

# Enrolled Senate Bill 116

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 Hardy Myers for Department of Justice)

CHAPTER .....

AN ACT

Relating to towers of motor vehicles; creating new provisions; and amending ORS 98.805, 98.810, 98.812, 98.818, 98.830, 98.835, 98.840, 646.608, 811.620, 819.160, 822.205 and 822.215.

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

**SECTION 1. (1) The Legislative Assembly finds that:**

**(a) 49 U.S.C. 14501(c)(1) limits the authority of the state and political subdivisions of the state to enact or enforce laws or ordinances related to price, route or service of motor carriers with respect to the transportation of property.**

**(b) 49 U.S.C. 14501(c)(2)(A) exempts, from the limits described in paragraph (a) of this subsection, safety regulations with respect to motor vehicles.**

**(c) 49 U.S.C. 14501(c)(2)(C) exempts, from the limits described in paragraph (a) of this subsection, laws or ordinances relating to the price of for-hire motor vehicle transportation by a tow truck if the transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.**

**(2) The Legislative Assembly declares that:**

**(a) Statutes that assist members of the public in avoiding involuntary loss of use of motor vehicles and in expediting recovery of motor vehicles and the personal property in the motor vehicles promote the safety and welfare of members of the public.**

**(b) ORS 98.810 to 98.818 do not preempt any authority that a local government, as defined in ORS 174.116, may have to regulate the price of for-hire motor vehicle transportation by a tow vehicle if the transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.**

**SECTION 2. As used in sections 3 to 7 of this 2007 Act:**

**(1) "Consideration" has the meaning given that term in ORS 171.725.**

**(2) "Motor vehicle" has the meaning given that term in ORS 801.360.**

**(3) "Parking facility" has the meaning given that term in ORS 98.805.**

**(4) "Tower" means a person that:**

**(a) Owns or operates a tow vehicle for profit; or**

**(b) Is employed by a person that owns or operates a tow vehicle for profit.**

**(5) "Tow vehicle" has the meaning given that term in ORS 801.530.**

**SECTION 3. A tower may not:**

(1) Tow a motor vehicle without providing to the owner or operator of the motor vehicle the information required under section 4 of this 2007 Act in the manner required under section 4 of this 2007 Act.

(2) Charge more than a price disclosed under section 4 of this 2007 Act.

(3) Solicit towing business at, or within 1,000 feet of, the site of a motor vehicle accident, unless the tower tows the motor vehicle pursuant to a prenegotiated payment agreement between the tower and a motor vehicle road service company.

(4)(a) Except as provided in paragraph (b) of this subsection, park a tow vehicle within 1,000 feet of a parking facility for the purpose of monitoring the parking facility for towing business.

(b) A tower may park a tow vehicle within 1,000 feet of a parking facility for the purpose of monitoring the parking facility for towing business if the tower provides notice of the hours during which monitoring occurs on signs that are clearly readable by an operator of a motor vehicle in each parking stall or at each entrance to the parking facility.

(5)(a) Provide consideration to obtain the privilege of towing motor vehicles from a parking facility.

(b) Provision of:

(A) Signs by a tower under section 7 of this 2007 Act does not constitute consideration.

(B) Goods or services by a tower below fair market value constitutes consideration.

(6) Require, as a condition of towing a motor vehicle or releasing a motor vehicle or personal property in the motor vehicle, that the owner or operator of the motor vehicle agree not to dispute:

(a) The reason for the tow;

(b) The validity or amount of charges; or

(c) The responsibility of the tower for the condition of the motor vehicle or personal property in the motor vehicle.

(7) Hold a towed motor vehicle for more than 24 hours without:

(a) Taking an inventory of all personal property in the motor vehicle that is visible from the exterior of the motor vehicle; and

(b) Holding the personal property in the motor vehicle in a secure manner.

(8) Accept cash as a method of payment for towing services unless the tower provides exact change not later than the end of the business day following receipt of payment.

**SECTION 4.** (1) A tower shall disclose to the owner or operator of a motor vehicle in a conspicuous written statement of at least 10-point boldfaced type:

(a) The prices the tower charges for goods and services;

(b) The location where the tower will:

(A) Store the motor vehicle and personal property in the motor vehicle; or

(B) Tow the motor vehicle, if the tower is towing the motor vehicle to a location other than a location under the control of the tower;

(c) The telephone number and any other means of contacting the tower, and the hours of availability at that telephone number and at the other means of contacting the tower;

(d) The methods of payment that the tower accepts; and

(e) That, if the owner or operator of the motor vehicle pays for the tow with cash, the tower will provide, in person or by mail, exact change not later than the end of the business day following receipt of payment.

(2) If the owner or operator is present at the time of the tow, the tower shall provide the information required under subsection (1) of this section to the owner or operator of the motor vehicle before towing the motor vehicle.

(3) If the owner or operator of the motor vehicle is not present at the time of the tow, the tower shall provide the information required under subsection (1) of this section to the owner or person in lawful possession of the motor vehicle prior to the time the owner or person in lawful possession of the motor vehicle redeems the motor vehicle.

(4)(a) As used in this subsection, “business day” means Monday through Friday, excluding legal holidays.

(b) If the owner or operator of the motor vehicle is not present at the time of the tow:

(A) Within five business days from the date of the tow, the tower shall request the name and address of the owner of the motor vehicle from the state motor vehicle agency for the state in which the motor vehicle is registered.

(B) The tower shall provide the information required under subsection (1) of this section to the owner of the motor vehicle by mail by the end of the first business day following receipt of the information from the state motor vehicle agency.

(C) If the owner of the motor vehicle or a person in lawful possession of the motor vehicle redeems the motor vehicle or contacts the tower prior to five business days after the tow, the tower is not required to contact the state motor vehicle agency.

(5) If the owner or operator of the motor vehicle is not present at the time of the tow but the owner or operator of the motor vehicle requested the tow and arranged to pay the tower directly, the tower may obtain the name and address of the owner of the motor vehicle from the owner or operator of the motor vehicle and may provide the information required under subsection (1) of this section:

(a) Within five business days after the tow; or

(b) With a copy of the invoice for the tow or upon receipt of payment, whichever first occurs.

**SECTION 5.** (1) A tower in physical possession of a motor vehicle shall permit the owner or person in lawful possession of a motor vehicle the tower has towed to:

(a) Redeem the motor vehicle:

(A) Between 8 a.m. and 6 p.m. Monday through Friday, excluding legal holidays;

(B) At all other hours, within 60 minutes after asking the tower to release the motor vehicle; and

(C) Within 30 minutes of a time mutually agreed upon between the tower and the owner or person in lawful possession of the motor vehicle;

(b) Contact the tower at any time to receive information about the location of the motor vehicle and instructions for obtaining release of the motor vehicle; and

(c) Obtain all personal property of an emergency nature in the motor vehicle within the time allowed under paragraph (a) of this subsection.

(2) A tower may not charge the owner or person in lawful possession of the motor vehicle a fee in any amount to obtain personal property of an emergency nature except for a gate fee between the hours of 6 p.m. and 8 a.m. Monday through Friday, or on a Saturday, a Sunday or a legal holiday.

(3) As used in this section, “personal property of an emergency nature” includes but is not limited to prescription medication, eyeglasses, clothing, identification, a wallet, a purse, a credit card, a checkbook, cash and child safety car and booster seats.

**SECTION 6.** (1) For purposes of this section, an insurance company undertaking to adjust a claim involving a towed motor vehicle is a person in lawful possession and entitled to release of the motor vehicle if:

(a) The insurance company has obtained permission from the owner or another person in lawful possession of the motor vehicle to secure release of the motor vehicle; and

(b) The insurance company transmits to the tower by facsimile or electronic mail a document that reasonably identifies the insurance company as a person in lawful possession and directs the tower to release the motor vehicle to a person designated by the insurance company.

(2) A tower who, in good faith, releases a motor vehicle under subsection (1) of this section is not liable for damages for releasing the motor vehicle to a person designated by the insurance company or for damages that arise after release of the motor vehicle.

(3) This section does not prohibit a tower from releasing a motor vehicle to an insurance company in a manner other than that provided for in subsection (1) of this section.

**SECTION 7.** A tower need not provide the written information required under section 4 of this 2007 Act if:

(1) The motor vehicle is towed from a parking facility where the tower has provided the information on signs that are clearly readable by an operator of a motor vehicle in each parking stall or at each entrance to the parking facility.

(2) The tower is hired or otherwise engaged by an agency taking custody of a vehicle under ORS 819.140.

(3) The tower tows the motor vehicle under a prenegotiated payment agreement between the tower and a motor vehicle road service company or an insurance company.

(4) The tower is hired or otherwise engaged by a business entity at the request of the owner or operator of the motor vehicle to tow the motor vehicle.

**SECTION 8.** The Attorney General may adopt rules to implement sections 3 to 7 of this 2007 Act.

**SECTION 9.** ORS 98.805 is amended to read:

98.805. As used in **this section and** ORS 98.810 to 98.818, **98.830, 98.835 and 98.840:**

(1) "Owner of a parking facility" means:

- (a) The owner, lessee or person in lawful possession of a private parking facility; or
- (b) Any officer or agency of this state with authority to control or operate a parking facility.

(2) "Owner of proscribed property" means the owner, lessee or person in lawful possession of proscribed property.

(3) "Parking facility" means any property used for [motor] vehicle parking.

(4) "Proscribed property" means any part of private property:

(a) Where **a reasonable person would conclude that** parking is not normally permitted at all **or where a land use regulation prohibits parking;** or

(b) That is used primarily for **parking at a dwelling unit** [residences, including but not limited to houses and apartments, where there is designated parking for not more than 10 vehicles]. **As used in this paragraph, "dwelling unit" means a single-family residential dwelling or a duplex.**

(5) "Tower" means a person issued a towing business certificate under ORS 822.205.

(6) "Vehicle" has the meaning given that term in ORS 801.590.

**SECTION 10.** ORS 98.810 is amended to read:

98.810. [No] A person **may not**, without the permission of:

(1) The owner of a parking facility, [shall] leave or park any vehicle on the parking facility if there is a sign displayed in plain view at the parking facility prohibiting **or restricting** public parking [thereon or restricting parking thereon] **on the parking facility.**

(2) The owner of proscribed property, [shall] leave or park any vehicle on the proscribed property whether or not there is a sign prohibiting or restricting parking on the proscribed property.

**SECTION 11.** ORS 98.812 is amended to read:

98.812. (1) If a [motor] vehicle has been left or parked in violation of ORS 98.810, the owner of the parking facility or the owner of the proscribed property[, after notice to the local law enforcement agency, may have the motor vehicle towed] **may have a tower tow the vehicle** from the parking facility or the proscribed property and [placed] **place the vehicle** in storage at a [public garage or public parking lot] **secure location under the control of the tower.**

(2) **A tower who tows a vehicle at the request of an owner of a parking facility or the owner of proscribed property under this section shall provide to the owner or operator of the vehicle the information required in section 4 of this 2007 Act in the manner provided in section 4 of this 2007 Act.**

[2] (3) [The garagekeeper or public parking operator] **A tower** is entitled to a lien on [the] **a towed** vehicle and its contents for the [garagekeeper's or operator's] **tower's** just and reasonable charges and may retain possession thereof until the just and reasonable charges for the towage, care

and storage of the **towed** vehicle have been paid if the *[garagekeeper or public parking operator]* **tower** complies with the following requirements:

(a) The *[garagekeeper or public parking operator]* **tower** shall notify the local law enforcement agency of the location of the **towed** vehicle within one hour after the **towed** vehicle is placed in storage;

(b) If the *[unclaimed]* **towed** vehicle is registered in Oregon, the *[garagekeeper or public parking operator]* **tower** shall give notice, within 15 days after the **towed** vehicle is placed in storage, to the *[vehicle]* owner **of the towed vehicle** or any other person with an interest in the **towed** vehicle, as indicated by the certificate of title. If notice under this paragraph is given by mail, it must be transmitted within the 15-day period, but need not be received within that period, but within a reasonable time. If the *[garagekeeper or public parking operator]* **tower** fails to comply with the notice requirements of this paragraph, the amount of the lien is limited to a sum equal to the reasonable expenses incurred within the 15-day period for towage, care and storage of the **towed** vehicle; and

(c) If the *[unclaimed]* **towed** vehicle is not registered in Oregon, the *[garagekeeper or public parking operator]* **tower** shall, within 15 days after the **towed** vehicle is placed in storage, notify and request the title information and the name[,] **and** address *[and telephone number]* of the *[vehicle]* owner **of the towed vehicle** from the motor vehicle agency for the state in which the **towed** vehicle is registered. The *[garagekeeper or public parking operator]* **tower** shall have 15 days from the date of receipt of the information from the state motor vehicle agency to notify the *[vehicle]* owner **of the towed vehicle** or any other person with an interest in the **towed** vehicle, as indicated by the certificate of title. If notice under this paragraph is given by mail, it must be transmitted within 15 days from the receipt of information from the state motor vehicle agency, but need not be received within that period, but within a reasonable time. If the *[garagekeeper or public parking operator]* **tower** fails to comply with the notice requirements of this paragraph, the amount of the lien is limited to a sum equal to the reasonable expenses incurred within the period between storage of the **towed** vehicle and receipt of information from the state motor vehicle agency for towage, care and storage of the **towed** vehicle.

*[(3)]* **(4)** The lien created by subsection *[(2)]* **(3)** of this section may be foreclosed only in the manner provided by ORS 87.172 (3) and 87.176 to 87.206 for foreclosure of liens arising or claimed under ORS 87.152.

**SECTION 11a.** ORS 98.818 is amended to read:

98.818. The lien created by ORS 98.812 shall have preference over any and all other liens or encumbrances upon *[such motor]* **the** vehicle.

**SECTION 12.** ORS 98.830 is amended to read:

98.830. A person who is the owner, or is in lawful possession, of private property on which a *[motor]* vehicle has been abandoned may have *[the motor vehicle towed]* **a tower tow the vehicle** from the property if:

(1) The person affixes a notice to the vehicle stating that the vehicle will be towed if it is not removed. The notice required by this subsection must remain on the vehicle for 72 hours before the vehicle may be removed.

*[(2)]* *The person notifies the local law enforcement agency of the intent to have the vehicle towed.*

*[(3)]* **(2)** The person fills out and signs a form that includes:

(a) A description of the vehicle to be towed;

(b) The location of the property from which the vehicle will be towed; and

(c) A statement that the person has complied with *[subsections (1) and (2)]* **subsection (1)** of this section.

**SECTION 13.** ORS 98.835 is amended to read:

98.835. (1) A *[person]* **tower** who tows a vehicle pursuant to ORS 98.830 is immune from civil liability for towing the vehicle if the *[person]* **tower** has a form described in ORS 98.830 *[(3)]* **(2)**, filled out by a person purporting to be the owner or a person in lawful possession of the private property from which the vehicle is towed. This subsection does not grant immunity for any loss,

damage or injury arising out of any negligent or willful damage to, or destruction of, the vehicle that occurs during the course of the towing.

(2) The [person] **tower** who tows a vehicle pursuant to ORS 98.830 is entitled to a lien on the **towed** vehicle and its contents for the [person's] **tower's** just and reasonable charges. [and] **The tower** may retain possession [thereof] **of the towed vehicle** until the just and reasonable charges for the towage, care and storage of the **towed** vehicle have been paid if the [person] **tower** complies with the following requirements:

(a) The [person] **tower** shall notify the local law enforcement agency of the location of the **towed** vehicle within one hour after the **towed** vehicle is placed in storage;

(b) If the [unclaimed] **towed** vehicle is registered in Oregon, the [person] **tower** shall give notice by [certified] **first class mail with a certificate of mailing**, within 15 days after the **towed** vehicle is placed in storage, to the [vehicle] owner **of the towed vehicle** and any other person with an interest in the **towed** vehicle, as indicated by the certificate of title. If notice under this paragraph is given by mail, it must be transmitted within the 15-day period, but need not be received within that period, but within a reasonable time. If the [person who tows the vehicle] **tower** fails to comply with the notice requirements of this paragraph, the amount of the lien is limited to a sum equal to the reasonable expenses incurred within the 15-day period for towage, care and storage of the **towed** vehicle; and

(c) If the [unclaimed] **towed** vehicle is not registered in Oregon, the [person] **tower** shall, within 15 days after the **towed** vehicle is placed in storage, notify and request the title information and the name[,] **and** address [and telephone number] of the [vehicle] owner **of the towed vehicle** from the motor vehicle agency for the state in which the **towed** vehicle is registered. The [person] **tower** shall have 15 days from the date of receipt of the information from the state motor vehicle agency to notify the [vehicle] owner **of the towed vehicle** or any other person with an interest in the **towed** vehicle, as indicated by the certificate of title. If notice under this paragraph is given by mail, it must be transmitted within 15 days from the receipt of information from the state motor vehicle agency, but need not be received within that period, but within a reasonable time. If the [person] **tower** fails to comply with the notice requirements of this paragraph, the amount of the lien is limited to a sum equal to the reasonable expenses incurred within the period between storage of the **towed** vehicle and receipt of information from the state motor vehicle agency for towage, care and storage of the **towed** vehicle.

(3) The lien created by subsection (2) of this section may be foreclosed only in the manner provided by ORS 87.172 (3) and 87.176 to 87.206 for foreclosure of liens arising or claimed under ORS 87.152.

**SECTION 13a.** ORS 98.840 is amended to read:

98.840. The procedure authorized by ORS 98.830 and 98.835 for removal of abandoned [motor] vehicles from private property may be used by persons described in ORS 98.805 as an alternative to the procedures described in ORS 98.810 to 98.818.

**SECTION 14.** ORS 811.620 is amended to read:

811.620. If a vehicle is illegally parked in violation of ORS 811.615, the vehicle may be removed and, if notice required under subsection (3) of this section is given, is subject to costs for the removal and storage of the vehicle as provided under the following:

(1) The owner of private property may have the vehicle removed from the property in the manner provided for removal of vehicles under ORS 98.812.

(2) Subject to subsection (3) of this section, any state agency or political subdivision of this state may provide for the removal and storage of the vehicle and the vehicle shall be subject to the following:

(a) The state agency or political subdivision may require payment of reasonable costs for removal and storage of the vehicle before the vehicle is released.

(b) If the vehicle is not claimed and any fees required under this subsection are not paid within 30 days of the removal, a lien described under ORS 98.812 [(3)] attaches to the vehicle and its contents for the reasonable costs for removal and storage of the vehicle and contents.

(3) If a vehicle is removed under subsection (2) of this section, the [garagekeeper or public parking operator] **tower** removing the vehicle shall:

(a) Notify the local law enforcement agency of the location of the vehicle within one hour after the vehicle is placed in storage; and

(b) Unless the vehicle is claimed, give notice, within 10 days after the vehicle is placed in storage, to the vehicle owner or any other person with an interest in the vehicle, as indicated by the title records. If notice under this paragraph is given by mail, it must be mailed within the 10-day period, but need not be received within that period.

**SECTION 15.** ORS 819.160 is amended to read:

819.160. (1) Except as otherwise provided by this section, a person shall have a lien on the vehicle and its contents if the person, at the request of an authority described under ORS 819.140, tows any of the following vehicles:

(a) An abandoned vehicle appraised at a value of more than \$500 by a person who holds a certificate issued under ORS 819.230.

(b) A vehicle taken into custody under ORS 819.110 or 819.120, unless it is an abandoned vehicle appraised at a value of \$500 or less by a person who holds a certificate issued under ORS 819.230.

(c) A vehicle left parked or standing in violation of ORS 811.555 or 811.570.

(2) A lien established under this section shall be on the vehicle and its contents for the just and reasonable charges for the towing service performed and any storage provided. However, if the person who tows the vehicle fails to comply with the notice requirements of subsection (3) of this section, the amount of any lien claimed under this paragraph shall be limited to an amount equal to the just and reasonable charges for the towing service performed and storage provided for a period not exceeding 20 days from the date the vehicle and its contents were placed in storage. The lien shall be subject to the provisions for liens under ORS 98.812 [(3)]. The person holding the lien may retain possession of the vehicle and contents until the charges on which the lien is based are paid. A lien described under this section does not attach:

(a) To the contents of any vehicle taken from public property until 15 days after taking the vehicle into custody.

(b) To the contents of any vehicle that is taken into custody for violation of ORS 811.555 or 811.570.

(3) A person who tows any vehicle at the request of an authority under ORS 819.110 or 819.120 shall transmit by [certified] **first class mail with a certificate of mailing**, within 20 days after the vehicle and its contents are placed in storage, written notice, approved by the authority, containing information on the procedures necessary to obtain a hearing under ORS 819.190. The notice shall be provided to the owner, a person entitled to possession or any person with an interest recorded on the title to the vehicle. This subsection does not apply to a person who tows an abandoned vehicle that is appraised at a value of \$500 or less by a person who holds a certificate issued under ORS 819.230.

**SECTION 16.** ORS 822.205 is amended to read:

822.205. The Department of Transportation shall issue a towing business certificate to any person if the person meets all of the following requirements to the satisfaction of the department:

(1) The person must complete an application in a form and in the manner established by the department by rule.

(2) The person must maintain insurance in amounts and providing coverage of the type required for motor carriers under ORS chapter 825 **and deliver a certificate of insurance to the department.** [The department may accept the certification of the person as evidence of compliance with this subsection or may require other evidence, as the department determines appropriate.]

**(3) The certificate of insurance required under subsection (2) of this section must:**

**(a) Be issued by an insurance company licensed to do business in this state;**

**(b) Show that the person is insured by a policy that provides the minimum amount and limits of coverage required under ORS chapter 825;**

**(c) Contain the policy number; and**

**(d) Require the insurance company to give the department written notice of cancellation of the policy and to continue to be liable under the policy until the department receives the written notice or until the cancellation date specified in the written notice, whichever is later.**

[3] (4) The person must maintain insurance providing [~~\$15,000~~] **\$50,000** coverage for cargo transported by the person **and deliver a certificate of insurance to the department**. An applicant is not required to comply with this subsection if the applicant tows or recovers only vehicles that are owned by the applicant. [*The department may accept the certification of the person as evidence of compliance with this subsection or may require other evidence, as the department determines appropriate.*]

[4] (5) The person must maintain vehicles used by the person for the purposes of towing or recovering services so that they meet minimum safety standards established by the department by rule. The department may accept the certification of the person as evidence of compliance with this subsection or may require other evidence, as the department determines appropriate.

**(6) The certificate of insurance required under subsection (4) of this section must:**

**(a) Be issued by an insurance company licensed to do business in this state;**

**(b) Show that the person is insured by a policy that provides the minimum amount and limits of coverage required under ORS chapter 825;**

**(c) Contain the policy number; and**

**(d) Require the insurance company to give the department written notice of cancellation of the policy and to continue to be liable under the policy until the department receives the written notice or until the cancellation date specified in the written notice, whichever is later.**

[5] (7) The person must pay the fee required under ORS 822.700 for issuance of a towing business [~~license~~] **certificate**.

**SECTION 17.** ORS 822.215 is amended to read:

822.215. The Department of Transportation may deny or refuse to issue any towing business certificate under ORS 822.205 or may suspend, revoke or refuse to renew any towing business certificate issued upon proof that the applicant for or holder of the certificate has done any of the following:

(1) Used fraud or deception in securing the certificate.

(2) Received in any manner or by any device any rebate or other additional fee for towing or recovery from a person who performs repairs on a vehicle who does not also own the vehicle. This subsection does not prohibit the payment of the towing fee by a person who performs repairs on a vehicle if the fee is included in the charges by that person for repairs on the vehicle.

(3) [~~Uses~~] **Used** vehicles for the purposes of towing or recovering services that [~~do~~] **did** not meet the minimum safety standards established by the department.

(4) [~~Fails~~] **Failed** to display special towing business registration plates, stickers or indicia or identification devices for proportionally registered tow vehicles authorized under ORS 805.200 on each vehicle used to tow or recover vehicles.

(5) [~~Fails~~] **Failed** to maintain the amounts and types of insurance required to qualify for issuance of a towing business certificate under ORS 822.205.

(6) [~~Fails~~] **Failed** to obtain any permits or authority required under any provision of ORS chapter 825 or rules adopted thereunder.

**(7) Violated any provision of section 3 or 5 of this 2007 Act or a rule adopted under section 8 of this 2007 Act.**

**SECTION 18.** ORS 646.608 is amended to read:

646.608. (1) A person engages in an unlawful practice when 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 those 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 they 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 they 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 they 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 them 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 when not authorized by the owner or apparent owner thereof.

(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 occurrence of an event subsequent to 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 them 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, auctioneers 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 646.850 (1).

(cc) Violates any requirement of ORS 646.661 to 646.686.

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

(ee) Violates ORS 646.883 or 646.885.

(ff) Violates any provision of ORS 646.195.

(gg) Violates ORS 646.569.

(hh) Violates the provisions of ORS 646.859.

(ii) Violates ORS 759.290.

(jj) Violates ORS 646.872.

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

(LL) Violates ORS 646.563.

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

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

(oo) Violates ORS 646.892 or 646.894.

(pp) Violates any provision of ORS 646.249 to 646.259.

(qq) Violates ORS 646.384.

(rr) Violates ORS 646.871.

(ss) Violates ORS 822.046.

(tt) Violates ORS 128.001.

(uu) Violates ORS 646.649 (2) to (4).

(vv) Violates ORS 646.877 (2) to (4).

(ww) Violates ORS 87.686.

(xx) Violates ORS 646.651.

(yy) Violates ORS 646.879.

(zz) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.

(aaa) Violates ORS 180.440 (1).

(bbb) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

(ccc) Violates ORS 87.007 (2) or (3).

(ddd) Violates ORS 92.405 (1), (2) or (3).

(eee) Engages in an unlawful practice under ORS 646.648.

**(fff) Violates section 3 or 5 of this 2007 Act or a rule adopted under section 8 of this 2007 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)(aaa) 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 19.** Sections 2 to 7 of this 2007 Act and the amendments to ORS 98.805, 98.810, 98.812, 98.818, 98.830, 98.835, 98.840, 646.608, 811.620, 819.160, 822.205 and 822.215 by sections 9 to 18 of this 2007 Act apply to persons who tow vehicles on or after the effective date of this 2007 Act.

Passed by Senate April 23, 2007

Repassed by Senate June 12, 2007

.....  
Secretary of Senate

.....  
President of Senate

Passed by House June 8, 2007

.....  
Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

.....  
Governor

Filed in Office of Secretary of State:

.....M,....., 2007

.....  
Secretary of State