

House Bill 3305

Sponsored by Representative STARK

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**.

Includes travel trailers as vehicles that are subject to state's "lemon law."
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to enforcing warranties for new vehicles; amending ORS 646A.400, 646A.402, 646A.404,
3 646A.405, 646A.406 and 646A.416; and declaring an emergency.

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

5 **SECTION 1.** ORS 646A.400 is amended to read:

6 646A.400. As used in ORS 646A.400 to 646A.418:

7 (1) "Collateral charge" means a charge, fee or cost to the consumer related to the sale or lease
8 of a motor vehicle, such as:

9 (a) A sales, property or use tax;

10 (b) A license, registration or title fee;

11 (c) A finance charge;

12 (d) A prepayment penalty;

13 (e) A charge for undercoating, rust-proofing or factory or dealer installed options; and

14 (f) The cost of an aftermarket item purchased within 20 days after delivery of the motor vehicle.

15 (2) "Consumer" means:

16 (a) The purchaser or lessee, other than for purposes of resale, of a new motor vehicle normally
17 used for personal, family or household purposes;

18 (b) Any person to whom a new motor vehicle used for personal, family or household purposes
19 is transferred for the same purposes during the duration of an express warranty applicable to such
20 motor vehicle; and

21 (c) Any other person entitled by the terms of such warranty to enforce the obligations of the
22 warranty.

23 (3)(a) "Motor home" means a motor vehicle that is a new or demonstrator vehicular unit built
24 on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab or van that be-
25 comes an integral part of the completed vehicle, and that is designed to provide temporary living
26 quarters for recreational, camping or travel use.

27 (b) "Motor home" does not include:

28 **(A)** A trailer, camper, van or vehicle manufactured by an entity that primarily manufactures
29 motor vehicles other than motor homes as defined in this subsection[.]; **or**

30 *[(c)]* **(B)** *["Motor home" does not include "living facility components," which means those]* Items
31 designed, used or maintained primarily for the living quarters portion of *[the]* a motor home, in-

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.

cluding but not limited to the flooring, plumbing fixtures, appliances, water heater, fabrics, door and furniture hardware, lighting fixtures, generators, roof heating and air conditioning units, cabinets, countertops, furniture and audio-visual equipment.

(4) “Motor vehicle” means a passenger motor vehicle, as defined in ORS 801.360, that is purchased in this state or is purchased outside this state but registered in this state.

(5) **“Travel trailer” means a vehicle or prefabricated structure without motive power that is:**

(a) **Eight and one-half feet in width, or less; and**

(b) **Designed to provide or to assist in providing storage or temporary living quarters for recreational, camping or travel use.**

SECTION 2. ORS 646A.402 is amended to read:

646A.402. The remedy under the provisions of ORS 646A.400 to 646A.418 is available to a consumer if:

(1) A new motor vehicle **or travel trailer** does not conform to applicable manufacturer’s express warranties;

(2) The consumer reports each nonconformity to the manufacturer, the manufacturer’s agent or the manufacturer’s authorized dealer, for the purpose of repair or correction, during the two-year period following the date of original delivery of the motor vehicle **or travel trailer** to the consumer or, **for motor vehicles**, during the period ending on the date on which the mileage on the motor vehicle reaches 24,000 miles, whichever period ends first; and

(3) The manufacturer has received direct written notification from or on behalf of the consumer and has had an opportunity to correct the alleged defect. “Notification” under this subsection includes, but is not limited to, a request by the consumer for an informal dispute settlement procedure under ORS 646A.408.

SECTION 3. ORS 646A.404 is amended to read:

646A.404. (1) If *[the]* a manufacturer or agents or authorized dealers of the manufacturer are unable to conform the motor vehicle **or travel trailer** to an applicable manufacturer’s express warranty by repairing or correcting a defect or condition that substantially impairs the use, market value or safety of the motor vehicle **or travel trailer** to the consumer after a reasonable number of attempts, the manufacturer shall:

(a) Replace the motor vehicle with a new motor vehicle; *[or]*

(b) Replace the travel trailer with a new travel trailer; or

[(b)] **(c)** Accept return of the **motor vehicle or travel trailer** from the consumer and refund to the consumer the full purchase or lease price and collateral charges paid, less a reasonable allowance for the consumer’s use of the motor vehicle **or travel trailer**. In lieu of refunding, as part of the collateral charges paid, the cost of an aftermarket item purchased within 20 days after delivery of the motor vehicle **or travel trailer**, the manufacturer may remove the aftermarket item from the motor vehicle **or travel trailer**, if the aftermarket item can be removed from the motor vehicle **or travel trailer** without damage, and return the aftermarket item to the consumer.

(2) Refunds must be made to the consumer and lienholder, if any, as the interests of the consumer and lienholder may appear.

(3)(a) As used in this section, “reasonable allowance for the consumer’s use” of the motor vehicle^[7] **or the travel trailer** means:

(A) For a motor vehicle that is not a motorcycle or a motor home, an amount of money equivalent to the motor vehicle mileage as described in paragraph (b) of this subsection, multiplied by the

1 combined amount of the cash price or lease price of the motor vehicle and the amount of any
2 collateral charges paid by the consumer, and divided by 120,000.

3 (B) For a motorcycle, an amount of money equivalent to the motor vehicle mileage as described
4 in paragraph (b) of this subsection, multiplied by the combined amount of the cash price or lease
5 price of the motorcycle and the amount of any collateral charges paid by the consumer, and divided
6 by 25,000.

7 (C) For a motor home, an amount of money equivalent to the motor vehicle mileage as described
8 in paragraph (b) of this subsection, multiplied by the combined amount of the cash price or lease
9 price of the motor home and the amount of any collateral charges paid by the consumer, and divided
10 by 90,000.

11 **(D) For a travel trailer, the amount of money that is equivalent to the reasonable rate**
12 **of rental for a travel trailer of similar make, model, year and capacity multiplied by the**
13 **number of days during which the consumer occupied or otherwise used the travel trailer.**

14 (b) The motor vehicle mileage for the purposes of the calculation described in paragraph (a) of
15 this subsection is the motor vehicle’s mileage at the time the manufacturer takes an action described
16 in subsection (1) of this section, less 10 miles for mileage that the motor vehicle traveled during any
17 period in which the consumer did not have use of the motor vehicle because the manufacturer or
18 an agent or authorized dealer of the manufacturer was repairing the motor vehicle.

19 (4) It is an affirmative defense to a claim under ORS 646A.400 to 646A.418 that:

20 (a) An alleged nonconformity does not substantially impair such use, market value or safety; or

21 (b) A nonconformity is the result of abuse, neglect or unauthorized modifications or alterations
22 of the motor vehicle **or travel trailer.**

23 **SECTION 4.** ORS 646A.405 is amended to read:

24 646A.405. (1) A manufacturer that takes an action with respect to a motor vehicle **or travel**
25 **trailer** under ORS 646A.404 [(1)(a) or (b)] (1) shall request the Department of Transportation to:

26 (a) Title the motor vehicle **or travel trailer** in the manufacturer’s name; and

27 (b) Inscribe on the certificate of title for the motor vehicle **or travel trailer** and in the
28 department’s records concerning the motor vehicle **or travel trailer** the notation “Lemon Law
29 Buyback.”

30 (2) A person that acquires a motor vehicle **or travel trailer** in order to sell, lease or otherwise
31 transfer the motor vehicle **or travel trailer** and that knows or should have known that the man-
32 ufacturer took an action with respect to the motor vehicle **or travel trailer** under ORS 646A.404
33 [(1)(a) or (b)] (1) or that the certificate of title for the motor vehicle **or travel trailer** is inscribed
34 with the notation specified in subsection (1) of this section, before selling, leasing or otherwise
35 transferring the motor vehicle **or travel trailer** shall:

36 (a) Provide the buyer, lessee or transferee with a notice that states:

37 _____
38
39 This vehicle **or travel trailer** was repurchased by its manufacturer in accordance with Oregon’s
40 consumer warranty law because of a defect in the vehicle **or travel trailer**. The title to this vehicle
41 **or travel trailer** has been permanently inscribed with the notation “Lemon Law Buyback.”
42 _____

43
44 (b) Obtain the signature of the buyer, lessee or transferee on the notice in a space provided for
45 that purpose under a statement in which the buyer, lessee or transferee acknowledges receiving and

1 understanding the notice.

2 (3) Failure to comply with the requirements of subsection (1) or (2) of this section is an unlawful
 3 practice under ORS 646.608 and a person that fails to comply with the requirements is subject to
 4 the causes of action and remedies provided in ORS 646.632 and 646.638.

5 (4) The Director of Transportation may adopt rules to prescribe the form and content of the
 6 notice required under this section and to require the disclosure of other information the director
 7 deems necessary to inform a buyer, lessee or transferee of the condition of a motor vehicle **or travel**
 8 **trailer** that is subject to the provisions of this section or information that is otherwise material to
 9 a sale, lease or transfer of the motor vehicle **or travel trailer**.

10 **SECTION 5.** ORS 646A.406 is amended to read:

11 646A.406. (1) It is presumed that a reasonable number of attempts have been undertaken to
 12 conform a motor vehicle **or travel trailer** to the applicable manufacturer’s express warranties if,
 13 during the two-year period following the date of original delivery of the motor vehicle **or travel**
 14 **trailer** to a consumer or, **for a motor vehicle**, during the period ending on the date on which the
 15 mileage on the motor vehicle reaches 24,000 miles, whichever period ends first:

16 (a) The manufacturer or an agent or authorized dealer of the manufacturer has subjected the
 17 nonconformity to repair or correction three or more times and has had an opportunity to cure the
 18 defect alleged, but the nonconformity continues to exist;

19 (b) The motor vehicle is out of service by reason of repair or correction for a cumulative total
 20 of 30 or more calendar days or 60 or more calendar days if the vehicle is a motor home **or travel**
 21 **trailer**; or

22 (c) The manufacturer or an agent or authorized dealer of the manufacturer has subjected a
 23 nonconformity that is likely to cause death or serious bodily injury to repair or correction at least
 24 one time and has made a final attempt to repair or correct the nonconformity, but the nonconformity
 25 continues to exist.

26 (2) A repair or correction for purposes of subsection (1) of this section includes a repair that
 27 must take place after the expiration of the earlier of either period.

28 (3) The period ending on the date on which the mileage on the motor vehicle reaches 24,000
 29 miles, the two-year period and the 30-day **or 60-day** period [*shall*] **must** be extended by any period
 30 of time during which repair services are not available to the consumer because of a war, invasion,
 31 strike, fire, flood or other natural disaster.

32 (4) The presumption described in subsection (1) of this section does not apply against a man-
 33 ufacturer unless the manufacturer has received prior direct written notification from or on behalf
 34 of the consumer and has had an opportunity to cure the defect alleged.

35 **SECTION 6.** ORS 646A.416 is amended to read:

36 646A.416. An action brought under ORS 646A.400 to 646A.418 must be commenced within one
 37 year after whichever of the following periods ends earlier:

38 (1) The period ending on the date on which the mileage on the motor vehicle reaches 24,000
 39 miles;

40 (2) The two-year period following the date of the original delivery of the motor vehicle **or travel**
 41 **trailer** to the consumer; or

42 (3) The period that ends after an extension of time provided under ORS 646A.406 (3).

43 **SECTION 7. This 2017 Act being necessary for the immediate preservation of the public**
 44 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
 45 **on its passage.**

