

House Bill 2270

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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 **as introduced**.

Provides that shipping and handling fee that seller charges buyer in transaction for consumer goods must be reasonably based on actual cost of preparing, packaging, processing, posting and delivering goods. Requires seller to disclose shipping and handling fee at time of solicitation of sale, and before consummation of transaction or before buyer pays for goods or provides payment information to seller.

Authorizes enforcement of violation as unlawful trade practice.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to fees sellers charge to buyers; creating new provisions; amending ORS 646.608; and de-
3 claring an emergency.

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

SECTION 1. As used in sections 1 to 3 of this 2009 Act:

6 (1) **"Buyer" means an individual who buys or contracts to buy goods.**

7 (2) **"Consummation" means the time at which a buyer becomes contractually obligated**
8 **to make an immediate payment or a future payment in a transaction.**

9 (3) **"Goods" means consumer goods that are used or bought for use primarily for per-**
10 **sonal, family or household purposes.**

11 (4) **"Payment information" means a credit card or debit card number, a bank account**
12 **number or other account number or other information a seller needs to process a payment**
13 **from a buyer.**

14 (5) **"Seller" means a person that solicits an offer to buy goods, that advertises or offers**
15 **goods for sale or that sells goods to a buyer.**

16 (6) **"Shipping and handling fee" means an amount of money a seller charges to a buyer**
17 **that is not included in the price at which the seller advertises or offers goods for sale or in**
18 **the price a buyer would pay to obtain the goods from the seller exclusive of the costs of**
19 **preparing, packaging, processing, postage, delivery or similar costs.**

20 **SECTION 2. (1) If a seller charges a buyer a shipping and handling fee in a transaction**
21 **for goods, the shipping and handling fee must be reasonably based on the seller's costs of**
22 **preparing, packaging, processing, posting and delivering the goods.**

23 (2) **Except as provided in subsection (3) of this section, a seller shall disclose to the buyer**
24 **the shipping and handling fee that will apply to the transaction at the time the seller ad-**
25 **vertises or offers goods for sale, and again before the consummation of the transaction or**
26 **before the buyer pays for the goods or provides payment information to the seller, whichever**
27 **occurs first.**

28 (3) **If a seller at the time the seller advertises or offers goods for sale does not know or**

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 cannot reasonably ascertain the shipping and handling fee the seller will apply to the trans-
 2 action, the seller shall disclose to the buyer information the seller has or can ascertain that
 3 will affect or determine the shipping and handling fee. The seller shall make the disclosure
 4 at the earliest time at which the information is available, but not later than a time that al-
 5 lows the buyer a reasonable interval to consider the information before the consummation
 6 of the transaction or before the buyer pays for the goods or provides payment information
 7 to the seller. The information the seller must disclose includes, but is not limited to:

8 (a) Available options for shipping the goods, if the shipping and handling fee will depend
 9 on which shipping method or option, including the carrier or class of shipping, the buyer
 10 chooses.

11 (b) Variables the seller uses to calculate the shipping and handling fee and the maximum
 12 shipping and handling fee that will apply to the transaction if the shipping and handling fee
 13 will depend on the shipping method chosen, the price or weight of the goods, the distance the
 14 goods must travel before delivery or other variables.

15 (c) The name of the third party carrier the seller will use to ship the goods to the buyer,
 16 if the seller will use a third party carrier.

17 (d) The amount of a delivery fee or postage a third party carrier will charge the seller
 18 to deliver the goods to the buyer, if the shipping and handling fee will depend on how much
 19 the third party carrier charges for delivering the goods. If the seller does not know or cannot
 20 reasonably ascertain the delivery fee or postage the third party carrier will charge, the seller
 21 shall instead:

22 (A) Disclose how much of the shipping and handling fee the seller retains after paying
 23 the third party carrier's delivery fee, that the third party carrier returns to the seller or
 24 that the seller expects to receive from the third party carrier; and

25 (B) Inform the buyer that the buyer must pay a delivery fee or postage in an amount
 26 determined by the third party carrier and that the amount of the delivery fee or postage
 27 may depend on the shipping method, the weight of the goods or the distance the goods must
 28 travel before delivery.

29 (e) Whether a shipping and handling fee is a fixed or variable amount for each shipment,
 30 if the transaction consists of periodic shipments in which the seller delivers goods to the
 31 buyer for a predetermined term or until the buyer indicates that the buyer will not accept
 32 further shipments. If the shipping and handling fee is fixed for each shipment, the seller shall
 33 disclose the amount of the fee. If the shipping and handling fee is variable, the seller shall
 34 disclose:

35 (A) The variables the seller uses to calculate the fee; and

36 (B) The maximum shipping and handling fee the seller will charge for the initial shipment
 37 and the maximum amount of shipping and handling fees the seller will charge for the term
 38 of the transaction or for a one-year term if the transaction does not have a fixed term and
 39 if the seller does not plan to increase the fee after the one-year term expires.

40 (4)(a) A seller may not charge a buyer a shipping and handling fee that exceeds the sum
 41 of:

42 (A) The actual costs of postage or the actual delivery fee a third party carrier charges;
 43 and

44 (B) The amount the seller disclosed to the buyer under subsection (3)(d)(A) of this sec-
 45 tion.

1 **(b) For transactions described in subsection (3)(e) of this section, if the seller intends to**
2 **increase the amount of a shipping and handling fee for subsequent shipments, the seller shall**
3 **notify the buyer and disclose the new rates 30 days in advance of the increase.**

4 **(c) A seller may not represent to a buyer that the seller does not charge a shipping and**
5 **handling fee if the seller increases the price of the goods advertised or offered to include the**
6 **shipping and handling fee. However, a seller may:**

7 **(A) Deliver goods to a buyer without charging a shipping and handling fee; or**

8 **(B) Represent to a buyer that a shipping and handling fee is included in the price of the**
9 **goods offered.**

10 **SECTION 3. In accordance with ORS chapter 183 and section 2 of this 2009 Act, the At-**
11 **torney General may adopt rules to establish standards for a seller's disclosure of shipping**
12 **and handling fees and to enforce the standards the Attorney General establishes.**

13 **SECTION 4.** ORS 646.608, as amended by section 8, chapter 19, Oregon Laws 2008, and section
14 5, chapter 31, Oregon Laws 2008, is amended to read:

15 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
16 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-

1 vides the information required under ORS 646.611.

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

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

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

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

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

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

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

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

20 (w) Manufactures mercury fever thermometers.

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

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

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

26 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
 27 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
 28 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
 29 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
 30 graph, "thermostat" means a device commonly used to sense and, through electrical communication
 31 with heating, cooling or ventilation equipment, control room temperature.

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

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

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

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

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

38 (ee) Violates ORS 646.883 or 646.885.

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

40 (gg) Violates ORS 646.569.

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

42 (ii) Violates ORS 646A.360.

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

44 (kk) Violates ORS 646.563.

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

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

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

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

5 (pp) Violates ORS 646A.254.

6 (qq) Violates ORS 646A.095.

7 (rr) Violates ORS 822.046.

8 (ss) Violates ORS 128.001.

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

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

11 (vv) Violates ORS 87.686.

12 (ww) Violates ORS 646.651.

13 (xx) Violates ORS 646A.362.

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

15 (zz) Violates ORS 180.440 (1).

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

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

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

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

20 (eee) Violates ORS 646A.365.

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

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

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

24 (iii) Violates ORS 646A.430 to 646A.450.

25 (jjj) Violates a provision of sections 2 to 6, chapter 19, Oregon Laws 2008.

26 (kkk) Violates section 2, chapter 31, Oregon Laws 2008, 30 or more days after a recall notice,
27 warning or declaration described in section 2, chapter 31, Oregon Laws 2008, is issued for the chil-
28 dren's product, as defined in section 1, chapter 31, Oregon Laws 2008, that is the subject of the vi-
29 olation.

30 **(LLL) Violates a provision of section 2 of this 2009 Act.**

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

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

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

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

41 **SECTION 5. (1) Sections 1 to 3 of this 2009 Act and the amendments to ORS 646.608 by**
42 **section 4 of this 2009 Act become operative 90 days after the effective date of this 2009 Act.**

43 **(2) The Attorney General may take any action before the operative date set forth in**
44 **subsection (1) of this section that is necessary to enable the Attorney General to exercise,**
45 **on and after the operative date, all of the duties, functions and powers conferred on the**

1 Attorney General by sections 1 to 3 of this 2009 Act and the amendments to ORS 646.608 by
2 section 4 of this 2009 Act.

3 **SECTION 6.** This 2009 Act being necessary for the immediate preservation of the public
4 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
5 on its passage.
6
