

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2845**

1 On page 1 of the printed bill, delete line 3 and insert “646.608.”.

2 Delete lines 5 through 27 and delete pages 2 through 5 and insert:

3 **“SECTION 1. As used in sections 1 to 7 of this 2015 Act:**

4 **“(1) ‘Borrower’ means an individual who enters into a finance**  
5 **agreement that is secured by a motor vehicle or who, in connection**  
6 **with purchasing or leasing a motor vehicle, incurs an obligation to pay**  
7 **money to a creditor under terms and conditions that are specified in**  
8 **a finance agreement.**

9 **“(2) ‘Creditor’ means:**

10 **“(a) A person that:**

11 **“(A) Permits another person to defer or to pay in installments an**  
12 **amount due under a finance agreement that is secured by a motor**  
13 **vehicle; or**

14 **“(B) Otherwise extends credit to another person under a finance**  
15 **agreement that is entered into in connection with purchasing or leas-**  
16 **ing a motor vehicle; or**

17 **“(b) An assignee of a person described in paragraph (a) of this**  
18 **subsection.**

19 **“(3) ‘Evaluation period’ means a period of at least 30 days after the**  
20 **date on which a borrower purchases a guaranteed asset protection**  
21 **waiver during which, if the borrower did not receive a benefit from the**  
22 **guaranteed asset protection waiver, the borrower may cancel the**

1 **guaranteed asset protection waiver and receive a full refund of the**  
2 **purchase price.**

3 **“(4) ‘Finance agreement’ means a contract or other agreement that**  
4 **is evidence of a borrower’s obligation to pay money to a creditor and**  
5 **that specifies the terms and conditions under which the borrower must**  
6 **repay the obligation.**

7 **“(5) ‘Guaranteed asset protection waiver’ means a contractual pro-**  
8 **vision of or an addendum to a finance agreement that is secured by a**  
9 **motor vehicle under the terms of which a creditor agrees to waive the**  
10 **creditor’s right to collect all or part of an amount due from a borrower**  
11 **under the terms of the finance agreement or to release a borrower**  
12 **from an obligation to pay the creditor an amount due under a finance**  
13 **agreement if the motor vehicle:**

14 **“(a) Suffers physical damage that is equivalent to a total loss; or**

15 **“(b) Is stolen and is not recovered.**

16 **“(6) ‘Insurer’ means an insurer that is licensed, registered or oth-**  
17 **erwise authorized to transact insurance in this state.**

18 **“(7) ‘Motor vehicle’ means a self-propelled or towed vehicle that is**  
19 **designed for personal or commercial use, such as an automobile,**  
20 **truck, motorcycle, recreational vehicle, all-terrain vehicle,**  
21 **snowmobile, camper, boat, personal watercraft or a trailer for a mo-**  
22 **torcycle, boat, camper or personal watercraft.**

23 **“(8) ‘Reimbursement insurance policy’ means an insurance policy**  
24 **under the terms of which an insurer reimburses a creditor for an**  
25 **amount the creditor must waive under a guaranteed asset protection**  
26 **waiver.**

27 **“SECTION 2. (1)(a) A guaranteed asset protection waiver is not in-**  
28 **surance and is not subject to the provisions of the Insurance Code. A**  
29 **person, other than an insurer, that sells a guaranteed asset protection**  
30 **waiver in compliance with sections 1 to 7 of this 2015 Act does not**

1 become subject to the Insurance Code by reason of the sale.

2 “(b) Notwithstanding any other provision of law, any cost for a  
3 guaranteed asset protection waiver into which a borrower enters in  
4 compliance with the Truth in Lending Act, 15 U.S.C. 1601 et seq., and  
5 regulations promulgated under the Truth in Lending Act, must be  
6 stated separately in the finance agreement and is not a finance charge  
7 or interest.

8 “(2) Sections 1 to 7 of this 2015 Act do not apply to:

9 “(a) An insurance policy that an insurer offers under the provisions  
10 of the Insurance Code;

11 “(b) A debt cancellation contract or debt suspension agreement of-  
12 fered in compliance with 12 C.F.R. 37.2 or 12 C.F.R. part 721, both as  
13 in effect on the effective date of this 2015 Act; or

14 “(c) A state bank, as defined in ORS 706.008 or a credit union, as  
15 defined in ORS 723.008.

16 “SECTION 3. A person may not sell a guaranteed asset protection  
17 waiver in connection with a sale of a motor vehicle that is used for  
18 personal, family or household purposes unless, at the time of the sale:

19 “(1) The person discloses, in writing and in plain and easily under-  
20 standable language:

21 “(a) The name, address and other contact information for:

22 “(A) The person that sells the guaranteed asset protection waiver;

23 “(B) The creditor, if different; and

24 “(C) Any other person that is a party to or has duties, responsibil-  
25 ities or other obligations under the terms of the guaranteed asset  
26 protection waiver.

27 “(b) The purchase price of the guaranteed asset protection waiver.

28 “(c) The terms and conditions of the guaranteed asset protection  
29 waiver, including but not limited to:

30 “(A) Conditions under which the creditor will waive or decline to

1 waive all or a portion of the obligation that remains under a finance  
2 agreement;

3 “(B) The methodology for determining the amount the creditor will  
4 waive; and

5 “(C) The length of the evaluation period.

6 “(d) The identity, location and contact information for the person  
7 to which the borrower must submit a claim for benefits or a refund  
8 under the guaranteed asset protection waiver and the procedure the  
9 borrower must follow to submit the claim.

10 “(e) Conditions under which the borrower may cancel the guaran-  
11 teed asset protection waiver and the procedure the borrower must  
12 follow to cancel, both during the evaluation period and after the  
13 evaluation period expires, if the terms of the guaranteed asset pro-  
14 tection waiver permit cancellation after the evaluation period expires.

15 “(f) The formula or methodology that will apply to calculating the  
16 amount of any refund available under the terms and conditions of the  
17 guaranteed asset protection waiver if:

18 “(A) The borrower cancels the guaranteed asset protection waiver  
19 during the evaluation period or, if permitted under the terms and  
20 conditions of the guaranteed asset protection waiver, after the evalu-  
21 ation period expires; or

22 “(B) The finance agreement is terminated early.

23 “(2) The guaranteed asset protection waiver provides that the bor-  
24 rower may cancel the guaranteed asset protection waiver during the  
25 evaluation period for a full refund of the purchase price if the bor-  
26 rower did not receive any benefits.

27 “(3) The creditor states clearly, and the terms of the guaranteed  
28 asset protection waiver provide in writing, that purchasing a guaran-  
29 teed asset protection waiver is not required in order to obtain credit  
30 or complete a purchase or lease of a motor vehicle and does not affect

1 the terms and conditions of credit that a borrower obtains from a  
2 creditor.

3 **“SECTION 4. (1) A guaranteed asset protection waiver must deter-**  
4 **mine the amount that a creditor waives under the terms of the guar-**  
5 **anteed asset protection waiver in accordance with the following**  
6 **methods:**

7 **“(a) If primary motor vehicle insurance or third party liability in-**  
8 **surance covers the amount of a total loss of the motor vehicle, the**  
9 **creditor shall waive the difference between:**

10 **“(A) The primary insurer’s or the third party’s determination of the**  
11 **motor vehicle’s actual cash value as of the date of the total loss; and**

12 **“(B) The amount the borrower owes under the finance agreement.**

13 **“(b) If primary motor vehicle insurance or third party liability in-**  
14 **surance does not cover a total loss of the motor vehicle, if an insurer**  
15 **that issued the primary motor vehicle insurance or the third party li-**  
16 **ability insurance is insolvent or if the primary motor vehicle insurance**  
17 **or third party liability insurance have stated values or limits that are**  
18 **less than the actual cash value of the insured motor vehicle, the**  
19 **creditor shall waive the difference between:**

20 **“(A) The value of the motor vehicle immediately before the loss or**  
21 **theft of the motor vehicle, as shown in a published and generally**  
22 **available regional or national guide to motor vehicle values or from**  
23 **the best available equivalent information, as specified in the guaran-**  
24 **teed asset protection waiver; and**

25 **“(B) The amount the borrower owes under the finance agreement.**

26 **“(2)(a) A guaranteed asset protection waiver need not require a**  
27 **creditor to waive:**

28 **“(A) A motor vehicle insurance policy deductible;**

29 **“(B) Delinquent, missed or deferred payments;**

30 **“(C) Late fees or charges;**

1       **“(D) Unearned finance charges, interest or lease charges;**

2       **“(E) Unearned rental payments;**

3       **“(F) Taxes;**

4       **“(G) Refundable items that include, but are not limited to:**

5       **“(i) Charges associated with service contracts;**

6       **“(ii) Prepaid taxes and fees; or**

7       **“(iii) Credit insurance; or**

8       **“(H) Other similar items that the guaranteed asset protection**  
9 **waiver specifies.**

10       **“(b) A guaranteed asset protection waiver may specify limits on the**  
11 **amount a creditor must waive based on a loan to value ratio, a maxi-**  
12 **imum term, a maximum waiver amount or other limits.**

13       **“(3) A guaranteed asset protection waiver may require a creditor**  
14 **to waive all or a portion of a motor vehicle insurance policy deduct-**  
15 **ible.**

16       **“SECTION 5. (1)(a) A guaranteed asset protection waiver may pro-**  
17 **vide that a borrower may cancel the guaranteed asset protection**  
18 **waiver after the evaluation period expires or that the guaranteed asset**  
19 **protection waiver expires if the finance agreement terminates early.**  
20 **If the guaranteed asset protection waiver permits a borrower to cancel**  
21 **as provided in this subsection and the borrower did not receive a**  
22 **benefit, the borrower is entitled to a refund of a portion of the pur-**  
23 **chase price in accordance with a formula or methodology specified in**  
24 **the guaranteed asset protection waiver.**

25       **“(b) A borrower shall apply in writing to the person identified in the**  
26 **guaranteed asset protection waiver for a refund of all or a portion of**  
27 **the purchase price of the guaranteed asset protection waiver within**  
28 **90 days after the borrower cancels the guaranteed asset protection**  
29 **waiver or the finance agreement terminates.**

30       **“(2) The terms of the guaranteed asset protection waiver may pro-**

1 vide that if the borrower defaults on the obligation set forth in the  
2 finance agreement, if the creditor repossesses the motor vehicle that  
3 secures the obligation or if the finance agreement terminates for a  
4 reason other than the borrower's satisfaction of the obligation set  
5 forth in the finance agreement, any refund due as a consequence of  
6 the cancellation or termination may be:

7 “(a) Paid directly to the creditor; or

8 “(b) Applied to any outstanding balance on the obligation set forth  
9 in the finance agreement, unless the borrower has paid the obligation  
10 in full.

11 “(3) Unless canceled as provided in this section, a guaranteed asset  
12 protection waiver remains in effect as part of the finance agreement  
13 for the term set forth in the guaranteed asset protection waiver even  
14 if the finance agreement is sold, assigned or otherwise transferred.

15 “SECTION 6. (1)(a) A creditor other than a person that sells a  
16 guaranteed asset protection waiver in connection with a retail sale of  
17 a motor vehicle may insure a guaranteed asset protection waiver with  
18 a reimbursement insurance policy.

19 “(b) A person that sells a guaranteed asset protection waiver in  
20 connection with a retail sale of a motor vehicle shall insure the  
21 guaranteed asset protection waiver with a reimbursement insurance  
22 policy that meets the requirements set forth in subsection (2) of this  
23 section.

24 “(c) A lessor that leases a motor vehicle does not need to insure a  
25 guaranteed asset protection waiver that the lessor sells in connection  
26 with the lease.

27 “(2) A reimbursement insurance policy for a guaranteed asset pro-  
28 tection waiver must state:

29 “(a) The terms of the obligation the insurer has to reimburse the  
30 creditor for amounts the creditor must waive under the terms of the

1 **guaranteed asset protection waiver;**

2 **“(b) That the insurer’s obligation to reimburse the creditor extends**  
3 **to the creditor’s assignee or any person to which the creditor sells or**  
4 **transfers the finance agreement or the guaranteed asset protection**  
5 **waiver that the reimbursement insurance policy covers;**

6 **“(c) That the reimbursement insurance policy remains in effect**  
7 **until canceled in accordance with applicable provisions of the Insur-**  
8 **ance Code; and**

9 **“(d) That a cancellation of the reimbursement insurance policy does**  
10 **not affect an insurer’s obligation under the reimbursement insurance**  
11 **policy for guaranteed asset protection waivers that the insured sold,**  
12 **and for which the insurer received premium payments, before the date**  
13 **on which the reimbursement insurance policy was canceled.**

14 **“(3) A person that sells a guaranteed asset protection waiver in**  
15 **connection with a sale or lease of a motor vehicle shall report to any**  
16 **insurer that has issued a reimbursement insurance policy to the per-**  
17 **son the number of guaranteed asset protection waiver sales and any**  
18 **other details the insurer requires under the terms of the reimburse-**  
19 **ment insurance policy and shall timely forward to the insurer all funds**  
20 **due under the terms of the reimbursement insurance policy.**

21 **“SECTION 7. (1) A person that is subject to sections 1 to 7 of this**  
22 **2015 Act shall act in a fiduciary capacity with respect to funds the**  
23 **person receives or holds for the benefit of another person.**

24 **“(2) A person that sells a guaranteed asset protection waiver in**  
25 **connection with a retail sale of a motor vehicle may not:**

26 **“(a) Charge more for the guaranteed asset protection waiver than**  
27 **five percent of the amount the borrower finances under a finance**  
28 **agreement; or**

29 **“(b) Vary the benefits, terms, conditions or price of the guaranteed**  
30 **asset protection waiver on account of a borrower’s race, sex, sexual**



1 **orientation, income or education.**

2 **“SECTION 8. A violation of a provision of sections 1 through 7 of**  
3 **this 2015 Act is an unlawful practice under ORS 646.608 that is subject**  
4 **to an action under ORS 646.638.**

5 **“SECTION 9.** ORS 646.608, as amended by section 3, chapter 19, Oregon  
6 Laws 2014, is amended to read:

7 “646.608. (1) A person engages in an unlawful practice if in the course of  
8 the person’s business, vocation or occupation the person does any of the  
9 following:

10 “(a) Passes off real estate, goods or services as the real estate, goods or  
11 services of another.

12 “(b) Causes likelihood of confusion or of misunderstanding as to the  
13 source, sponsorship, approval, or certification of real estate, goods or ser-  
14 vices.

15 “(c) Causes likelihood of confusion or of misunderstanding as to affil-  
16 iation, connection, or association with, or certification by, another.

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

19 “(e) Represents that real estate, goods or services have sponsorship, ap-  
20 proval, characteristics, ingredients, uses, benefits, quantities or qualities that  
21 the real estate, goods or services do not have or that a person has a spon-  
22 sorship, approval, status, qualification, affiliation, or connection that the  
23 person does not have.

24 “(f) Represents that real estate or goods are original or new if the real  
25 estate or goods are deteriorated, altered, reconditioned, reclaimed, used or  
26 secondhand.

27 “(g) Represents that real estate, goods or services are of a particular  
28 standard, quality, or grade, or that real estate or goods are of a particular  
29 style or model, if the real estate, goods or services are of another.

30 “(h) Disparages the real estate, goods, services, property or business of a

1 customer or another by false or misleading representations of fact.

2 “(i) Advertises real estate, goods or services with intent not to provide  
3 the real estate, goods or services as advertised, or with intent not to supply  
4 reasonably expectable public demand, unless the advertisement discloses a  
5 limitation of quantity.

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

8 “(k) Makes false or misleading representations concerning credit avail-  
9 ability or the nature of the transaction or obligation incurred.

10 “(L) Makes false or misleading representations relating to commissions  
11 or other compensation to be paid in exchange for permitting real estate,  
12 goods or services to be used for model or demonstration purposes or in ex-  
13 change for submitting names of potential customers.

14 “(m) Performs service on or dismantles any goods or real estate if the  
15 owner or apparent owner of the goods or real estate does not authorize the  
16 service or dismantling.

17 “(n) Solicits potential customers by telephone or door to door as a seller  
18 unless the person provides the information required under ORS 646.611.

19 “(o) In a sale, rental or other disposition of real estate, goods or services,  
20 gives or offers to give a rebate or discount or otherwise pays or offers to pay  
21 value to the customer in consideration of the customer giving to the person  
22 the names of prospective purchasers, lessees, or borrowers, or otherwise  
23 aiding the person in making a sale, lease, or loan to another person, if  
24 earning the rebate, discount or other value is contingent upon an event oc-  
25 ccurring after the time the customer enters into the transaction.

26 “(p) Makes any false or misleading statement about a prize, contest or  
27 promotion used to publicize a product, business or service.

28 “(q) Promises to deliver real estate, goods or services within a certain  
29 period of time with intent not to deliver the real estate, goods or services  
30 as promised.

1 “(r) Organizes or induces or attempts to induce membership in a pyramid  
2 club.

3 “(s) Makes false or misleading representations of fact concerning the of-  
4 fering price of, or the person’s cost for real estate, goods or services.

5 “(t) Concurrent with tender or delivery of any real estate, goods or ser-  
6 vices fails to disclose any known material defect or material nonconformity.

7 “(u) Engages in any other unfair or deceptive conduct in trade or com-  
8 merce.

9 “(v) Violates any of the provisions relating to auction sales, consignment  
10 sales, auctioneers, consignees or auction marts under ORS 698.640, whether  
11 in a commercial or noncommercial situation.

12 “(w) Manufactures mercury fever thermometers.

13 “(x) Sells or supplies mercury fever thermometers unless the thermometer  
14 is required by federal law, or is:

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

16 “(B) Supplied with instructions on the careful handling of the  
17 thermometer to avoid breakage and on the proper cleanup of mercury should  
18 breakage occur.

19 “(y) Sells a thermostat that contains mercury unless the thermostat is  
20 labeled in a manner to inform the purchaser that mercury is present in the  
21 thermostat and that the thermostat may not be disposed of until the mercury  
22 is removed, reused, recycled or otherwise managed to ensure that the mer-  
23 cury does not become part of the solid waste stream or wastewater. For  
24 purposes of this paragraph, ‘thermostat’ means a device commonly used to  
25 sense and, through electrical communication with heating, cooling or venti-  
26 lation equipment, control room temperature.

27 “(z) Sells or offers for sale a motor vehicle manufactured after January  
28 1, 2006, that contains mercury light switches.

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

30 “(bb) Violates ORS 646A.070 (1).

- 1 “(cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 2 “(dd) Violates the provisions of ORS 128.801 to 128.898.
- 3 “(ee) Violates ORS 646.883 or 646.885.
- 4 “(ff) Violates ORS 646.569.
- 5 “(gg) Violates the provisions of ORS 646A.142.
- 6 “(hh) Violates ORS 646A.360.
- 7 “(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 8 “(jj) Violates ORS 646.563.
- 9 “(kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 10 “(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any  
11 rule adopted pursuant thereto.
- 12 “(mm) Violates ORS 646A.210 or 646A.214.
- 13 “(nn) Violates any provision of ORS 646A.124 to 646A.134.
- 14 “(oo) Violates ORS 646A.095.
- 15 “(pp) Violates ORS 822.046.
- 16 “(qq) Violates ORS 128.001.
- 17 “(rr) Violates ORS 646A.800 (2) to (4).
- 18 “(ss) Violates ORS 646A.090 (2) to (4).
- 19 “(tt) Violates ORS 87.686.
- 20 “(uu) Violates ORS 646A.803.
- 21 “(vv) Violates ORS 646A.362.
- 22 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or  
23 646A.054.
- 24 “(xx) Violates ORS 180.440 (1) or 180.486 (1).
- 25 “(yy) Commits the offense of acting as a vehicle dealer without a certif-  
26 icate under ORS 822.005.
- 27 “(zz) Violates ORS 87.007 (2) or (3).
- 28 “(aaa) Violates ORS 92.405 (1), (2) or (3).
- 29 “(bbb) Engages in an unlawful practice under ORS 646.648.
- 30 “(ccc) Violates ORS 646A.365.

1 “(ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.  
2 “(eee) Sells a gift card in violation of ORS 646A.276.  
3 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.  
4 “(ggg) Violates ORS 646A.430 to 646A.450.  
5 “(hhh) Violates a provision of ORS 744.318 to 744.384.  
6 “(iii) Violates a provision of ORS 646A.702 to 646A.720.  
7 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning  
8 or declaration described in ORS 646A.530 is issued for the children’s product,  
9 as defined in ORS 646A.525, that is the subject of the violation.  
10 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,  
11 697.682, 697.692 or 697.707.  
12 “(LLL) Violates the consumer protection provisions of the  
13 Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on  
14 January 1, 2010.  
15 “(mmm) Violates a provision of ORS 646A.480 to 646A.495.  
16 “(nnn) Violates ORS 646A.082.  
17 “(ooo) Violates ORS 646.647.  
18 “(ppp) Violates ORS 646A.115.  
19 “(qqq) Violates a provision of ORS 646A.405.  
20 “(rrr) Violates ORS 646A.092.  
21 “(sss) Violates a provision of ORS 646.644.  
22 “(ttt) Violates a provision of ORS 646A.295.  
23 “(uuu) Violates ORS 646A.564.  
24 “(vvv) Engages in the business of, or acts in the capacity of, an immi-  
25 gration consultant, as defined in ORS 9.280, in this state and for compen-  
26 sation, unless federal law authorizes the person to do so or unless the person  
27 is an active member of the Oregon State Bar.  
28 “(www) Violates ORS 702.012, 702.029, 702.032 or 702.054.  
29 “(xxx) Violates ORS 646A.806.  
30 “(yyy) Violates section 2 (2), chapter 19, Oregon Laws 2014.

