

To: Representative Nathan Sosa
From: Chris Coughlin, Policy Director, Oregon Consumer Justice
Date: July 10, 2024
Re: Potential legislative solutions to address issues that consumers face
when buying a car

Overview

For many, owning a car is essential to maintain employment, access educational opportunities, or obtain medical care for themselves or a loved one. It is often the most expensive purchase a consumer will ever make. The challenges that arise around car financing or having a recently purchased car end up being unreliable can be very stressful. Consumers should be able to feel confident that car dealers will provide transparent and complete information during the car purchasing process, fulfill their promises, and stick to the financing and other terms agreed upon at the dealership.

Unfortunately, this is not the case for many consumers in Oregon, who face and are targeted by predatory and unfair auto sales practices. Identifying a safe, reliable, affordable car is hard, and financing a car is often complicated, especially in the current market.

Challenges for Consumers

This spring, Oregon Consumer Justice convened an auto purchasing cohort with community organizations to explore the issues and possible solutions to the challenges consumers face when purchasing cars.

Many issues were identified by community partners including:

- Consumers lack knowledge of their right to cancel the sale in the event the dealership is unable to meet agreed financing terms after spot delivery has occurred.
- Trade-in vehicles are sold by dealers before securing of loan and finalizing the deal.
- Reclaiming their trade-in car when a deal unwinds can require consumers to pay the entire debt still owed on the trade-in.
- The use of pre-payment penalties for paying off a vehicle traps consumers in higher-interest loans.
- The front-loading of warranties and fees in the loan terms leads to consumers more likely to experience negative equity, owing more on the car than it is worth.
- Dealers entice buyers with long car loans with low monthly payments to make the deal "affordable," this however often results in people still owing money when a car is unroadworthy.
- When dealerships still have not found a lender to approve agreed-upon loan terms but continue to try, after the first month, purchasers are held liable, at the threat of repossession, for monthly payments without clear instructions on what the payment is and how to make it.
- Cars break down soon after purchase with no recourse for consumers.
- Dealers refuse to address issues following a car purchase once the loan is sold.
- The sale of used cars with open safety recalls results in preventable injury to the purchaser after the sale.

In addition, car sales and repairs remain a top consumer complaint. Oregon Attorney General Ellen Rosenblum announced that auto sales and repairs were Oregon consumers' second largest complaint in 2023¹. Further, auto sales and repair was the top complaint category for the Consumer Federation of America's 2023 annual report².

Finally, given the current market conditions and increased costs of used cars, consumers are going to continue to face challenges when purchasing a car. The Consumer Financial Protection Bureau recently [released a report](#) on the implications of negative equity in auto lending.

OCJ appreciates your partnership in introducing HB 2801 in 2023, which sought to finalize the original deal a dealer makes if they cannot obtain outside financing within the current 14 days, as allowed by statute³. We are not suggesting that the proposal in HB 2801 should

¹ [Oregon Attorney General Rosenblum Releases List of Top Consumer Complaints of 2023](#), Oregon Department of Justice, March 4, 2024.

² [Top Ten Consumer Complaints for 2023](#), The Consumer Federation of America, June 3, 2024.

³ O.R.S. 646A.090(3(a))

come back in 2025. However, the "a contract is a contract" language exists and could be filed as a placeholder bill if other possible solutions, including those below, need to be workshopped with stakeholders during the fall. We have identified potential solutions to address some of the issues consumers face when purchasing a car in Oregon. OCJ and our partners look forward to working with you and other stakeholders to strengthen consumer protections and create an equitable and transparent marketplace.

Suggested Legislative Solutions for Identified Problems

Addressing Ambiguities in Finalizing Financing

Problem: Underregulated dealer-arranged financing coupled with the practice of spot delivery has left consumers in unfair and tricky positions as auto financing has become more complicated in the current market.

Issues include:

- Consumers are often unaware of their right to cancel the sale if the dealership is unable to meet the agreed-upon financing terms after spot delivery.
- The sale of trade-in vehicles before securing financing and finalizing the deal, despite O.R.S. 646A.090(3)(b)⁴, which forbids it.
- Dealers pay off the remaining debt on a trade-in vehicle before securing financing and finalizing the deal, requiring consumers to pay the entire previously owed debt to recover their trade-in if the financing and deal fall through.
- When dealerships have not secured financing within a month and payments are due, there is a lack of clarity around consumer liability for monthly payments and unspecified/uncertain payment requirements (place, amount, frequency, method).

Solutions: OCJ suggests the refinement of statutes dealing with dealership-arranged financing to address these issues.

1. Reduce time for the dealer to obtain financing from 14 to four (4) days.

In situations of spot delivery, if dealers can't find financing consumers are called back to the dealership to renegotiate less favorable financing terms. With longer periods to obtain financing, dealerships leverage the consumer's recent attachment to their new car and

⁴ " (b) If the seller has accepted a trade-in motor vehicle from the buyer, the seller may not sell or lease the buyer's trade-in motor vehicle before the seller receives final approval of funding from the lender." O.R.S. 646A.090(3)(b)

potentially the remaining debt or sale of their trade-in vehicle against them. OCJ suggests reducing the time period for dealers to obtain financing from 14 to 4 days, creating a clear boundary for consumers to cleanly walk away from unfavorable deals. This reduction can also help prevent the sale of trade-ins before the financing is finalized.

Four days is sufficient in today's market. Maryland and Washington have both reduced the time for a dealer to obtain financing to four calendar days. OCJ prefers Maryland's language because Washington excludes Saturday, Sunday, and legal holidays from this count.

2. Require the dealer to self-finance or cancel the contract if unable to secure agreed financing within the four-day time frame.

To ensure transparency regarding when a deal becomes final, dealers should be required to self-finance or cancel the contract if they are unable to secure the agreed financing with a lender. This approach will prevent dealers from negotiating from a position of unilateral power with a first grasp on the consumer's trade-in vehicle and down payment. And, it gives the dealer choice: finance or cancel.

Consumers should be notified of the dealer's decision promptly after the 4-day period has elapsed. Any restructuring of the deal is to occur only after formal notice of the dealer's decision to self-finance or cancel. A consumer should not have to wait weeks to know that their purchase is final, especially when they are essentially "off the market" until the dealer notifies them one way or the other.

Dealers already are required to have a reasonable basis to believe that a contract will be accepted when engaging in spot delivery⁵. Therefore the danger to dealers of having to self-finance a significant number of consumers is negligible. Consequently, failure to notify the consumer about the cancellation of the deal should result in the dealer having to finance the transaction themselves until they find a new lender.

Wisconsin law upholds a similar provision which states, "If the dealer fails to timely provide such notice, the purchaser may elect to carry out the contract and the dealer shall, within 28

⁵ OAR-137-020-0020(3)(x): "Unlawful Spot Delivery — No dealer or broker shall spot deliver a vehicle to any consumer unless the dealer or broker has a reasonable basis to believe that the dealer will either keep the retail installment contract ("buy here pay here") or be able to sell the retail installment contract to a financial organization at the exact terms quoted to or agreed to by the consumer at the time of delivery;"

days of the contract date, finance the purchase of the vehicle on the terms specified in the contract and deliver the vehicle in the manner specified in the purchase contract.”⁶

Washington’s regulations specify that if a dealer is unable to secure financing within 4 days they must inform the buyer either:

*“(i) That the dealer unconditionally accepts the contract or lease, having satisfied, removed, or waived all conditions to acceptance or performance, including, but not limited to, financing, assignment, or lease approval; or (ii) that the dealer rejects the contract or lease, thereby automatically voiding the contract or lease,” WA RCW 46.70.180 (4(a))*⁷.

3. Require the dealer to make a “good faith effort” to obtain financing at the negotiated terms.

OCJ suggests expanding the reasonable basis in OAR-137-020-0020(3)(x) to include that dealers make a “good faith effort” to obtain financing to ensure that a dealer may not unilaterally back out of a sale if market conditions change or if the dealer finds a different consumer willing to purchase a vehicle for more favorable terms.

4. Require notice to consumers of terms of spot delivery and their right to cancel

Many consumers do not know or understand their rights when a spot delivery deal fails due to a lack of financing. This information divide allows unscrupulous dealers to take advantage of them. For example, dealers may illegally retain the consumer’s down payment or refuse to return the consumer’s trade-in vehicle and then attempt to negotiate a new agreement.

To make certain consumers are properly informed of their rights and are confident in exercising them should financing fall through after spot delivery, OCJ recommends that both buyers and sellers are required to sign a written notice, separate from all other purchase documents and furnished to the buyer, that explains the details of spot delivery. The dealer and consumer’s rights and responsibilities need to be provided using plain language. This notice aims to close the knowledge gap between dealers and consumers. It would direct consumers to contact the Department of Justice and the Oregon State Bar

⁶ [Wisconsin Trans. 139.055\(1\)\(a\)](#)

⁷ [WA RCW 46.70.180 \(4\(a\)\)](#)

referral service if they believe a dealer is not complying with the law. A precedent for such notice exists in Oregon’s Home Solicitation Sales Act, ORS 83.730.

Maryland has already adopted such a regulation⁸:

(a)(1) For a buyer purchasing a vehicle through dealer–arranged financing or leasing before approval of a third–party institution has been received, the following notice shall be provided to the buyer in a separate document and signed by the dealer and the buyer:

“For finance or lease sales: The financing or lease agreement you entered into with the dealer is not final and must be approved by a third–party financial institution. If the terms are approved, the sale cannot be canceled. If the terms are not approved, the dealer must notify you in writing within 4 days of delivery of the vehicle to you, and you or the dealer may cancel this sale. If the sale is canceled, the vehicle delivered to you must be returned to the dealer in the same condition it was given to you, except for normal wear and tear, within 2 days of your receipt of a written notice of the third–party rejection. Unless you and the dealer agree on different terms, any down payment, titling fee, excise tax, dealer processing charge, or any other fee, tax, or charge associated with the transaction, and any trade–in vehicle, in the same condition in which the dealer received the vehicle, will be returned to you immediately and you may not be charged a fee for use of the vehicle that was the subject of the sale. You may not waive any of these rights. If you feel the dealer has failed to comply with the terms of this notice, you may contact the Motor Vehicle Administration or the Consumer Protection Division of the Office of the Attorney General.”

[MD. Transportation Code Ann. § 15-311.3 \(2020\)](#) (a(1))

5. Expand O.R.S. 646A.090(3)(b) to include payment of damages to consumers for the premature sale of trade-in vehicles.

Some dealers continue to illegally sell trade-in vehicles prior to securing financing and finalizing the deal despite O.R.S. 646A.090(3)(b), which forbids it. Owning a car is an essential part of daily life for many, so when dealerships are unable to find financing and this unlawful practice occurs, consumers face immense pressure to negotiate unfavorable terms in order to keep spot-delivered vehicles.

⁸ [MD. Transportation Code Ann. § 15-311.3 \(2020\)](#) (a(1))

OCJ proposes expanding O.R.S. 646A.090(3)(b) to entitle consumers to specific damages to discourage dealers from violating this provision:

(c) If the seller does sell the buyer's trade-in motor vehicle before the seller receives final approval of funding from the lender they must pay the buyer the greater of:

- (1) the outstanding loan on the trade-in,
- (2) the trade-in value
- (3) the fair market value; or
- (4) any payment the dealer received for the trade-in.

California law requires dealers who prematurely dispose of trade-in vehicles to pay the greater of the value stated in the contract or the fair market value of the vehicle, whichever is greater⁹.

6. Prevent dealers from charging fees, including mileage, if the deal is canceled.

In Oregon, dealers can charge buyers for mileage on returned vehicles from deal cancellations¹⁰. Dealers currently may charge, "a reasonable charge per mile for the use of the motor vehicle."¹¹ This law reduces a dealer's incentive to act quickly in finding financing or unwinding the deal. Dealers are required¹² to have a reasonable basis to believe they can find financing at the agreed-upon terms and are also more aware of the state of the lending market. This means dealers are in a better position to mitigate against the possible risks associated with a deal falling through. That's why the burden of an unsuccessful spot delivery sale should be borne by the dealership and not the consumer.

OCJ recommends that dealers are prevented from charging any fee or for mileage if a spot delivery sale is canceled. Maryland specifies that dealers cannot charge any fees for the use of the vehicle¹³. Washington allows for charges if there are excessive additional miles¹⁴.

⁹ [Cal Civil Code 2982.7](#)

¹⁰ O.R.S. 646A.090(4)

¹¹ *Id.* at (4(b))

¹² OAR-137-020-0020(3)(x)

¹³ "... may not be charged a fee for use of the vehicle that was the subject of the sale." MD. Transportation Code § 15-311.3 (2023)(a)(1).

¹⁴ "...Excessive additional miles or a discrepancy in the mileage. "Excessive additional miles" means the addition of 500 miles or more." (**RCW 46.70.180**(4(b(iii)))).

Addressing the Sale of Used Cars with Open Recall Notices

Oregon has adopted SB 980 (2019), and Oregon Administrative Rule 137 020 0020 Section 3(o). SB 980 contains a compensation provision requiring manufacturers to compensate dealers 1.5 percent of the valuation of a used vehicle subject to certain recalls (federal safety recalls, manufacturer issues do not drive or stop sale order) during the time a dealer holds that vehicle awaiting a part or other remedy. OAR 137-020-0020 requires dealers, prior to the sale or lease of a motor vehicle, to disclose existing defects about which the dealer knows or should have known, this includes if repairs have not been performed pursuant to a safety recall¹⁵. Per official commentary to OAR 137-020-0020, this rule rests upon the idea that unless explicitly disclosed prior to sale or lease to the public, a car is represented directly or by implication as roadworthy when sold¹⁶. Unfortunately, disclosures are not enough to keep people safe.

1. Require inspection for and repair of open recalls on used cars prior to sale.

The sale of used cars with outstanding safety recalls poses a danger to consumers even when dealers disclose open recalls. During the complex process of purchasing a car, a disclosure of an open recall(s) may not effectively communicate the possible safety concerns. This is especially true when dealers offer test drives or advertise recalled cars as “certified-preowned” or “inspected.” Disclosure requirements mandate minimal responsibility from auto dealers, shifting the risk, financial, and physical burden of addressing such recalls to the consumer¹⁷.

OCJ suggests that auto dealers are required to check the National Highway Traffic Safety Administration’s VIN recall database¹⁸ number on intake and repair safety recalls prior to offering used cars for sale. This solution will protect consumers from entirely preventable injuries that can result when cars are sold with open recalls.

¹⁵ [OAR 137-020-0020](#): “Disclosure of Material Nonconformities and Defects — Prior to the sale or lease of a motor vehicle, a dealer or broker shall disclose existing material nonconformities and defects about which the dealer or broker knows or negligently disregarded when the dealer or broker should have known. This includes, but is not limited to if repairs have not been performed pursuant to a safety recall and the needed repairs can be identified through a VIN search;”

¹⁶ [Official Commentary below OAR 137-020-0020 Section 3\(o\)](#)

¹⁷ Rui Kaneya and Pratheek Rebala, [“The Multistate Push to Let Dealers Get Away With Selling You a Defective Car.”](#) The Center for Public Integrity, Web. Apr. 4, 2019.

¹⁸ “Recall Lookup” National Highway Traffic Safety Administration.

Strengthen Consumer Confidence

We look forward to working with you and other stakeholders to address some of the many challenges facing consumers in the car purchasing process. Together we can develop legislation for 2025 that will put people first and create an equitable, fair, and transparent marketplace where consumers can purchase a car with confidence.