seller assigns a retail installment contract may not**
11 **impose a charge on a delinquent payment made pursuant to an agreement to extend or defer**
12 **a scheduled payment.**

13
14 **ENFORCEMENT**
15

16 **SECTION 9.** ORS 646.608 is amended to read:

17 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
18 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

45 (m) Performs service on or dismantles any goods or real estate when not authorized by the

1 owner or apparent owner thereof.

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

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

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

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

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

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

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

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

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

22 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

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

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

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

40 (ee) Violates ORS 646.883 or 646.885.

41 (ff) Violates ORS 646.569.

42 (gg) Violates the provisions of ORS 646A.142.

43 (hh) Violates ORS 646A.360.

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

45 (jj) Violates ORS 646.563.

- 1 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
 2 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
 3 thereto.
 4 (mm) Violates ORS 646A.210 or 646A.214.
 5 (nn) Violates any provision of ORS 646A.124 to 646A.134.
 6 (oo) Violates ORS 646A.095.
 7 (pp) Violates ORS 822.046.
 8 (qq) Violates ORS 128.001.
 9 (rr) Violates ORS 646.649 (2) to (4).
 10 (ss) Violates ORS 646A.090 (2) to (4).
 11 (tt) Violates ORS 87.686.
 12 (uu) Violates ORS 646.651.
 13 (vv) Violates ORS 646A.362.
 14 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
 15 (xx) Violates ORS 180.440 (1) or 180.486 (1).
 16 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
 17 (zz) Violates ORS 87.007 (2) or (3).
 18 (aaa) Violates ORS 92.405 (1), (2) or (3).
 19 (bbb) Engages in an unlawful practice under ORS 646.648.
 20 (ccc) Violates ORS 646A.365.
 21 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
 22 (eee) Sells a gift card in violation of ORS 646A.276.
 23 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
 24 (ggg) Violates ORS 646A.430 to 646A.450.
 25 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
 26 (iii) Violates a provision of ORS 646A.702 to 646A.720.
 27 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
 28 scribed in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the
 29 subject of the violation.
 30 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
 31 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
 32 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
 33 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
 34 (nnn) Violates ORS 646A.082.
 35 (ooo) Violates ORS 646.647.
 36 (ppp) Violates ORS 646A.115.
 37 (qqq) Violates a provision of ORS 646A.405.
 38 **(rrr) Violates a provision of sections 1 to 8 of this 2011 Act.**
 39 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
 40 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
 41 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
 42 need not prove competition between the parties or actual confusion or misunderstanding.
 43 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
 44 torney General has first established a rule in accordance with the provisions of ORS chapter 183
 45 declaring the conduct to be unfair or deceptive in trade or commerce.

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

4
5 **OPERATIVE DATE AND APPLICABILITY**

6
7 **SECTION 10. Sections 1 to 8 of this 2011 Act and the amendments to ORS 646.608 by**
8 **section 9 of this 2011 Act become operative on July 1, 2012.**

9 **SECTION 11. (1) Sections 1 to 8 of this 2011 Act and the amendments to ORS 646.608 by**
10 **section 9 of this 2011 Act apply to the sale or leasing of motor vehicles that occurs on or**
11 **after the operative date specified in section 10 of this 2011 Act.**

12 **(2) For purposes of this section, “motor vehicle” has the meaning given that term in**
13 **section 1 of this 2011 Act.**

14
15 **UNIT CAPTIONS**

16
17 **SECTION 12. The unit captions used in this 2011 Act are provided only for the conven-**
18 **ience of the reader and do not become part of the statutory law of this state or express any**
19 **legislative intent in the enactment of this 2011 Act.**