

House Bill 2466

Sponsored by Representative GELSER; Representatives BARKER, DOHERTY, NATHANSON, READ, J SMITH, TOMEI (at the request of Lisa Krause) (Pre-session filed.)

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 sending of unsolicited facsimiles to public bodies. Makes violation unlawful trade practice. Mandates penalty for violation.

A BILL FOR AN ACT

1
2 Relating to unsolicited facsimiles; creating new provisions; and amending ORS 646.608.

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

4 **SECTION 1. The Legislative Assembly finds that the sending of unsolicited facsimiles to**
5 **public bodies without obtaining the public bodies' request or agreement to receive facsimiles**
6 **constitutes a waste and misuse of paper and public resources. The Legislative Assembly de-**
7 **clares that it is in the public interest to establish a prohibition on the sending of unsolicited**
8 **facsimiles to public bodies unless the public bodies specifically request or agree to receive**
9 **identified facsimiles.**

10 **SECTION 2. (1) A person may not send an unsolicited facsimile to a public body unless**
11 **the public body, or an employee, representative or agent of the public body, has specifically**
12 **requested or agreed to receive the facsimile. A person may not consider a prior business**
13 **relationship with a public body, or an employee, representative or agent of the public body,**
14 **to constitute agreement to receive a facsimile under this section.**

15 **(2) A person that violates subsection (1) of this section commits an unlawful practice**
16 **under ORS 646.608 that is subject to enforcement and penalty as provided in ORS 646.605 to**
17 **646.652.**

18 **(3) In addition to any other penalty provided by law, the Attorney General may bring an**
19 **action in the name of this state against any person for violation of this section. Upon proof**
20 **by a preponderance of the evidence of a violation of this section, a person shall pay a civil**
21 **penalty of not more than \$500 for each violation.**

22 **(4) Civil penalties authorized by this section must be imposed in the manner provided in**
23 **ORS 183.745.**

24 **(5)(a) All sums collected as penalties under this section shall be first applied toward re-**
25 **imbursement of costs incurred in determining the violations, conducting hearings and col-**
26 **lecting penalties.**

27 **(b) The remainder, if any, of the sums collected as penalties under this section must be**
28 **paid over to the Department of State Lands for the benefit of the Common School Fund of**
29 **this state.**

30 **(6) As used in this section:**

31 **(a) "Facsimile" means a communication sent by means of a facsimile machine, as that**

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 **term is defined in ORS 646A.360.**

2 **(b) "Person" has the meaning given that term in ORS 646.605.**

3 **(c) "Public body" has the meaning given that term in ORS 174.109.**

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

5 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
6 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (q) Promises to deliver real estate, goods or services within a certain period of time with intent

- 1 not to deliver them as promised.
- 2 (r) Organizes or induces or attempts to induce membership in a pyramid club.
- 3 (s) Makes false or misleading representations of fact concerning the offering price of, or the
- 4 person's cost for real estate, goods or services.
- 5 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
- 6 known material defect or material nonconformity.
- 7 (u) Engages in any other unfair or deceptive conduct in trade or commerce.
- 8 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
- 9 ORS 698.640, whether in a commercial or noncommercial situation.
- 10 (w) Manufactures mercury fever thermometers.
- 11 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
- 12 law, or is:
 - 13 (A) Prescribed by a person licensed under ORS chapter 677; and
 - 14 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
 - 15 on the proper cleanup of mercury should breakage occur.
- 16 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
- 17 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
- 18 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
- 19 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
- 20 graph, "thermostat" means a device commonly used to sense and, through electrical communication
- 21 with heating, cooling or ventilation equipment, control room temperature.
- 22 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
- 23 mercury light switches.
 - 24 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
 - 25 (bb) Violates ORS 646A.070 (1).
 - 26 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
 - 27 (dd) Violates the provisions of ORS 128.801 to 128.898.
 - 28 (ee) Violates ORS 646.883 or 646.885.
 - 29 (ff) Violates ORS 646.569.
 - 30 (gg) Violates the provisions of ORS 646A.142.
 - 31 (hh) Violates ORS 646A.360.
 - 32 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
 - 33 (jj) Violates ORS 646.563.
 - 34 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
 - 35 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
 - 36 thereto.
 - 37 (mm) Violates ORS 646A.210 or 646A.214.
 - 38 (nn) Violates any provision of ORS 646A.124 to 646A.134.
 - 39 (oo) Violates ORS 646A.095.
 - 40 (pp) Violates ORS 822.046.
 - 41 (qq) Violates ORS 128.001.
 - 42 (rr) Violates ORS 646.649 (2) to (4).
 - 43 (ss) Violates ORS 646A.090 (2) to (4).
 - 44 (tt) Violates ORS 87.686.
 - 45 (uu) Violates ORS 646.651.

- 1 (vv) Violates ORS 646A.362.
- 2 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 3 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 4 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 5 (zz) Violates ORS 87.007 (2) or (3).
- 6 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 7 (bbb) Engages in an unlawful practice under ORS 646.648.
- 8 (ccc) Violates ORS 646A.365.
- 9 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 10 (eee) Sells a gift card in violation of ORS 646A.276.
- 11 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 12 (ggg) Violates ORS 646A.430 to 646A.450.
- 13 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
- 14 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 15 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
16 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
17 subject of the violation.
- 18 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 19 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
20 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 21 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 22 (nnn) Violates ORS 646A.082.
- 23 (ooo) Violates ORS 646.647.
- 24 (ppp) Violates ORS 646A.115.
- 25 (qqq) Violates a provision of ORS 646A.405.
- 26 **(rrr) Violates a provision of section 2 of this 2011 Act.**
- 27 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
28 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- 29 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
30 need not prove competition between the parties or actual confusion or misunderstanding.
- 31 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
32 torney General has first established a rule in accordance with the provisions of ORS chapter 183
33 declaring the conduct to be unfair or deceptive in trade or commerce.
- 34 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
35 under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is lim-
36 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.
- 37 **SECTION 4. Section 2 of this 2011 Act and the amendments to ORS 646.608 by section 3**
38 **of this 2011 Act apply to unsolicited facsimiles sent to public bodies on or after the effective**
39 **date of this 2011 Act.**

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