

B-Engrossed House Bill 3631

Ordered by the Senate February 20
Including House Amendments dated February 7 and Senate Amendments
dated February 20

Sponsored by COMMITTEE ON ELECTIONS, ETHICS AND RULES (at the request of House Interim Committee
on Consumer Protection)

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.

Prohibits retailer from selling or offering for sale, leasing, subletting or otherwise distributing children's product subject to recall notice or warning issued by United States Consumer Product Safety Commission, subject to warning issued by children's product manufacturer, **unless retailer eliminates hazard in compliance with standards and instructions provided in warning**, or subject to rule or declaration that children's product is banned hazardous substance. Requires retailer to subscribe to or arrange to receive recall notices and warnings issued for children's products and to dispose of children's products identified in recall notice or warning in strict compliance with instructions.

Directs Attorney General to assist retailers in obtaining information necessary to subscribe to or receive recall notices related to children's products.

Authorizes enforcement of violation as unlawful trade practice **by Attorney General and by private action if violation occurs 30 days or more after recall notice is issued.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to children's products; creating new provisions; amending ORS 646.607 and 646.608; and
3 declaring an emergency.

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

5 **SECTION 1. As used in sections 1 to 3 of this 2008 Act:**

6 **(1)(a) "Children's product" means a consumer product that is designed or intended:**

7 **(A) For the care of or use by a child under 12 years of age; or**

8 **(B) To come into contact with a child under 12 years of age at the time the product is**
9 **used.**

10 **(b) "Children's product" does not include:**

11 **(A) A medication, drug, food or other product that is intended to be ingested; or**

12 **(B) A crib, as defined in ORS 646A.504.**

13 **(2) "Retailer" means a person that, in the ordinary course of the person's business, sells**
14 **or offers for sale, leases, sublets or otherwise distributes a children's product to consumers**
15 **in this state.**

16 **(3)(a) "Warning" means a communication about a health or safety hazard that a chil-**
17 **dren's product poses to consumers that is:**

18 **(A) Directed to a retailer; and**

19 **(B) Intended to inform the retailer about the health or safety hazard, instruct the**
20 **retailer to remove the children's product from inventory or provide the retailer with a**

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 method to eliminate the health or safety hazard.

2 (b) "Warning" does not include a communication:

3 (A) Directed to consumers; and

4 (B) Affixed to the children's product or packaging related to the children's product or
5 provided by the retailer to the consumer as part of a transaction related to the children's
6 product.

7 **SECTION 2.** (1) A retailer may not sell or offer for sale, lease, sublet or otherwise dis-
8 tribute a children's product to consumers in this state if the children's product is:

9 (a) Subject to a recall notice issued by or in cooperation with the United States Consumer
10 Product Safety Commission or a successor agency;

11 (b) The subject of a warning issued by the children's product manufacturer or the Con-
12 sumer Product Safety Commission or a successor agency that the intended use of the chil-
13 dren's product constitutes a health or safety hazard, unless the retailer has eliminated the
14 hazard and made the children's product safe for sale, lease, subletting or distribution to
15 consumers in strict compliance with standards and instructions provided in or related to the
16 warning; or

17 (c) Subject to a declaration by the Director of Human Services under ORS 453.055 or
18 under rules adopted by the Department of Human Services that the children's product is a
19 banned hazardous substance.

20 (2) A retailer shall subscribe to or arrange to receive recall notices and warnings issued
21 by the Consumer Product Safety Commission and warnings issued by manufacturers from
22 which the retailer receives children's products.

23 (3) A retailer shall dispose of a children's product identified in a recall notice or warning
24 issued by or in cooperation with the Consumer Product Safety Commission or a successor
25 agency in strict compliance with disposal instructions included with or related to the recall
26 notice or warning.

27 (4) A retailer shall comply strictly with all return, repair, retrofitting, labeling or reme-
28 diation instructions issued with or related to a warning issued by the Consumer Product
29 Safety Commission or a successor agency, an agency of this state or the children's product
30 manufacturer.

31 **SECTION 3.** The Attorney General shall assist retailers in obtaining information the
32 retailers may need to subscribe to or arrange to receive recall notices issued by the United
33 States Consumer Product Safety Commission for children's products. The assistance shall
34 include, but is not limited to, providing links from the Attorney General's website to a
35 website maintained by or in cooperation with the Consumer Product Safety Commission for
36 the purpose of disseminating product recall notices.

37 **SECTION 4.** ORS 646.607 is amended to read:

38 646.607. A person engages in an unlawful practice when in the course of the person's business,
39 vocation or occupation the person:

40 (1) Employs any unconscionable tactic in connection with the sale, rental or other disposition
41 of real estate, goods or services, or collection or enforcement of an obligation;

42 (2) Fails to deliver all or any portion of real estate, goods or services as promised, and upon
43 request of the customer, fails to refund any money that has been received from the customer that
44 was for the purchase of the undelivered real estate, goods or services and that is not retained by
45 the seller pursuant to any right, claim or defense asserted in good faith. This subsection does not

1 create a warranty obligation and does not apply to a dispute over the quality of real estate, goods
2 or services delivered to a customer; [or]

3 (3) Violates ORS 401.107 (1) to (4)[.]; or

4 (4) Violates section 2 of this 2008 Act.

5 **SECTION 5.** ORS 646.608 is amended to read:

6 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
7 ness, vocation or occupation the person does any of the following:

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

9 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
10 proval, or certification of real estate, goods or services.

11 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
12 ciation with, or certification by, another.

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

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

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

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

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

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

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

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

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

34 (m) Performs service on or dismantles any goods or real estate when not authorized by the
35 owner or apparent owner thereof.

36 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
37 vides the information required under ORS 646.611.

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

44 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
45 cize a product, business or service.

- 1 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
2 not to deliver them as promised.
- 3 (r) Organizes or induces or attempts to induce membership in a pyramid club.
- 4 (s) Makes false or misleading representations of fact concerning the offering price of, or the
5 person's cost for real estate, goods or services.
- 6 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
7 known material defect or material nonconformity.
- 8 (u) Engages in any other unfair or deceptive conduct in trade or commerce.
- 9 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
10 ORS 698.640, whether in a commercial or noncommercial situation.
- 11 (w) Manufactures mercury fever thermometers.
- 12 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
13 law, or is:
- 14 (A) Prescribed by a person licensed under ORS chapter 677; and
- 15 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
16 on the proper cleanup of mercury should breakage occur.
- 17 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
18 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
19 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
20 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
21 graph, "thermostat" means a device commonly used to sense and, through electrical communication
22 with heating, cooling or ventilation equipment, control room temperature.
- 23 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
24 mercury light switches.
- 25 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 26 (bb) Violates ORS 646A.070 (1).
- 27 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 28 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 29 (ee) Violates ORS 646.883 or 646.885.
- 30 (ff) Violates any provision of ORS 646A.020.
- 31 (gg) Violates ORS 646.569.
- 32 (hh) Violates the provisions of ORS 646A.142.
- 33 (ii) Violates ORS 646A.360.
- 34 (jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 35 (kk) Violates ORS 646.563.
- 36 (LL) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 37 (mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
38 thereto.
- 39 (nn) Violates ORS 646A.210 or 646A.214.
- 40 (oo) Violates any provision of ORS 646A.124 to 646A.134.
- 41 (pp) Violates ORS 646A.254.
- 42 (qq) Violates ORS 646A.095.
- 43 (rr) Violates ORS 822.046.
- 44 (ss) Violates ORS 128.001.
- 45 (tt) Violates ORS 646.649 (2) to (4).

- 1 (uu) Violates ORS 646A.090 (2) to (4).
- 2 (vv) Violates ORS 87.686.
- 3 (ww) Violates ORS 646.651.
- 4 (xx) Violates ORS 646A.362.
- 5 (yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 6 (zz) Violates ORS 180.440 (1).
- 7 (aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 8 (bbb) Violates ORS 87.007 (2) or (3).
- 9 (ccc) Violates ORS 92.405 (1), (2) or (3).
- 10 (ddd) Engages in an unlawful practice under ORS 646.648.
- 11 (eee) Violates ORS 646A.365.
- 12 (fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 13 (ggg) Sells a gift card in violation of ORS 646A.276.
- 14 (hhh) Violates ORS 646A.102, 646A.106 or 646A.108.
- 15 (iii) Violates ORS 646A.430 to 646A.450.
- 16 **(jjj) Violates section 2 of this 2008 Act 30 or more days after a recall notice, warning or**
- 17 **declaration described in section 2 of this 2008 Act is issued for the children's product, as**
- 18 **defined in section 1 of this 2008 Act, that is the subject of the violation.**
- 19 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
- 20 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- 21 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
- 22 need not prove competition between the parties or actual confusion or misunderstanding.
- 23 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
- 24 torney General has first established a rule in accordance with the provisions of ORS chapter 183
- 25 declaring the conduct to be unfair or deceptive in trade or commerce.
- 26 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
- 27 under subsection (1)(zz) of this section by a person other than a prosecuting attorney, relief is lim-
- 28 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.
- 29 **SECTION 6.** ORS 646.608, as operative until July 1, 2008, is amended to read:
- 30 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
- 31 ness, vocation or occupation the person does any of the following:
- 32 (a) Passes off real estate, goods or services as those of another.
- 33 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
- 34 proval, or certification of real estate, goods or services.
- 35 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
- 36 ciation with, or certification by, another.
- 37 (d) Uses deceptive representations or designations of geographic origin in connection with real
- 38 estate, goods or services.
- 39 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
- 40 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
- 41 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.
- 42 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,
- 43 reconditioned, reclaimed, used or secondhand.
- 44 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
- 45 or that real estate or goods are of a particular style or model, if they are of another.

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

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

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

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

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

13 (m) Performs service on or dismantles any goods or real estate when not authorized by the
14 owner or apparent owner thereof.

15 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
16 vides the information required under ORS 646.611.

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

23 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
24 cize a product, business or service.

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

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

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

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

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

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

35 (w) Manufactures mercury fever thermometers.

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

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

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

41 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
42 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
43 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
44 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
45 graph, "thermostat" means a device commonly used to sense and, through electrical communication

1 with heating, cooling or ventilation equipment, control room temperature.

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

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

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

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

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

8 (ee) Violates ORS 646.883 or 646.885.

9 (ff) Violates any provision of ORS 646A.020.

10 (gg) Violates ORS 646.569.

11 (hh) Violates the provisions of ORS 646A.142.

12 (ii) Violates ORS 646A.360.

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

14 (kk) Violates ORS 646.563.

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

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

18 (nn) Violates ORS 646A.210 or 646A.214.

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

20 (pp) Violates ORS 646A.254.

21 (qq) Violates ORS 646A.095.

22 (rr) Violates ORS 822.046.

23 (ss) Violates ORS 128.001.

24 (tt) Violates ORS 646.649 (2) to (4).

25 (uu) Violates ORS 646A.090 (2) to (4).

26 (vv) Violates ORS 87.686.

27 (ww) Violates ORS 646.651.

28 (xx) Violates ORS 646A.362.

29 (yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

30 (zz) Violates ORS 180.440 (1).

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

32 (bbb) Violates ORS 87.007 (2) or (3).

33 (ccc) Violates ORS 92.405 (1), (2) or (3).

34 (ddd) Engages in an unlawful practice under ORS 646.648.

35 (eee) Violates ORS 646A.365.

36 (fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

37 (ggg) Sells a gift card in violation of ORS 646A.276.

38 (hhh) Violates ORS 646A.102, 646A.106 or 646A.108.

39 **(iii) Violates section 2 of this 2008 Act 30 or more days after a recall notice, warning or**
40 **declaration described in section 2 of this 2008 Act is issued for the children's product, as**
41 **defined in section 1 of this 2008 Act, that is the subject of the violation.**

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

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

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

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

7 **SECTION 7. Sections 1 to 3 of this 2008 Act and the amendments to ORS 646.607 and**
8 **646.608 by sections 4 to 6 of this 2008 Act apply to a person that operates as a retailer on or**
9 **after the operative date of sections 1 to 3 of this 2008 Act and the amendments to ORS**
10 **646.607 and 646.608 by sections 4 to 6 of this 2008 Act.**

11 **SECTION 8. Sections 1 to 3 and 7 of this 2008 Act and the amendments to ORS 646.607**
12 **and 646.608 by sections 4 to 6 of this 2008 Act become operative on May 1, 2008.**

13 **SECTION 9. This 2008 Act being necessary for the immediate preservation of the public**
14 **peace, health and safety, an emergency is declared to exist, and this 2008 Act takes effect**
15 **on its passage.**

16 _____