

CHAPTER 523

AN ACT

HB 2845

Relating to guaranteed asset protection waivers; creating new provisions; and amending ORS 646.608.

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

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

(1) "Borrower" means an individual who enters into a finance agreement that is secured by a motor vehicle or who, in connection with purchasing or leasing a motor vehicle, incurs an obligation to pay money to a creditor under terms and conditions that are specified in a finance agreement.

(2) "Creditor" means:

(a) A person that:

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

(B) Otherwise extends credit to another person under a finance agreement that is entered into in connection with purchasing or leasing a motor vehicle; or

(b) An assignee of a person described in paragraph (a) of this subsection.

(3) "Evaluation period" means a period of at least 30 days after the date on which a borrower purchases a guaranteed asset protection waiver during which, if the borrower did not receive a benefit from the guaranteed asset protection waiver, the borrower may cancel the guaranteed asset protection waiver and receive a full refund of the purchase price.

(4) "Finance agreement" means a contract or other agreement that is evidence of a borrower's obligation to pay money to a creditor and that specifies the terms and conditions under which the borrower must repay the obligation.

(5) "Guaranteed asset protection waiver" means a contractual provision of or an addendum to a finance agreement that is secured by a motor vehicle under the terms of which a creditor agrees to waive the creditor's right to collect all or part of an amount due from a borrower under the terms of the finance agreement or to release a borrower from an obligation to pay the creditor an amount due under a finance agreement if the motor vehicle:

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

(b) Is stolen and is not recovered.

(6) "Insurer" means an insurer that is licensed, registered or otherwise authorized to transact insurance in this state.

(7) "Motor vehicle" means a self-propelled or towed vehicle that is designed for personal or

commercial use, such as an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, snowmobile, camper, boat, personal watercraft or a trailer for a motorcycle, boat, camper or personal watercraft.

(8) "Reimbursement insurance policy" means an insurance policy under the terms of which an insurer reimburses a creditor for an amount the creditor must waive under a guaranteed asset protection waiver.

SECTION 2. (1)(a) A guaranteed asset protection waiver is not insurance and is not subject to the provisions of the Insurance Code. A person, other than an insurer, that sells a guaranteed asset protection waiver in compliance with sections 1 to 7 of this 2015 Act does not become subject to the Insurance Code by reason of the sale.

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

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

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

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

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

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

(1) The person discloses, in writing and in plain and easily understandable language:

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

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

(B) The creditor, if different; and

(C) Any other person that is a party to or has duties, responsibilities or other obligations under the terms of the guaranteed asset protection waiver.

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

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

(A) Conditions under which the creditor will waive or decline to waive all or a portion of the obligation that remains under a finance agreement;

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

(C) The length of the evaluation period.

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

(e) Conditions under which the borrower may cancel the guaranteed asset protection waiver and the procedure the borrower must follow to cancel, both during the evaluation period and after the evaluation period expires, if the terms of the guaranteed asset protection waiver permit cancellation after the evaluation period expires.

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

(A) The borrower cancels the guaranteed asset protection waiver during the evaluation period or, if permitted under the terms and conditions of the guaranteed asset protection waiver, after the evaluation period expires; or

(B) The finance agreement is terminated early.

(2) The guaranteed asset protection waiver provides that the borrower may cancel the guaranteed asset protection waiver during the evaluation period for a full refund of the purchase price if the borrower did not receive any benefits.

(3) The creditor states clearly, and the terms of the guaranteed asset protection waiver provide in writing, that purchasing a guaranteed asset protection waiver is not required in order to obtain credit or complete a purchase or lease of a motor vehicle and does not affect the terms and conditions of credit that a borrower obtains from a creditor.

SECTION 4. (1) A guaranteed asset protection waiver must determine the amount that a creditor waives under the terms of the guaranteed asset protection waiver in accordance with the following methods:

(a) If primary motor vehicle insurance or third party liability insurance covers the amount of a total loss of the motor vehicle, the creditor shall waive the difference between:

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

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

(b) If primary motor vehicle insurance or third party liability insurance does not cover a total loss of the motor vehicle, if an insurer that issued the primary motor vehicle insurance or the third party liability insurance is insolvent

or if the primary motor vehicle insurance or third party liability insurance have stated values or limits that are less than the actual cash value of the insured motor vehicle, the creditor shall waive the difference between:

(A) The value of the motor vehicle immediately before the loss or theft of the motor vehicle, as shown in a published and generally available regional or national guide to motor vehicle values or from the best available equivalent information, as specified in the guaranteed asset protection waiver; and

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

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

(A) A motor vehicle insurance policy deductible;

(B) Delinquent, missed or deferred payments;

(C) Late fees or charges;

(D) Unearned finance charges, interest or lease charges;

(E) Unearned rental payments;

(F) Taxes;

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

(i) Charges associated with service contracts;

(ii) Prepaid taxes and fees; or

(iii) Credit insurance; or

(H) Other similar items that the guaranteed asset protection waiver specifies.

(b) A guaranteed asset protection waiver may specify limits on the amount a creditor must waive based on a loan to value ratio, a maximum term, a maximum waiver amount or other limits.

(3) A guaranteed asset protection waiver may require a creditor to waive all or a portion of a motor vehicle insurance policy deductible.

SECTION 5. (1)(a) A guaranteed asset protection waiver may provide that a borrower may cancel the guaranteed asset protection waiver after the evaluation period expires or that the guaranteed asset protection waiver expires if the finance agreement terminates early. If the guaranteed asset protection waiver permits a borrower to cancel as provided in this subsection and the borrower did not receive a benefit, the borrower is entitled to a pro-rata refund of the unearned portion of the purchase price.

(b) A borrower shall apply in writing to the person identified in the guaranteed asset protection waiver for a refund of all or a portion of the purchase price of the guaranteed asset protection waiver within 90 days after cancellation if the borrower cancels the guaranteed asset protection waiver. If the guaranteed asset protection waiver is canceled as a result of the termination of the finance agreement, then any cancellation refund shall be provided without requiring the borrower to apply or submit a claim for the refund.

(2) The terms of the guaranteed asset protection waiver may provide that if the borrower financed the purchase of the guaranteed asset protection waiver and cancels the guaranteed asset protection waiver, if the borrower defaults on the obligation set forth in the finance agreement, if the creditor repossesses the motor vehicle that secures the obligation or if the finance agreement terminates for a reason other than the borrower's satisfaction of the obligation set forth in the finance agreement, any refund due as a consequence of the termination may be:

(a) Paid directly to the creditor; or

(b) Applied to any outstanding balance on the obligation set forth in the finance agreement, unless the borrower has paid the obligation in full. If the borrower has paid the obligation in full, the creditor shall pay to the borrower the refund.

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

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

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

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

(2) A reimbursement insurance policy for a guaranteed asset protection waiver must state:

(a) The terms of the obligation the insurer has to reimburse the creditor for amounts the creditor must waive under the terms of the guaranteed asset protection waiver;

(b) That the insurer's obligation to reimburse the creditor extends to the creditor's assignee or any person to which the creditor sells or transfers the finance agreement or the guaranteed asset protection waiver that the reimbursement insurance policy covers;

(c) That the reimbursement insurance policy remains in effect until canceled in accordance with applicable provisions of the Insurance Code; and

(d) That a cancellation of the reimbursement insurance policy does not affect an insurer's obligation under the reimbursement insurance

policy for guaranteed asset protection waivers that the insured sold, and for which the insurer received premium payments, before the date on which the reimbursement insurance policy was canceled.

(3) A person that sells a guaranteed asset protection waiver in connection with a sale or lease of a motor vehicle shall report to any insurer that has issued a reimbursement insurance policy to the person the number of guaranteed asset protection waiver sales and any other details the insurer requires under the terms of the reimbursement insurance policy and shall timely forward to the insurer all funds due under the terms of the reimbursement insurance policy.

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

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

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

(b) Vary the benefits, terms, conditions or price of the guaranteed asset protection waiver on account of a borrower's race, sex, sexual orientation, income or education.

SECTION 8. A violation of a provision of sections 1 through 7 of this 2015 Act is an unlawful practice under ORS 646.608.

SECTION 9. ORS 646.608, as amended by section 3, chapter 19, Oregon Laws 2014, 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).

(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 section 2 (2), chapter 19, Oregon Laws 2014.

(zzz) Violates a provision of sections 1 to 7 of this 2015 Act.

(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 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 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 10. ORS 646.608, as amended by section 3, chapter 19, Oregon Laws 2014, and section 9 of this 2015 Act, 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.

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(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.

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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.

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(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.

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(www) Violates ORS 702.012, 702.029, 702.032 or 702.054.

(xxx) Violates ORS 646A.806.

(yyy) Violates section 2 (2), chapter 19, Oregon Laws 2014.

[(zzz) *Violates a provision of sections 1 to 7 of this 2015 Act.*]

(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 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 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 11. Sections 1 to 8 of this 2015 Act are repealed on January 2, 2020.

SECTION 12. The amendments to ORS 646.608 by section 10 of this 2015 Act become operative on January 2, 2020.

SECTION 13. Sections 1 to 8 of this 2015 Act and the amendments to ORS 646.608 by section 9 of this 2015 Act apply to guaranteed asset protection waivers that are sold or offered for sale on or after the effective date of this 2015 Act.

Approved by the Governor June 22, 2015
Filed in the office of Secretary of State June 25, 2015
Effective date January 1, 2016