

# Senate Bill 273

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor John A. Kitzhaber, M.D., for Department of Consumer and Business Services)

## 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**.

Establishes limitation on insurance purchased unilaterally by creditors. Imposes requirements for guaranteed asset protection policies.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to credit personal property insurance; creating new provisions; amending ORS 742.005; and  
3 declaring an emergency.

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

5 **SECTION 1. Sections 2 to 4 of this 2015 Act are added to and made a part of the Insur-**  
6 **ance Code.**

7 **SECTION 2. "Creditor-placed insurance" means insurance that a creditor that is the**  
8 **named insured purchases unilaterally after the date of a credit transaction and that provides**  
9 **coverage against loss, expense or damage to collateralized personal property as a result of**  
10 **fire, theft, collision or other risks of loss that would either impair a creditor's interest or**  
11 **adversely affect the value of collateral covered by limited dual interest insurance and:**

12 (1) **Is purchased according to the terms of the credit agreement as a result of the**  
13 **debtor's failure to provide required physical damage insurance, with the cost of the coverage**  
14 **being charged to the debtor; and**

15 (2) **May be either single interest insurance or limited dual interest insurance.**

16 **SECTION 3. "Single interest insurance" means insurance purchased by a creditor to in-**  
17 **sure the creditor's interest in the collateral securing a debtor's credit transaction.**

18 **SECTION 4. "Limited dual interest insurance" means insurance purchased by a creditor**  
19 **to insure the creditor's interest in the collateral securing the debtor's credit transaction and**  
20 **extends coverage on the collateral while in the possession of the debtor.**

21 **SECTION 5. Sections 6 to 16 of this 2015 Act are added to and made a part of ORS**  
22 **chapter 742.**

23 **SECTION 6. As used in ORS 742.005 and sections 6 to 16 of this 2015 Act:**

24 (1) **"Actual cash value" means the cost of replacing damaged or destroyed property with**  
25 **comparable new property, minus depreciation and obsolescence.**

26 (2) **"Collateral" means personal property that is pledged as security for the satisfaction**  
27 **of a debt.**

28 (3) **"Creditor" has the meaning given that term in ORS 743.371.**

29 (4) **"Credit transaction" means any transaction for which the repayment of money loaned**  
30 **or loan commitment made, or payment for goods, services or properties sold or leased, is to**

**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 be made at one or more future dates.

2 (5) "Debtor" has the meaning given that term in ORS 743.371.

3 (6) "Guaranteed asset protection" means a policy that covers the difference between the  
4 value of a vehicle and the portion of a loan balance that has been contractually agreed to  
5 be reimbursable in the event of a loss and that is still owed on the financing.

6 (7) "Net debt" means the amount necessary to liquidate the remaining debt in a single  
7 lump-sum payment, excluding all unearned interest and other unearned finance charges.

8 **SECTION 7.** (1) Creditor-placed insurance may not take effect until the latest of the fol-  
9 lowing dates:

10 (a) The date of the credit transaction;

11 (b) The date prior coverage, including prior creditor-placed insurance coverage, ceases  
12 to be in force; or

13 (c) A later date provided for in the agreement between the creditor and the insurer.

14 (2) Creditor-placed insurance must terminate on the earliest of the following dates:

15 (a) The date other acceptable insurance becomes effective, subject to the debtor provid-  
16 ing acceptable evidence of the other insurance to the creditor;

17 (b) The date the collateral is repossessed, unless the collateral is returned to the debtor  
18 within 10 days after the repossession;

19 (c) The date the collateral is determined by the insurer to be a total loss;

20 (d) The date the debt is completely extinguished; or

21 (e) An earlier date specified in the individual policy or certificate of insurance.

22 (3) A creditor may not:

23 (a) Charge a debtor for a term longer than the scheduled term of the creditor-placed in-  
24 surance at the time the insurance becomes effective.

25 (b) Impose an insurance charge on the debtor for creditor-placed insurance before the  
26 effective date of the insurance.

27 (4) If a charge is made to a debtor for creditor-placed insurance coverage for a term of  
28 one year or more, the creditor shall notify the debtor at least annually that the insurance  
29 will be canceled and a refund or credit of unearned charges made if the debtor provides evi-  
30 dence that the debtor has secured acceptable insurance.

31 **SECTION 8.** (1) An insurer may calculate premiums for creditor-placed insurance cover-  
32 age based on:

33 (a) An amount not exceeding the net debt even though the coverage may limit the  
34 insurer's liability to the net debt, actual cash value or cost of repair; or

35 (b) Other premium calculation methods that more closely reflect the exposure of each  
36 item insured and that approximate the premium calculation method of the coverage required  
37 by the credit agreement.

38 (2) The premium or amount charged to the debtor for creditor-placed insurance may not  
39 exceed the premium charged by the insurer, computed at the time the charge to the debtor  
40 is determined.

41 (3) An insurer may not use a method of billing insurance charges to the debtor on  
42 closed-end credit transactions that creates a balloon payment at the end of the credit  
43 transaction or extends the maturity date of the credit transaction, unless the method of  
44 billing is specifically disclosed at the time of the origination of the credit agreement and  
45 specifically agreed to by the debtor at the time the charge is added to the outstanding credit

1 balance.

2 (4) An insurer may not pay a commission for guaranteed asset protection, commercial  
3 property and residual value policies that exceeds 35 percent of the premium charge for the  
4 policy.

5 (5) An insurer may not charge a premium on anything other than the actual value of the  
6 item being purchased.

7 **SECTION 9.** (1) Creditor-placed insurance coverage may not include:

8 (a) Coverage for the cost of repossession;

9 (b) Skip, confiscation and conversion coverage;

10 (c) Coverage for payment of mechanics' or other liens that do not arise from a covered  
11 loss occurrence;

12 (d) Coverage that requires a debtor's insurance deductible to be less than \$250; or

13 (e) Coverage that is broader than the insurance coverage that meets the minimum in-  
14 surance requirements of the credit agreement.

15 (2) Nothing in this section prohibits the issuance of a separate policy or endorsement  
16 providing the coverage listed in subsection (1) of this section. However, a creditor may not  
17 pass along a charge to the debtor for any coverage listed in subsection (1) of this section.

18 **SECTION 10.** (1) Creditor-placed insurance shall be set forth in an individual policy or  
19 certificate of insurance. A copy of the individual policy, certificate of insurance or other ev-  
20 idence of insurance coverage shall be delivered to the last known address of the debtor.

21 (2) If the policy provides for renewing the coverage or cancellation, the policy must  
22 contain a provision as follows: "This policy shall be canceled at any time at the request of  
23 the insured, in which case this company shall, upon demand and surrender of this policy,  
24 refund the excess of paid premium above the customary short rates for the expired time."

25 (3) The policy also shall provide:

26 (a) That the insurer may cancel the policy at any time by giving 10 days' written notice  
27 of cancellation to the insured in the event of nonpayment of premium or 30 days' written  
28 notice for any other reason. However, when insurance coverage is part of a package policy  
29 including commercial liability insurance, cancellation of the policy is governed by the pro-  
30 visions of ORS 742.702.

31 (b) That cancellation by the insurer may be made with or without tender of the excess  
32 of paid premium above the pro rata premium for the expired time, and that the excess, if  
33 not tendered with the cancellation, will be refunded on demand.

34 (4) When an insurer gives notice of cancellation, the notice shall state that the excess  
35 of paid premium above the pro rata premium for the expired time, if not tendered with the  
36 notice, will be refunded on demand.

37 (5) The policy must describe the value of any add-on coverage. All charges to the  
38 policyholder must be listed on the declarations page or certificate of coverage. An insurance  
39 producer or staff of the creditor may not add any fees or charges that are not filed with the  
40 Department of Consumer and Business Services and shown on the declarations page or cer-  
41 tificate of coverage of the policy.

42 (6) When an insurer bundles credit products into one package, the insured must individ-  
43 ually select each credit coverage.

44 (7) If guaranteed asset protection is included in collateral protection, the insurer must  
45 identify to the debtor any charges for the guaranteed asset protection coverage separately

1 from any other coverage provided.

2 (8) An insurer may not terminate eligible benefits being paid under a claim if the insurer  
3 terminates a master policy.

4 (9)(a) If the policy does not provide coverage for loss of market value or diminution of  
5 value, the term describing the limitation must be specifically defined in the policy and the  
6 policy must provide a separate exclusion stating that there is no coverage for diminished  
7 value.

8 (b) As used in this subsection, “diminution of value” means a measure of value lost due  
9 to a circumstance that caused the loss, calculated by measuring the value of something be-  
10 fore and after the act that caused the loss.

11 (10) The description of coverage must include a statement of the value of applicable  
12 collateral and how the value was determined.

13 (11) Within 30 days after the debtor purchases insurance that is not creditor-placed in-  
14 surance, the debtor may cancel creditor-placed insurance coverage and have any unearned  
15 premium paid by the debtor refunded or credited.

16 **SECTION 11.** (1) Three conditions must be met for payment of loss under a single inter-  
17 est insurance policy:

18 (a) The debtor must default in payment;

19 (b) The creditor must legally repossess the collateral, unless the collateral has been sto-  
20 len from the debtor; and

21 (c) The creditor must have suffered an impairment of interest.

22 (2) The conditions for loss payment set forth in subsection (1) of this section do not apply  
23 to limited dual interest insurance.

24 **SECTION 12.** (1) Within 60 calendar days after the termination of creditor-placed insur-  
25 ance coverage, and in accordance with the formulas approved by the Director of the De-  
26 partment of Consumer and Business Services, an insurer shall refund any unearned premium  
27 or other identifiable charge that is made to a debtor who has consumer credit insurance.

28 (2) Within 30 calendar days after the termination date of creditor-placed insurance cov-  
29 erage, the insurer shall provide to the debtor a statement of refund disclosing the effective  
30 date, the termination date, the amount of premium being refunded and the amount of pre-  
31 mium charged for the coverage provided. A statement is not required if the policy terminates  
32 under section 7 (2)(d) of this 2015 Act.

33 (3) The insurer shall refund the entire amount of premium, minimum premium, fees or  
34 charges of any kind if no coverage was provided.

35 (4) The policy must clearly define the cancellation refund method. An insurer must make  
36 refunds within a reasonable time.

37 **SECTION 13.** (1)(a) At the time of a sales transaction that includes a guaranteed asset  
38 protection policy, an insurance producer must provide a comprehensive list of those portions  
39 of an outstanding loan balance that will not be reimbursed in the event of a loss. The pro-  
40 ducer must present the list to the consumer at the time of the sale and the consumer must  
41 verify that the consumer has reviewed and understood the list.

42 (b) As used in this subsection, “outstanding loan balance” means the amount in U.S.  
43 currency that is required to pay off the finance contract balance as of the date of the  
44 transaction.

45 (2) In the event of a loss under a creditor-placed insurance policy, the insurer shall pay,

1 at a minimum, the least of the following:

2 (a) The cost to repair the collateral less any applicable deductible.

3 (b) The actual cash value of the collateral, less any applicable deductible.

4 (c) The net debt, less any applicable deductible. The method of calculation of net debt  
5 payable under this paragraph shall be identical to the method of calculation of net debt for  
6 payment of premiums under section 8 of this 2015 Act.

7 (d) If single interest insurance is provided, the amount by which the creditor's interest  
8 is impaired.

9 (3) For purposes of determining payment under subsection (2) of this section, values shall  
10 be determined as of the date of the loss.

11 (4)(a) The insurer may reduce the net debt or fair market value amount by the value of  
12 salvage if the insurer does not take possession of the insured property.

13 (b) As used in this subsection, "fair market value" means an estimate of the market  
14 value of a property, based on what a knowledgeable, willing and unpressured buyer would pay  
15 to a knowledgeable, willing and unpressured seller in the market.

16 (5) In the event of a loss, no subrogation shall run against the debtor from the insurer.

17 (6) Whenever a claim is made on a creditor-placed insurance policy, the insurer shall  
18 furnish to the claimant a written statement of the loss explaining the settlement amount and  
19 the method of settlement.

20 (7) A creditor or insurer may not abandon salvage in lieu of payment of storage fees  
21 without the consent of the facility and the claimant. The insurer shall be responsible for the  
22 payment of towing and storage charges for a covered loss occurrence from the time the  
23 claim is reported to the insurer in accordance with the terms of the policy to the time the  
24 claim is paid.

25 (8) The policy must provide that, in the event of a dispute, the insured is authorized to  
26 obtain an independent appraisal of the physical damage from a disinterested party.

27 (9) At the time of a covered loss, the guaranteed asset protection insurance carrier must  
28 calculate the value of the vehicle using the same valuation method that has been used by the  
29 primary carrier to calculate that loss.

30 **SECTION 14.** (1) In order for a creditor to place insurance on the collateral pledged by  
31 the debtor and pass the cost of the insurance on to the debtor:

32 (a) The creditor must have a security interest in the personal property;

33 (b) The credit agreement must require the debtor to maintain insurance on the collateral  
34 to protect the creditor's interest;

35 (c) The credit agreement must authorize the creditor to place the insurance if the debtor  
36 fails to provide evidence of the insurance; and

37 (d) These requirements must be clearly disclosed to the debtor at the inception of the  
38 credit transaction.

39 (2) A debtor may always provide required insurance through existing policies of insurance  
40 owned or controlled by the debtor or procure and furnish the required coverage through an  
41 insurer authorized to transact insurance within this state. However, a creditor may establish  
42 maximum acceptable deductibles, insurer solidity standards and other reasonable conditions  
43 with respect to the required insurance.

44 (3) The insurer may not designate the creditor as the claims representative for the  
45 insurer in adjusting claims.

1 (4) The policy placed on the collateral must state that the insurer will furnish a claim  
 2 form within 30 days after notice of claim or will accept the filing of proof-of-loss covering the  
 3 occurrence, character and extent of loss.

4 **SECTION 15.** (1) A creditor shall remit the entire amount of the premium due to the  
 5 insurer or its insurance producer in accordance with the requirements of the insurer. No  
 6 commission may be paid to, or retained by, a person other than a licensed and appointed  
 7 insurance producer.

8 (2) A creditor may not retain unearned premium upon cancellation of the insurance  
 9 without crediting to the debtor's account the amount of unearned insurance charges.

10 (3)(a) An insurer or an insurance producer may not provide a rebate or other inducement  
 11 to the creditor of a portion of the premium charged to the debtor.

12 (b) As used in this subsection, "rebate or other inducement" means:

13 (A) Allowing insurers or insurance producers to purchase certificates of deposit from the  
 14 creditor or to maintain accounts with the creditor at less than the market interest rates and  
 15 charges that the creditor applies to other customers for deposit accounts of similar amounts  
 16 and durations;

17 (B) Paying a commission to a person, including a creditor, who is not appropriately li-  
 18 censed as an insurance producer in this state;

19 (C) Purchasing or offering to purchase certificates of deposit from, or maintaining or  
 20 offering to maintain deposit accounts or investment accounts with, a creditor as part of a  
 21 creditor-placed insurance solicitation; or

22 (D) Any other activity identified by rule by the Director of the Department of Consumer  
 23 and Business Services.

24 (4) An insurer that pays commissions to insurance producers for credit-placed insurance  
 25 that exceed 20 percent of the net written premium must demonstrate that the commissions  
 26 are not unreasonably high in relation to the value of the services rendered.

27 (5) A schedule of premium rates shall provide for premiums that are not unreasonable  
 28 in relation to the benefits provided by the form to which the schedule applies. For purposes  
 29 of this section, a premium rate or schedule of premium rates is presumed to be reasonable  
 30 if the rate or schedule of rates:

31 (a) Produces or may reasonably be expected to produce a ratio of incurred losses to  
 32 earned premium of 60 percent or greater; and

33 (b) Has been filed with the director as required by ORS 737.205.

34 **SECTION 16.** (1) A creditor may not impose charges, including premium costs and related  
 35 interest and finance charges, on a debtor for creditor-placed insurance coverage unless the  
 36 creditor adequately discloses to the debtor the requirement to maintain insurance.

37 (2) After the creditor provides to the debtor adequate disclosure of the requirement to  
 38 maintain insurance, a creditor may impose charges for creditor-placed insurance if the  
 39 debtor fails to provide evidence of insurance. A creditor may impose charges no earlier than  
 40 10 calendar days after sending the final notice.

41 (3) A depository institution soliciting insurance for personal, family or household pur-  
 42 poses shall disclose to the debtor that insurance related to the credit transaction may be  
 43 purchased from the insurer of the consumer's choice and will not affect the credit trans-  
 44 action decision.

45 (4) If a policy has fraud, concealment or misrepresentation language, the application is

1 required to include a fraud warning. If a fraud warning is included, the warning must be  
 2 general in nature and may not state that the applicant is “guilty” of fraud, but that the ap-  
 3 plicant “may be” guilty of fraud. Fraud or misstatement warnings that mention criminal or  
 4 civil penalties may not use definite statements of the criminal nature of an act, guilt or  
 5 possible penalties.

6 (5) For individually owned private passenger vehicles, the insurance producer must:

7 (a) Obtain a signed receipt acknowledging that the purchaser has read and understands  
 8 all required disclosures; and

9 (b) Retain all receipts for a period not less than six months after the termination of the  
 10 coverage.

11 (6) An application must:

12 (a) Be made a part of the policy;

13 (b) Be filed as part of the entire contract as required under ORS 742.003; and

14 (c) Not conflict with laws related to the coverage.

15 **SECTION 17.** ORS 742.005 is amended to read:

16 742.005. The Director of the Department of Consumer and Business Services shall disapprove  
 17 any form requiring the director’s approval:

18 (1) If the director finds it does not comply with the law;

19 (2) If the director finds it contains any provision, including statement of premium, or has any  
 20 label, description of its contents, title, heading, backing or other indication of its provisions, which  
 21 is unintelligible, uncertain, ambiguous or abstruse, or likely to mislead a person to whom the policy  
 22 is offered, delivered or issued;

23 (3) If, in the director’s judgment, its use would be prejudicial to the interests of the insurer’s  
 24 policyholders;

25 (4) If the director finds it contains provisions which are unjust, unfair or inequitable;

26 (5) If the director finds sales presentation material disapproved by the director pursuant to ORS  
 27 742.009 is being used with respect to the form; or

28 (6) If, with respect to any of the following forms, the director finds the benefits provided therein  
 29 are not reasonable in relation to the premium charged:

30 (a) Individual health insurance policy forms, including benefit certificates issued by fraternal  
 31 benefit societies and individual policies issued by health care service contractors, but excluding  
 32 policies referred to in ORS 743.402 as exempt from the application of ORS 743.405 to 743.498,  
 33 743A.160 and 743A.164;

34 (b) Small employer group health benefit plan forms for small employers as that term is defined  
 35 in ORS 743.730, including small employer group policies issued by health care service contractors;  
 36 [or]

37 (c) Credit life and credit health insurance forms subject to ORS 743.371 to 743.380; or

38 (d) **Guaranteed asset protection policy forms and forms for consumer credit insurance**  
 39 **issued or sold in connection with a loan or other credit transaction for personal, family or**  
 40 **household purposes that are subject to sections 6 to 16 of this 2015 Act.**

41 **SECTION 18.** Sections 2 to 4 and 6 to 16 of this 2015 Act and the amendments to ORS  
 42 742.005 by section 17 of this 2015 Act apply to policies issued or renewed on or after the ef-  
 43 fective date of this 2015 Act.

44 **SECTION 19.** This 2015 Act being necessary for the immediate preservation of the public  
 45 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect

1 **on its passage.**

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