

House Bill 2831

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFICIENCY

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 under retail installment contracts for sale or lease of motor vehicles that are not commercial vehicles or commercial motor vehicles. Imposes specified restrictions related to payments owed under contracts.

Creates unlawful trade practice for violation of Act.

Becomes operative on July 1, 2014.

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 7 of this 2013 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 incidental to, or as a condition of, the extension of credit.

24 (6)(a) "Motor vehicle" has the meaning given that term in ORS 801.360.

25 (b) "Motor vehicle" does not include commercial vehicles, as defined in ORS 801.210, or
26 commercial motor vehicles, 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 between a buyer and a seller for the sale of a
2 motor vehicle, 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 value of the motor
11 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 amount owed on property being offered in exchange for payment toward the motor
28 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, listed separately, charged by the seller and that are required by this state
34 for the sale, certification or operation of a motor vehicle.

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

36 (d) Any amounts, listed separately, charged for ancillary items.

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 that are required by this
39 state for 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 amounts described in subsections (1)(e) 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 amount owed on any property being offered in exchange for payment
2 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) The amount, if any, of a manufacturer's rebate applied or to be applied to the pur-
6 chase of the motor vehicle.

7 (e) Any additional amount of a down payment paid or to be paid by the buyer.

8 (f) The sum of the amounts described in paragraphs (c), (d) and (e) of this subsection.
9 If the sum is zero or greater than zero, the amount shall be listed under the heading "Down
10 Payment." If the sum is less than zero, the amount shall be listed as a positive number under
11 the heading "Amount Owed on Exchanged Property."

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

15 (7) Under the heading "Unpaid Balance":

16 (a) The difference between:

17 (A) The sum described in subsection (4) of this section plus the charges disclosed under
18 subsection (6) of this section; and

19 (B) The sum calculated under subsection (5)(f) of this section; or

20 (b) If the sum calculated under subsection (5)(f) of this section is less than zero, the ag-
21 gregate of the sum described in subsection (4) of this section, the charges disclosed under
22 subsection (6) of this section and the positive value of the sum calculated under subsection
23 (5)(f) of this section.

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

25 **SECTION 3.** In addition to the disclosure requirements of section 2 of this 2013 Act:

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

29 (2) If payment of all or a portion of a down payment is deferred, the seller must include
30 the deferred payment in the payment schedule required to be disclosed under Regulation Z,
31 12 C.F.R. part 226.

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

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

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

40 (b) Identify the difference between the overall amount due under the retail installment
41 contract and the overall amount that would be due if the terms of the retail installment
42 contract did not include the ancillary item; and

43 (c) Clearly state that the buyer is not required to purchase the ancillary item.

44 (5) If the terms of a retail installment contract include the provision of insurance cov-
45 erage for the buyer, the retail installment contract must include an itemized explanation of

1 terms that relate to the provision of insurance coverage. The explanation must identify the
2 type of insurance coverage, the premium charged for the insurance coverage and, if the in-
3 surance coverage expires before the date of the last scheduled payment under the retail in-
4 stallment contract, the date on which the insurance coverage expires.

5 **SECTION 4.** A retail installment contract must contain notice in substantially the fol-
6 lowing form in at least 12-point type that is boldfaced:

7 _____
8
9 **NOTICE TO BUYER**

10
11 **Do not sign this agreement before you read it or if it contains any blank spaces to be**
12 **filled in. There should be no blank spaces.**

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

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

18 **After you sign this contract, the seller may not change the financing or payment terms**
19 **unless you agree in writing to the change. You do not have to agree to any change. It is an**
20 **unlawful practice under ORS 646.608 for the seller to make a change without your written**
21 **approval.**

22
23 _____
24 **(Buyer's Initials)**
25 _____

26
27
28 **RESTRICTIONS RELATED TO PAYMENTS OWED**
29 **UNDER RETAIL INSTALLMENT CONTRACTS**

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31 **SECTION 5.** (1) Except as provided in subsection (3) of this section, a seller may not ac-
32 cept or solicit compensation for procuring, providing for or arranging the financing of a
33 motor vehicle.

34 (2) Except as provided in subsection (3) of this section, a seller or other person that fi-
35 nances a motor vehicle may not receive, and a person may not offer, consideration for the
36 sale, assignment or transfer of a retail installment contract.

37 (3)(a) A seller may charge a buyer a fee of up to \$250 for procuring, providing for or ar-
38 ranging the financing of a motor vehicle and a seller or other person that finances a motor
39 vehicle may charge a buyer a fee of up to \$250 for the sale, assignment or transfer of a retail
40 installment contract.

41 (b) A buyer may be charged no more than one fee under this subsection for each retail
42 installment contract to which the buyer is a party.

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

1 transaction or obligation incurred.

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

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

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

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

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

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

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

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

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

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

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

27 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

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

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

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

45 (ee) Violates ORS 646.883 or 646.885.

- 1 (ff) Violates ORS 646.569.
- 2 (gg) Violates the provisions of ORS 646A.142.
- 3 (hh) Violates ORS 646A.360.
- 4 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 5 (jj) Violates ORS 646.563.
- 6 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 7 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 8 thereto.
- 9 (mm) Violates ORS 646A.210 or 646A.214.
- 10 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 11 (oo) Violates ORS 646A.095.
- 12 (pp) Violates ORS 822.046.
- 13 (qq) Violates ORS 128.001.
- 14 (rr) Violates ORS 646.649 (2) to (4).
- 15 (ss) Violates ORS 646A.090 (2) to (4).
- 16 (tt) Violates ORS 87.686.
- 17 (uu) Violates ORS 646.651.
- 18 (vv) Violates ORS 646A.362.
- 19 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 20 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 21 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 22 (zz) Violates ORS 87.007 (2) or (3).
- 23 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 24 (bbb) Engages in an unlawful practice under ORS 646.648.
- 25 (ccc) Violates ORS 646A.365.
- 26 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 27 (eee) Sells a gift card in violation of ORS 646A.276.
- 28 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 29 (ggg) Violates ORS 646A.430 to 646A.450.
- 30 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
- 31 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 32 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 33 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 34 subject of the violation.
- 35 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 36 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 37 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 38 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 39 (nnn) Violates ORS 646A.082.
- 40 (ooo) Violates ORS 646.647.
- 41 (ppp) Violates ORS 646A.115.
- 42 (qqq) Violates a provision of ORS 646A.405.
- 43 (rrr) Violates ORS 646A.092.
- 44 (sss) Violates a provision of ORS 646.644.
- 45 (ttt) Violates a provision of ORS 646A.295.

1 (uuu) Violates section 3, chapter 52, Oregon Laws 2012.

2 **(vvv) Violates a provision of sections 1 to 7 of this 2013 Act.**

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

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

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

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

13
14 **OPERATIVE DATE AND APPLICABILITY**

15
16 **SECTION 9. Sections 1 to 7 of this 2013 Act and the amendments to ORS 646.608 by sec-**
17 **tion 8 of this 2013 Act become operative on July 1, 2014.**

18 **SECTION 10. Sections 1 to 7 of this 2013 Act and the amendments to ORS 646.608 by**
19 **section 8 of this 2013 Act apply to the sale or leasing of motor vehicles, as defined in section**
20 **1 of this 2013 Act, that occurs on or after the operative date specified in section 9 of this 2013**
21 **Act.**

22
23 **UNIT CAPTIONS**

24
25 **SECTION 11. The unit captions used in this 2013 Act are provided only for the conven-**
26 **ience of the reader and do not become part of the statutory law of this state or express any**
27 **legislative intent in the enactment of this 2013 Act.**