

Enrolled Senate Bill 134

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CHAPTER

AN ACT

Relating to transactions for motor vehicles contingent on a lender’s purchase of a financing agreement; creating new provisions; and amending ORS 646.608 and 646A.090.

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

SECTION 1. ORS 646A.090 is amended to read:

646A.090. (1) As used in this section:

(a) “Buyer” means *[the purchaser or lessee of]* **a person that purchases or leases** a motor vehicle.

(b) “Final approval of funding” means a lender’s irrevocable agreement to *[finance a sale or lease of a motor vehicle]* **purchase a retail installment contract or lease agreement from a seller** according to the exact terms that the seller and buyer have negotiated.

(c) “Lender” means *[any]* **a person that [finances a sale or lease of a motor vehicle] purchases a retail installment contract or lease agreement for a motor vehicle.**

(d) “Motor vehicle” means a motor vehicle, as defined in ORS 801.360, that is sold or leased in this state for personal, family or household purposes.

(e) “Seller” means a *[holder of]* **person that holds** a current, valid vehicle dealer certificate issued under ORS 822.020 or renewed under ORS 822.040.

(2) A seller may *[make an]* offer to sell or lease a motor vehicle to a buyer or prospective buyer **under a retail installment contract or lease agreement** that is subject to *[future acceptance by a lender that may finance the transaction at the request of the seller]* **a lender’s agreement to purchase the retail installment contract or lease agreement into which the buyer enters.**

(3) In any transaction described in subsection (2) of this section:

(a) If, **within 14 days after a buyer takes possession of a motor vehicle,** a lender does not agree to *[finance the transaction]* **purchase a retail installment contract or lease agreement** on the exact terms *[negotiated between]* **that** the seller and the buyer **negotiate** *[within 14 days after the date on which the buyer takes possession of the motor vehicle]* and the seller *[has not received]* **does not receive** final approval of funding from the lender, the seller shall return to the buyer all items of value **the seller** received from the buyer as part of the transaction; and

(b) If the seller has accepted a trade-in motor vehicle from the buyer *[or prospective buyer],* the seller *[shall]* **may** not sell or lease the buyer’s *[or prospective buyer’s]* trade-in motor vehicle before the seller *[has received]* **receives** final approval of funding from the lender.

(4) In any transaction described in subsection (2) of this section, if the buyer has accepted a motor vehicle from the seller **that is subject to a retail installment contract or lease**

agreement, and a lender does not agree to [*finance the transaction*] **purchase the retail installment contract or lease agreement** on the exact terms [*negotiated between*] the seller and the buyer **negotiated**, the buyer shall return to the seller all items of value **the buyer** received from the seller as part of the transaction. [*The offer or contract to sell or lease the motor vehicle may provide in writing that the buyer is liable to the seller for*] **The seller may charge the buyer only for amounts that the retail installment contract or lease agreement provides in writing that the seller may charge. The retail installment contract or lease agreement may provide only for these amounts:**

(a) The fair market value of damage to, excessive wear and tear on or loss of the motor vehicle [*occurring*] **that occurs** between the date the buyer takes possession of the motor vehicle and the date the buyer returns the motor vehicle to the seller's custody; and

(b) If, within 14 days [*of*] **after** the date **on which** the buyer takes possession of the motor vehicle, the seller sends notice to the buyer by first class mail **or written electronic communication** that [*financing is unavailable*] **a lender has not agreed to purchase the retail installment contract or lease agreement**, a reasonable charge per mile for the use of the motor vehicle. [*If the buyer returns the motor vehicle within five days of the mailing of the notice, the seller may charge the buyer for miles driven during the first 14 days that the buyer had possession of the motor vehicle. If the buyer does not return the vehicle within five days of the mailing of the notice, the seller may charge the buyer for all miles driven while the buyer has possession of the motor vehicle. The charge may not exceed the rate per mile allowed under federal law as a deduction for federal income tax purposes for an ordinary and necessary business expense.*] **The charge may not exceed the rate per mile allowed under federal law as a deduction for federal income tax purposes for an ordinary and necessary business expense.**

(5) If the buyer makes a reasonable attempt to return the vehicle within five days after the seller sends a notice under subsection (4)(b) of this section, but the seller is not available to accept the return, the seller may not charge the buyer under subsection (4)(b) of this section.

[*(5)*] **(6)(a) [It is] Subject to paragraph (b) of this subsection, a seller has** an affirmative defense to a claim or charge of violating subsection (3)(a) of this section **by showing** that the buyer failed to return the motor vehicle after the seller [*sent notice to the buyer by first class mail that financing was unavailable*] **sent the notice described in subsection (4)(b) of this section.**

(b) A seller shall retain proof of the date on which the seller sent to the buyer the notice described in subsection (4)(b) of this section.

SECTION 2. ORS 646.608 is amended to read:

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

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

(b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.

(c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.

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

(e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

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

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

(h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.

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

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

(k) Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred.

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

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

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

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

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

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

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

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

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

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

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

(w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

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

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

- (dd) Violates the provisions of ORS 128.801 to 128.898.
- (ee) Violates ORS 646.883 or 646.885.
- (ff) Violates ORS 646.569.
- (gg) Violates the provisions of ORS 646A.142.
- (hh) Violates ORS 646A.360.
- (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- (jj) Violates ORS 646.563.
- (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.
- (mm) Violates ORS 646A.210 or 646A.214.
- (nn) Violates any provision of ORS 646A.124 to 646A.134.
- (oo) Violates ORS 646A.095.
- (pp) Violates ORS 822.046.
- (qq) Violates ORS 128.001.
- (rr) Violates ORS 646A.800 (2) to (4).
- (ss) Violates ORS 646A.090 (2) to [(4)] (5).
- (tt) Violates ORS 87.686.
- (uu) Violates ORS 646A.803.
- (vv) Violates ORS 646A.362.
- (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- (xx) Violates ORS 180.440 (1) or 180.486 (1).
- (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- (zz) Violates ORS 87.007 (2) or (3).
- (aaa) Violates ORS 92.405 (1), (2) or (3).
- (bbb) Engages in an unlawful practice under ORS 646.648.
- (ccc) Violates ORS 646A.365.
- (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- (eee) Sells a gift card in violation of ORS 646A.276.
- (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- (ggg) Violates ORS 646A.430 to 646A.450.
- (hhh) Violates a provision of ORS 744.318 to 744.384.
- (iii) Violates a provision of ORS 646A.702 to 646A.720.
- (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration described in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the subject of the violation.
- (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- (nnn) Violates ORS 646A.082.
- (ooo) Violates ORS 646.647.
- (ppp) Violates ORS 646A.115.
- (qqq) Violates a provision of ORS 646A.405.
- (rrr) Violates ORS 646A.092.
- (sss) Violates a provision of ORS 646.644.
- (ttt) Violates a provision of ORS 646A.295.
- (uuu) Violates ORS 646A.564.
- (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as defined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to do so or unless the person is an active member of the Oregon State Bar.
- (www) Violates ORS 702.012, 702.029, 702.032 or 702.054.

(xxx) Violates ORS 646A.806.

(yyy) Violates ORS 646A.810 (2).

(zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws 2015.

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

(3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prosecuting attorney need not prove competition between the parties or actual confusion or misunderstanding.

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

(5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

SECTION 3. ORS 646.608, as amended by section 10, chapter 523, Oregon Laws 2015, is amended to read:

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

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

(b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.

(c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.

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

(e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

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

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

(h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.

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

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

(k) Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred.

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

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

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

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

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

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

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

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

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

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

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

(w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

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

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

(ee) Violates ORS 646.883 or 646.885.

(ff) Violates ORS 646.569.

(gg) Violates the provisions of ORS 646A.142.

(hh) Violates ORS 646A.360.

(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

(jj) Violates ORS 646.563.

(kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.

(mm) Violates ORS 646A.210 or 646A.214.

(nn) Violates any provision of ORS 646A.124 to 646A.134.

(oo) Violates ORS 646A.095.

(pp) Violates ORS 822.046.

(qq) Violates ORS 128.001.

(rr) Violates ORS 646A.800 (2) to (4).

- (ss) Violates ORS 646A.090 (2) to [(4)] (5).
 - (tt) Violates ORS 87.686.
 - (uu) Violates ORS 646A.803.
 - (vv) Violates ORS 646A.362.
 - (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
 - (xx) Violates ORS 180.440 (1) or 180.486 (1).
 - (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
 - (zz) Violates ORS 87.007 (2) or (3).
 - (aaa) Violates ORS 92.405 (1), (2) or (3).
 - (bbb) Engages in an unlawful practice under ORS 646.648.
 - (ccc) Violates ORS 646A.365.
 - (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
 - (eee) Sells a gift card in violation of ORS 646A.276.
 - (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
 - (ggg) Violates ORS 646A.430 to 646A.450.
 - (hhh) Violates a provision of ORS 744.318 to 744.384.
 - (iii) Violates a provision of ORS 646A.702 to 646A.720.
 - (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration described in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the subject of the violation.
 - (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
 - (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
 - (mmm) Violates a provision of ORS 646A.480 to 646A.495.
 - (nnn) Violates ORS 646A.082.
 - (ooo) Violates ORS 646.647.
 - (ppp) Violates ORS 646A.115.
 - (qqq) Violates a provision of ORS 646A.405.
 - (rrr) Violates ORS 646A.092.
 - (sss) Violates a provision of ORS 646.644.
 - (ttt) Violates a provision of ORS 646A.295.
 - (uuu) Violates ORS 646A.564.
 - (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as defined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to do so or unless the person is an active member of the Oregon State Bar.
 - (www) Violates ORS 702.012, 702.029, 702.032 or 702.054.
 - (xxx) Violates ORS 646A.806.
 - (yyy) Violates ORS 646A.810 (2).
- (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prosecuting attorney need not prove competition between the parties or actual confusion or misunderstanding.
- (4) An action or suit may not be brought under subsection (1)(u) of this section unless the Attorney General has first established a rule in accordance with the provisions of ORS chapter 183 declaring the conduct to be unfair or deceptive in trade or commerce.
- (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

SECTION 4. The amendments to ORS 646.608 and 646A.090 by sections 1 to 3 of this 2017 Act apply to retail installment contracts or lease agreements into which a seller and buyer enter on or after the effective date of this 2017 Act.

Passed by Senate March 29, 2017

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 24, 2017

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Tina Kotek, Speaker of House

Received by Governor:

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Approved:

.....M,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

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Dennis Richardson, Secretary of State