

A-Engrossed
Senate Bill 1001

Ordered by the Senate February 15
Including Senate Amendments dated February 15

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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.

Makes application of automatic renewal provision in consumer contract [*or promotional or free trial offer*] unlawful trade practice unless provision or offer complies with notice and express consent requirements.

Makes charging early termination fee for cancellation of consumer contract unlawful trade practice unless charging complies with notice and express consent requirements.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to unlawful consumer contract practices; creating new provisions; amending ORS 646.608;
3 and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2010 Act is added to and made a part of ORS 646.605 to**
6 **646.652.**

7 **SECTION 2. (1) As used in this section:**

8 (a) "Automatic renewal provision" means a provision by which the term of a consumer
9 contract is extended at the end of a definite term for a subsequent term unless the consumer
10 cancels the contract.

11 (b) "Clear and conspicuous" means language that is readily understandable and presented
12 in such size, color, contrast and location, or audibility and cadence, compared to other lan-
13 guage as to be readily noticed and understood, and that is in close proximity to the request
14 for consent to a contract offer or any specific term or provision of a contract offer.

15 (c) "Consumer" means an individual who seeks to purchase, or purchases, goods or ser-
16 vices for personal, family or household purposes.

17 (d)(A) "Consumer contract" means any agreement, or renewal of an agreement, between
18 a person and a consumer for the sale and purchase of goods or services for personal, family
19 or household purposes.

20 (B) "Consumer contract" does not include:

21 (i) An agreement for insurance;

22 (ii) A certificate of deposit;

23 (iii) A consumer finance loan, as that term is defined in ORS 725.010;

24 (iv) A rental agreement, as that term is defined in ORS 90.100;

25 (v) A lease-purchase agreement, as that term is defined in ORS 646A.120;

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 (vi) A service contract, as that term is defined in ORS 646A.154; or

2 (vii) A contract for services that are subject to the federal Communications Act of 1934
3 (47 U.S.C. 151 et seq.), when the contract contains an automatic renewal provision that ex-
4 tends the contract less than 32 days beyond the end of the term of the original contract or
5 of any previous renewal of the contract and presents information about any early termi-
6 nation fee provision in the contract in a clear and conspicuous manner at the time the con-
7 sumer enters into the contract.

8 (e) "Early termination fee" means a fee charged to a consumer for the consumer's can-
9 cellation of a consumer contract before the end of the initial contract period or of any ex-
10 tension of an initial contract period by an automatic renewal provision or otherwise.

11 (f) "Express consent" or "expressly consent" means a consumer's agreement, as indi-
12 cated by the consumer's written signature, oral words of acceptance or other indicia, to be-
13 come legally obligated under a consumer contract or a specific term or provision of the
14 contract.

15 (2) A person may not apply an automatic renewal provision that extends a consumer
16 contract at the end of the term of the original contract, or at the end of any previous re-
17 newal of the contract, unless the person:

18 (a) Presents the automatic renewal provision in a clear and conspicuous manner at the
19 time the contract offer is made;

20 (b) Provides a procedure to cancel the consumer contract in the same manner by which
21 the consumer entered into the contract or as otherwise expressly consented to by the con-
22 sumer. In the case of a consumer contract that was agreed to telephonically, the person
23 must provide a toll-free number by which the consumer may receive either an immediate
24 response and confirmation of cancellation, or a response and confirmation within three
25 business days after having left a message; and

26 (c) Where the automatic renewal provision extends the consumer contract more than 31
27 days beyond the end of the term of the original contract or of any previous renewal of the
28 contract:

29 (A) Provides notice to the consumer of the automatic renewal provision and that the
30 contract will automatically renew unless the consumer cancels the contract using the pro-
31 cedure required by paragraph (b) of this subsection, at least 30 days and no more than 60
32 days prior to the date upon which the contract ends and will automatically renew; and

33 (B) Provides the consumer with periodic statements of charges owed that contain infor-
34 mation about the cancellation procedure required by paragraph (b) of this subsection. The
35 statements required by this subparagraph must be provided at the same interval as the
36 person charges or bills the consumer.

37 (3) A person may not charge an early termination fee for cancellation of a consumer
38 contract unless the person:

39 (a) Presents the early termination fee provision in a clear and conspicuous manner at the
40 time the contract offer is made; and

41 (b) Receives the consumer's express consent to the early termination fee provision.

42 (4) In addition to any of the remedies available under ORS 646.605 to 646.652, in any sit-
43 uation in which a person violates one or more of the provisions of this section, the provision
44 of the consumer contract that is the source of the violation is void and unenforceable.

45 **SECTION 3.** ORS 646.608 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

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

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

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

24 (ee) Violates ORS 646.883 or 646.885.

25 (ff) Violates ORS 646.569.

26 (gg) Violates the provisions of ORS 646A.142.

27 (hh) Violates ORS 646A.360.

28 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

29 (jj) Violates ORS 646.563.

30 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

31 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
32 thereto.

33 (mm) Violates ORS 646A.210 or 646A.214.

34 (nn) Violates any provision of ORS 646A.124 to 646A.134.

35 (oo) Violates ORS 646A.095.

36 (pp) Violates ORS 822.046.

37 (qq) Violates ORS 128.001.

38 (rr) Violates ORS 646.649 (2) to (4).

39 (ss) Violates ORS 646A.090 (2) to (4).

40 (tt) Violates ORS 87.686.

41 (uu) Violates ORS 646.651.

42 (vv) Violates ORS 646A.362.

43 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

44 (xx) Violates ORS 180.440 (1) or 180.486 (1).

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

- 1 (zz) Violates ORS 87.007 (2) or (3).
- 2 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 3 (bbb) Engages in an unlawful practice under ORS 646.648.
- 4 (ccc) Violates ORS 646A.365.
- 5 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 6 (eee) Sells a gift card in violation of ORS 646A.276.
- 7 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 8 (ggg) Violates ORS 646A.430 to 646A.450.
- 9 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
- 10 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 11 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 12 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 13 subject of the violation.
- 14 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 15 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 16 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 17 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 18 (nnn) Violates ORS 646A.082.
- 19 (ooo) Violates ORS 646.647.
- 20 (ppp) Violates ORS 646A.115.
- 21 (qqq) Violates a provision of ORS 646A.405.

- 22 **(rrr) Violates a provision of section 2 of this 2010 Act.**
- 23 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
- 24 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- 25 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
- 26 need not prove competition between the parties or actual confusion or misunderstanding.
- 27 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
- 28 torney General has first established a rule in accordance with the provisions of ORS chapter 183
- 29 declaring the conduct to be unfair or deceptive in trade or commerce.
- 30 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
- 31 under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is lim-
- 32 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.

33 **SECTION 4. Section 2 of this 2010 Act and the amendments to ORS 646.608 by section 3**
34 **of this 2010 Act apply to consumer contracts entered into on or after the effective date of**
35 **this 2010 Act.**

36 **SECTION 5. This 2010 Act being necessary for the immediate preservation of the public**
37 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**
38 **on its passage.**

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