

Senate Bill 1001

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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**.

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. Consumer contract includes a free trial offer or a promotional offer.

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

21 (i) An agreement for insurance;

22 (ii) A certificate of deposit; or

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

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

27 (f) "Express consent" or "expressly consent" means a consumer's agreement, as indi-
28 cated by the consumer's written signature, oral words of acceptance or other indicia, to be-

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 come legally obligated under a consumer contract or pursuant to a promotional offer or free
2 trial offer, or to a specific term or provision of the contract or offer.

3 (g) "Free trial offer" means an arrangement pursuant to which a good or service is pro-
4 vided for a specific period of time at no charge to a consumer or for a one-time payment only
5 to cover incidental charges such as shipping and handling.

6 (h) "Promotional offer" means an arrangement pursuant to which a good or service is
7 provided to a consumer with promotional or introductory terms, such as amount, rate or
8 duration, that will materially change at the end of the promotional or introductory period
9 and that will continue unless the consumer takes affirmative steps to cancel the offer.

10 (i) "Prorate" means the method of calculating the amount charged to a consumer as an
11 early termination fee upon cancellation of a consumer contract by dividing the contract price
12 by the number of weeks in the contract term and multiplying the result by the number of
13 weeks remaining in the contract term.

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

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

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

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

28 (A) Provides notice to the consumer of the automatic renewal provision at least 30 days
29 and no more than 60 days prior to the date upon which the contract ends and will automat-
30 ically renew;

31 (B) Provides a procedure for the consumer to expressly consent to the automatic renewal
32 provision in the same manner by which the consumer entered into the contract or as oth-
33 erwise expressly consented to by the consumer. In the case of a consumer contract that was
34 agreed to telephonically, the person must provide a toll-free number by which the consumer
35 may receive either an immediate response and confirmation of renewal, or a response and
36 confirmation within three business days after having left a message;

37 (C) Receives the consumer's express consent to the automatic renewal provision in the
38 manner provided in this paragraph; and

39 (D) Provides the consumer with periodic statements, at least monthly, of charges owed
40 by the consumer pursuant to the consumer contract and that also contain information about
41 the cancellation procedure required by paragraph (b) of this subsection.

42 (3) A person may not continue to provide to and charge a consumer for a good or service
43 received pursuant to a promotional offer upon expiration of the promotional or introductory
44 period unless the person:

45 (a) Provides in a clear and conspicuous manner at the time the promotional offer is

1 made:

2 (A) Notice of any changes that will be made to the terms of the promotional offer at the
 3 end of the promotional or introductory period and that will continue unless the consumer
 4 takes affirmative steps to cancel the offer;

5 (B) A procedure to cancel the promotional offer in the same manner by which the con-
 6 sumer agreed to the offer. In the case of a promotional offer that was agreed to telephon-
 7 ically, the person must provide a toll-free number by which the consumer may receive either
 8 an immediate response and confirmation of cancellation, or a response and confirmation
 9 within three business days after having left a message; and

10 (C) Notice of any liquidated damages, penalty or early termination fee associated with
 11 canceling the promotional offer; and

12 (b) Presents in a clear and conspicuous manner at least 15 days and no more than 30 days
 13 prior to the expiration of the promotional or introductory period:

14 (A) Notice of any changes that will be made to the terms of the promotional offer at the
 15 end of the promotional or introductory period and that will continue unless the consumer
 16 takes affirmative steps to cancel the offer;

17 (B) Information about the procedure for cancellation required in paragraph (a)(B) of this
 18 subsection; and

19 (C) Notice of any liquidated damages, penalty or early termination fee associated with
 20 canceling the promotional offer.

21 (4) A person may not charge a consumer for a good or service received after expiration
 22 of a trial period pursuant to a free trial offer unless the person:

23 (a) Provides in a clear and conspicuous manner at the time the free trial offer is made
 24 notice of any changes that will be made to the terms of the offer at the end of the trial pe-
 25 riod and that will begin thereafter if the offer is accepted; and

26 (b) At least 15 days after the consumer receives the initial good or service, obtains the
 27 consumer's express consent to the material terms of the free trial offer before charging the
 28 consumer for additional goods or services.

29 (5) A person may not charge an early termination fee for cancellation of a consumer
 30 contract unless the person:

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

33 (b) Receives the consumer's express consent to the early termination fee provision; and

34 (c) Prorates the early termination fee over the remainder of the contract term as ini-
 35 tially contracted for or as renewed.

36 (6) In addition to any of the remedies available under ORS 646.605 to 646.652, in any sit-
 37 uation in which a person violates one or more of the provisions of this section:

38 (a) The provision of the consumer contract that is the source of the violation is void and
 39 unenforceable; and

40 (b) In the case of a good or service received pursuant to a free trial offer or promotional
 41 offer, any good, ware, merchandise or product in the possession of the consumer at the time
 42 of the violation shall be deemed an unconditional gift to the consumer, who may use or dis-
 43 pose of the item at the consumer's discretion without any obligation to the person in vio-
 44 lation of this section.

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.**

39