

# Senate Bill 485

Sponsored by Senator PROZANSKI (at the request of Dave Works)

## 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**.

Prohibits person from changing subscriber's Internet service provider unless person clearly and conspicuously discloses name of new provider and effect of change on cost of service and obtains unambiguous and verified order from subscriber requesting change. Provides that violation is unlawful trade practice.

## A BILL FOR AN ACT

1  
2 Relating to Internet service providers; creating new provisions; and amending ORS 646.608.

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

4 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS 646.605 to**  
5 **646.652.**

6 **SECTION 2. (1) It is an unlawful trade practice for a person to change a subscriber's**  
7 **Internet service provider unless the person clearly and conspicuously discloses to the sub-**  
8 **scriber the name of the new provider, discloses the effect of the change on the cost of ser-**  
9 **vice to the subscriber and obtains an unambiguous and verified order from the subscriber**  
10 **requesting the change in providers. The order from the subscriber must be separate from**  
11 **any other order made by the subscriber for unrelated products or services.**

12 **(2) If a person changes a subscriber's Internet service provider in violation of subsection**  
13 **(1) of this section, the subscriber is not obligated to pay for charges imposed by the new**  
14 **provider during the first 60 days after the change occurs, or to pay any service charge or**  
15 **other fee for the change in the subscriber's provider.**

16 **(3) An Internet service provider shall provide to any subscriber and to any state agency**  
17 **investigating or inquiring about any allegation of violation of subsection (1) of this section a**  
18 **copy of proof of verification of a subscriber's order within 20 days after demand is made for**  
19 **the verification. The failure of a provider to provide verification in the manner required by**  
20 **this subsection creates a presumption as described in ORS 40.120 that a valid verification**  
21 **does not exist.**

22 **(4) This section does not apply to any conduct by a person that is required or authorized**  
23 **by the orders or rules of a federal, state or local agency.**

24 **SECTION 3. ORS 646.608, as amended by section 8, chapter 19, Oregon Laws 2008, and section**  
25 **5, chapter 31, Oregon Laws 2008, is amended to read:**

26 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-  
27 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (w) Manufactures mercury fever thermometers.
- 2 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
- 3 law, or is:
- 4 (A) Prescribed by a person licensed under ORS chapter 677; and
- 5 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
- 6 on the proper cleanup of mercury should breakage occur.
- 7 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
- 8 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
- 9 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
- 10 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
- 11 graph, “thermostat” means a device commonly used to sense and, through electrical communication
- 12 with heating, cooling or ventilation equipment, control room temperature.
- 13 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
- 14 mercury light switches.
- 15 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 16 (bb) Violates ORS 646A.070 (1).
- 17 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 18 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 19 (ee) Violates ORS 646.883 or 646.885.
- 20 (ff) Violates any provision of ORS 646A.020.
- 21 (gg) Violates ORS 646.569.
- 22 (hh) Violates the provisions of ORS 646A.142.
- 23 (ii) Violates ORS 646A.360.
- 24 (jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 25 (kk) Violates ORS 646.563.
- 26 (LL) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 27 (mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 28 thereto.
- 29 (nn) Violates ORS 646A.210 or 646A.214.
- 30 (oo) Violates any provision of ORS 646A.124 to 646A.134.
- 31 (pp) Violates ORS 646A.254.
- 32 (qq) Violates ORS 646A.095.
- 33 (rr) Violates ORS 822.046.
- 34 (ss) Violates ORS 128.001.
- 35 (tt) Violates ORS 646.649 (2) to (4).
- 36 (uu) Violates ORS 646A.090 (2) to (4).
- 37 (vv) Violates ORS 87.686.
- 38 (ww) Violates ORS 646.651.
- 39 (xx) Violates ORS 646A.362.
- 40 (yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 41 (zz) Violates ORS 180.440 (1).
- 42 (aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 43 (bbb) Violates ORS 87.007 (2) or (3).
- 44 (ccc) Violates ORS 92.405 (1), (2) or (3).
- 45 (ddd) Engages in an unlawful practice under ORS 646.648.

- 1 (eee) Violates ORS 646A.365.
- 2 (fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 3 (ggg) Sells a gift card in violation of ORS 646A.276.
- 4 (hhh) Violates ORS 646A.102, 646A.106 or 646A.108.
- 5 (iii) Violates ORS 646A.430 to 646A.450.
- 6 (jjj) Violates a provision of sections 2 to 6, chapter 19, Oregon Laws 2008.
- 7 (kkk) Violates section 2, chapter 31, Oregon Laws 2008, 30 or more days after a recall notice,
- 8 warning or declaration described in section 2, chapter 31, Oregon Laws 2008, is issued for the chil-
- 9 dren’s product, as defined in section 1, chapter 31, Oregon Laws 2008, that is the subject of the vi-
- 10 olation.

11 **(LLL) Changes a subscriber’s Internet service provider in violation of section 2 of this**  
 12 **2009 Act.**

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

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

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

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

23 **SECTION 4. Section 2 of this 2009 Act applies only to conduct that occurs on or after the**  
 24 **effective date of this 2009 Act.**

25 \_\_\_\_\_