

Brasher's
PORTLAND
AUTO AUCTION

Please SUPPORT SB 1557

Issue: In 2001 legislation was adopted to provide an incentive for licensed automobile dealers to timely transfer clear titles in dealer-to-dealer transactions by requiring a purchasing dealer to pay the interest of another dealer from whom it received clear title within 15 days. If the dealer that provided the clear title did not receive payment, it was protected, at least to some extent, by the purchasing dealer's bond. In 2003, the legislature intended to create an exception from the 15-day payment rule for traditional "flooring agreements" with manufacturers and financial institutions. The legislative history of that exception clearly indicated that it was not intended to disrupt the customary industry practice between dealers where a purchasing dealer does not pay for the vehicle at the time of purchase, but only when the paper title changes hands, and that the transferring dealer holds the paper title to secure payment. This practice often involves the purchasing dealer giving the transferring dealer a check for the purchase price, i.e. a "float check," that the transferring dealer agrees not to deposit until the purchasing dealer sells the vehicle to a customer and requests the paper title.

The way the 2003 exception was worded, however, had the unintended effect of excepting all dealer-to-dealer transactions under the customary practice from the 15-day payment rule. In 2011, the Oregon Court of Appeals issued an opinion finding that the exception applies to "float agreements," an agreement that essentially reflects the standard practice between dealers.¹ As a result, a licensed dealer who provides clear title to another dealer does not have protection of 15-day payment rule, no access to the purchasing dealer's bond, and thus no incentive to timely transfer title to the purchasing dealer. This ultimately affects timely transfer of title to downstream retail consumers.

Purpose of Legislation: Clarify that the 2003 exception to the 15-day payment rule that was intended to only apply to traditional flooring agreements with manufacturers and financial institutions does not apply to transactions between licensed dealers, clarify that the dealer delivering clear title is the dealer protected, clarify the date on which the 15-day rule begins to run, and provide a means for transferring dealers to safeguard paper titles and cooperate with the Department of Transportation without losing the protection of the statute. ORS 822.045(1)(j)(B) and (2) should be amended to read as follows:

"(1)(j)(B) Within 15 days of receiving clear title to a vehicle or camper from another dealer, the purchasing dealer fails to satisfy the interest of the dealer from which the purchasing dealer received the certificate of title or other primary ownership document. For purposes of this subparagraph, a purchasing dealer receives a certificate of title or other primary ownership document from a dealer on the date:

(i) The purchasing dealer or the Department of Transportation takes physical possession of the certificate or document; or

(ii) A written notice is mailed by certified or registered mail, return receipt requested, to the purchasing dealer from the dealer, stating that the certificate or document is available to be picked up at a place and time prearranged by both parties. The written notice must be mailed to a business address of the purchasing dealer that is on file with the department. Service by mail under this sub-subparagraph is effective on the date of mailing.

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

¹*Brasher's Cascade Auto Auction, Inc. v. LEON, et al.*, 247 Or App 535 (2011).

Background: A licensed dealer violates the Oregon Vehicle Code if it fails to pay all interests in a vehicle within 15 days of receiving clear title to that vehicle from another dealer, unless the interest arises under an “inventory financing security interest” for which the dealer is a debtor. *See* ORS 822.045(1)(j)(B) & (2). As applied to the customary industry practice however, every transaction between dealers fits the dictionary definition of the exception because: 1) the vehicle is inventory; 2) delay in payment or holding of a float check is financing; and, 3) retention of the paper title is reservation of a security interest as a matter of law. *See*, ORS 72.4010(1). Prior to the 2011 Court of Appeals case a dealer who transferred clear title to another dealer but was not paid within 15 days had access to the purchasing dealer’s bond. *See*, ORS 822.030(2). Without this protection, the dealer holding the paper title has no incentive to transfer clear title to the purchasing dealer until it receives full payment, which ultimately affects timely transfer of title to retail customers.

The legislature can restore this protection, reinstate the incentive to timely transfer titles between dealers, clarify that the dealer delivering the clear title document is the dealer to be protected, clarify when the 15-day payment rule begins to run, and provide a means for a transferring dealer to safeguard the title documents from loss and cooperate with the department without losing the protection of the bond, all of which will ultimately expedite transfer of titles to downstream consumers.

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