

Enrolled Senate Bill 109

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 Governor Theodore R. Kulongoski for Department of Consumer and Business Services)

CHAPTER

AN ACT

Relating to sellers of travel; creating new provisions; amending ORS 646.608 and 646A.110; and repealing ORS 646A.010, 646A.012, 646A.014, 646A.016, 646A.018 and 646A.020.

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

SECTION 1. 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)] **(ff)** Violates ORS 646.569.

[(hh)] **(gg)** Violates the provisions of ORS 646A.142.

[(ii)] **(hh)** Violates ORS 646A.360.

[(jj)] **(ii)** Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

[(kk)] **(jj)** Violates ORS 646.563.

[(LL)] **(kk)** Violates ORS 759.690 or any rule adopted pursuant thereto.

[(mm)] **(LL)** Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.

[(nn)] **(mm)** Violates ORS 646A.210 or 646A.214.

[(oo)] **(nn)** Violates any provision of ORS 646A.124 to 646A.134.

[(pp)] **(oo)** Violates ORS 646A.254.

[(qq)] **(pp)** Violates ORS 646A.095.

[(rr)] **(qq)** Violates ORS 822.046.

[(ss)] **(rr)** Violates ORS 128.001.

[(tt)] **(ss)** Violates ORS 646.649 (2) to (4).

[(uu)] **(tt)** Violates ORS 646A.090 (2) to (4).

[(vv)] **(uu)** Violates ORS 87.686.

[(ww)] **(vv)** Violates ORS 646.651.

[(xx)] **(ww)** Violates ORS 646A.362.

[(yy)] **(xx)** Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

[(zz)] **(yy)** Violates ORS 180.440 (1).

[(aaa)] **(zz)** Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

[(bbb)] **(aaa)** Violates ORS 87.007 (2) or (3).

[(ccc)] **(bbb)** Violates ORS 92.405 (1), (2) or (3).

[(ddd)] **(ccc)** Engages in an unlawful practice under ORS 646.648.

[(eee)] **(ddd)** Violates ORS 646A.365.

[(fff)] **(eee)** Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

[(ggg)] **(fff)** Sells a gift card in violation of ORS 646A.276.

[(hhh)] **(ggg)** Violates ORS 646A.102, 646A.106 or 646A.108.

[(iii)] **(hhh)** Violates ORS 646A.430 to 646A.450.

[(jjj)] **(iii)** Violates a provision of sections 2 to 6, chapter 19, Oregon Laws 2008.

[(kkk)] **(jjj)** 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.

(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)] **(1)(yy)** 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 2. ORS 646A.110 is amended to read:

646A.110. (1) ORS 646.608 [(1)(fff)] **(1)(eee)**, 646A.100 to 646A.110 and 646A.112 apply only to persons who engage in the retail sale of merchandise in the regular course of their business.

(2) ORS 646.608 [(1)(fff)] **(1)(eee)**, 646A.100 to 646A.110 and 646A.112 do not apply to public officials acting within the scope of their duties as public officials.

SECTION 3. The unexpended balances of amounts authorized to be expended by the Department of Consumer and Business Services for the biennium beginning July 1, 2009, from revenues dedicated, continuously appropriated, appropriated or otherwise made available for the purpose of administering and enforcing the provisions of ORS 646A.010 to 646A.020 are transferred to the General Fund and made available for general governmental expenditures.

SECTION 4. ORS 646A.010, 646A.012, 646A.014, 646A.016, 646A.018 and 646A.020 are repealed.

Passed by Senate February 16, 2009

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Secretary of Senate

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President of Senate

Passed by House May 12, 2009

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Speaker of House

Received by Governor:

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

Approved:

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

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Governor

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

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Secretary of State