

Enrolled
House Bill 2268

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CHAPTER

AN ACT

Relating to requirements for customer authorization of motor vehicle repairs; 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 5 of this 2009 Act:

(1)(a) "Motor vehicle" means a self-propelled device, other than a motor home, that is used:

- (A) To transport persons or property upon a public highway; and**
- (B) For personal, family or household purposes.**

(b) "Motor vehicle" does not include a motor vehicle owned as part of a fleet and maintained under the terms of a maintenance contract.

(2) "Owner" means an individual who has legal authority or apparent legal authority to make decisions concerning the maintenance or repair of a motor vehicle.

(3) "Owner's designee" means an individual who received permission in accordance with section 5 of this 2009 Act to make decisions concerning the repair or maintenance of a motor vehicle.

(4)(a) "Vehicle repair shop" means an individual, corporation, partnership, limited liability company or other business entity that in exchange for payment evaluates the condition of, maintains or repairs a motor vehicle.

(b) "Vehicle repair shop" does not include a motor vehicle body and frame repair shop, as defined in ORS 746.275.

SECTION 2. (1) A vehicle repair shop shall prepare an estimate of the cost of work the vehicle repair shop proposes to perform on a motor vehicle before beginning the work. The vehicle repair shop not later than before receiving final payment shall give a copy of the estimate, either as a separate document or in the form of an invoice, to the owner or the owner's designee. The vehicle repair shop shall retain a copy of the estimate. The estimate, at a minimum, must:

- (a) Describe the general nature of the proposed work;**
- (b) Divide the work into separate tasks, to the extent that the work may be divided into separate tasks; and**
- (c) List:**
 - (A) The estimated cost of labor and the parts or component systems the vehicle repair shop proposes to replace;**
 - (B) The amount of any incidental charges; and**

(C) The total estimated cost, which may consist of a reasonable range.

(2) If a vehicle repair shop proposes to disassemble all or a portion of a motor vehicle or to remove parts or components of a motor vehicle in order to evaluate the condition of the motor vehicle for the purpose of recommending or proposing additional work, in addition to complying with the requirements shown in subsection (1) of this section, the estimate must:

(a) List the total estimated cost of performing the disassembly and evaluation and a separate estimate of the cost for reassembly, assuming for the purpose of the estimate that the owner or owner's designee elects not to proceed with work the vehicle repair shop may recommend or propose after evaluating the condition of the motor vehicle; and

(b) State the estimated amount of time, calculated from the date on which the owner or owner's designee authorizes the disassembly, evaluation and reassembly of the motor vehicle, that the vehicle repair shop would reasonably take to reassemble the motor vehicle if all necessary parts are available and if the owner or owner's designee, on the day that the owner or owner's designee receives the estimate, elects not to proceed with work the vehicle repair shop recommends or proposes after evaluating the condition of the motor vehicle.

SECTION 3. (1) Except as provided in subsection (2) of this section, a vehicle repair shop may not take any of the following actions if an estimate prepared under section 2 of this 2009 Act shows that taking the action will cost the owner or the owner's designee more than \$200:

(a) Evaluate the condition of a motor vehicle.

(b) Disassemble all or a portion of a motor vehicle or remove parts or components of a motor vehicle in order to evaluate the condition of the motor vehicle.

(c) Perform labor or replace or recondition a part in order to:

(A) Repair a motor vehicle; or

(B) Maintain the motor vehicle in or restore the motor vehicle to an operable condition or a condition that conforms with an identified or recognized standard.

(d) Use a work method or procedure, perform a task or labor or replace a part in a manner that differs from the method, procedure, task, labor or part described or identified in the estimate, if the change increases the cost specified in the estimate by more than 10 percent or by more than \$200, whichever amount is less.

(2) A vehicle repair shop shall obtain a separate authorization from the owner or the owner's designee before taking an action described in subsection (1) of this section. After consulting with the owner or owner's designee, the vehicle repair shop shall:

(a) Cross out, remove from or otherwise indicate on the estimate prepared under section 2 of this 2009 Act the work the vehicle repair shop will not perform on the motor vehicle and recalculate and display on the estimate the cost of work the vehicle repair shop will perform before obtaining authorization or assent from the owner or owner's designee; or

(b) Prepare a new estimate in accordance with section 2 of this 2009 Act and void the previous estimate before obtaining authorization or assent from the owner or owner's designee.

(3) The vehicle repair shop may obtain authorization or assent by any of the following means:

(a) Obtaining the signature of the owner or owner's designee under a statement printed on the estimate that authorizes the action.

(b) Obtaining the oral assent of the owner or owner's designee by telephone. The vehicle repair shop shall provide the owner or owner's designee with all material information shown on the estimate and shall note on the estimate the name and telephone number of the person that gives the assent and the date and time of the call.

(c) Receiving by facsimile, electronic mail or other electronic means a written message that authorizes the work. A facsimile message must display the signature of the person that gives the authorization and the date and time of transmission. An electronic mail or other electronic message must show the name of the person that gives the authorization and the

date and time of transmission. The vehicle repair shop shall attach the facsimile or a print-out of the electronic mail or other electronic message to a copy of the estimate.

SECTION 4. (1) A vehicle repair shop may not:

(a) Charge a person for work not performed on a motor vehicle even if the work is shown on an estimate for which the vehicle repair shop has obtained an authorization from the owner or the owner's designee.

(b) Provide or install used parts or any component system composed of new and used parts if an estimate prepared under section 2 of this 2009 Act indicates that the vehicle repair shop will use new parts or component systems in work performed on the motor vehicle.

(c) Knowingly provide or install, without disclosing to the owner or the owner's designee, a used or reconditioned part.

(2) A vehicle repair shop shall:

(a) Reassemble, if all necessary parts are available, approximately within the time indicated on an estimate prepared under section 2 (2) of this 2009 Act, a motor vehicle that the vehicle repair shop has disassembled or from which the vehicle repair shop has removed parts in order to evaluate the condition of the motor vehicle.

(b) Maintain for not less than one year, in electronic or printed form, legible copies of all documents required or provided under sections 1 to 5 of this 2009 Act.

SECTION 5. (1) An owner may designate a person as the owner's designee:

(a) In writing, either on the estimate prepared under section 2 of this 2009 Act or by means of a separate document. The owner shall sign a written designation made in accordance with this paragraph. If the designation is a separate document, the vehicle repair shop shall attach a copy of the document to the estimate.

(b) Orally or by telephone. For a designation made in accordance with this paragraph, the vehicle repair shop shall note on the estimate the name and telephone number of the person who made the designation, the name of the owner's designee and, if the person made the designation by telephone, the date and time of the call.

(2) An owner may waive the authorization requirement set forth in section 3 (2) of this 2009 Act only when the owner receives an explanation of the authorization requirements and signs a separate document directly under a statement that conspicuously identifies the authorization requirement.

(3) An owner may not designate a motor vehicle repair shop or a principal, agent or employee of a motor vehicle repair shop as the owner's designee.

(4) For purposes of this section, a statement is conspicuous if a reasonable person reading the separate document should have noticed the statement.

SECTION 6. ORS 646.608, as amended by section 8, chapter 19, Oregon Laws 2008, and section 5, chapter 31, Oregon Laws 2008, 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 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 any provision of ORS 646A.020.
- (gg) Violates ORS 646.569.
- (hh) Violates the provisions of ORS 646A.142.
- (ii) Violates ORS 646A.360.
- (jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- (kk) Violates ORS 646.563.
- (LL) Violates ORS 759.690 or any rule adopted pursuant thereto.
- (mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.
- (nn) Violates ORS 646A.210 or 646A.214.
- (oo) Violates any provision of ORS 646A.124 to 646A.134.
- (pp) Violates ORS 646A.254.
- (qq) Violates ORS 646A.095.
- (rr) Violates ORS 822.046.
- (ss) Violates ORS 128.001.
- (tt) Violates ORS 646.649 (2) to (4).
- (uu) Violates ORS 646A.090 (2) to (4).
- (vv) Violates ORS 87.686.
- (ww) Violates ORS 646.651.
- (xx) Violates ORS 646A.362.
- (yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- (zz) Violates ORS 180.440 (1).
- (aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- (bbb) Violates ORS 87.007 (2) or (3).
- (ccc) Violates ORS 92.405 (1), (2) or (3).
- (ddd) Engages in an unlawful practice under ORS 646.648.
- (eee) Violates ORS 646A.365.
- (fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- (ggg) Sells a gift card in violation of ORS 646A.276.
- (hhh) Violates ORS 646A.102, 646A.106 or 646A.108.
- (iii) Violates ORS 646A.430 to 646A.450.
- (jjj) Violates a provision of sections 2 to 6, chapter 19, Oregon Laws 2008.
- (kkk) Violates section 2, chapter 31, Oregon Laws 2008, 30 or more days after a recall notice, warning or declaration described in section 2, chapter 31, Oregon Laws 2008, is issued for the children's product, as defined in section 1, chapter 31, Oregon Laws 2008, that is the subject of the violation.

(LLL) Violates a provision of sections 1 to 5 of this 2009 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)(zz) 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 7. Sections 1 to 5 of this 2009 Act and the amendments to ORS 646.608 by section 6 of this 2009 Act apply to estimates a vehicle repair shop prepares or work a vehicle repair shop performs on a motor vehicle on or after the effective date of this 2009 Act.

Passed by House April 1, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate May 11, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State