

# Senate Bill 134

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 Attorney General Ellen Rosenblum)

## 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**.

Subjects motor vehicle seller and buyer to certain conditions contingent on lender's agreement or failure to agree to purchase retail installment contract or lease agreement for motor vehicle.

## A BILL FOR AN ACT

1  
2 Relating to transactions for motor vehicles contingent on a lender's purchase of a financing agree-  
3 ment; creating new provisions; and amending ORS 646A.090.

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

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

6 646A.090. (1) As used in this section:

7 (a) "Buyer" means [*the purchaser or lessee of*] **a person that purchases or leases** a motor ve-  
8 hicle.

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

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

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

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

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

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

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

29 (b) If the seller has accepted a trade-in motor vehicle from the buyer [*or prospective buyer*], the  
30 seller [*shall*] **may** not sell or lease the buyer's [*or prospective buyer's*] trade-in motor vehicle before

**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 the seller *[has received]* **receives** final approval of funding from the lender.

2 (4) In any transaction described in subsection (2) of this section, if the buyer has accepted a  
 3 motor vehicle from the seller **that is subject to a retail installment contract or lease**  
 4 **agreement**, and a lender does not agree to *[finance the transaction]* **purchase the retail install-**  
 5 **ment contract or lease agreement** on the exact terms *[negotiated between]* the seller and the buyer  
 6 **negotiated**, the buyer shall return to the seller all items of value **the buyer** received from the seller  
 7 as part of the transaction. *[The offer or contract to sell or lease the motor vehicle may provide in*  
 8 *writing that the buyer is liable to the seller for]* **The seller may charge the buyer only for amounts**  
 9 **that the retail installment contract or lease agreement provides in writing that the seller**  
 10 **may charge. The retail installment contract or lease agreement may provide only for these**  
 11 **amounts:**

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

15 (b) If, within 14 days *[of]* **after** the date **on which** the buyer takes possession of the motor ve-  
 16 hicle, the seller sends notice to the buyer by first class mail **or written electronic communication**  
 17 that *[financing is unavailable]* **a lender has not agreed to purchase the retail installment con-**  
 18 **tract or lease agreement**, a reasonable charge per mile for the use of the motor vehicle. If the  
 19 buyer returns the motor vehicle within five days *[of the mailing of]* **after the seller sends** the no-  
 20 tice, the seller may charge the buyer for miles driven during the first 14 days that the buyer had  
 21 possession of the motor vehicle. If the buyer does not return the vehicle within five days *[of the*  
 22 *mailing of]* **after the seller sends** the notice, the seller may charge the buyer for all miles driven  
 23 while the buyer *[has]* **had** possession of the motor vehicle. The charge may not exceed the rate per  
 24 mile allowed under federal law as a deduction for federal income tax purposes for an ordinary and  
 25 necessary business expense.

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

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

32 **SECTION 2. The amendments to ORS 646A.090 by section 1 of this 2017 Act apply to retail**  
 33 **installment contracts or lease agreements into which a seller and buyer enter on and after**  
 34 **the effective date of this 2017 Act.**