

B-Engrossed
Senate Bill 487

Ordered by the House June 1
Including Senate Amendments dated April 25 and House Amendments
dated June 1

Sponsored by Senator BONAMICI (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.

Prohibits automatic renewal or continuous service offers to consumers unless offer complies with disclosure requirements. Prohibits charging credit card, debit card or third party account of consumer without first obtaining consumer's affirmative consent to offer. Requires acknowledgment capable of being retained by consumer containing offer terms and cancellation policy. Makes violation unlawful trade practice.

[Declares emergency, effective on passage.]

A BILL FOR AN ACT

1
2 Relating to unlawful consumer charging practices; creating new provisions; and amending ORS
3 646.608.

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

5 **SECTION 1. It is the intent of the Legislative Assembly to end the practice of ongoing**
6 **charging of consumer credit or debit cards or third party payment accounts without the**
7 **consumers' explicit consent for ongoing shipments of a product or ongoing deliveries of ser-**
8 **vice.**

9 **SECTION 2. As used in this section and section 3 of this 2011 Act:**

10 (1) "Automatic renewal" means a plan or arrangement in which a paid subscription or
11 purchasing agreement is automatically renewed at the end of a definite term for a subse-
12 quent term.

13 (2) "Clear and conspicuous" means in larger type than the surrounding text, or in con-
14 trasting type, font or color to the surrounding text of the same size, or set off from the
15 surrounding text of the same size by symbols or other marks, in a manner that clearly calls
16 attention to the language. In the case of an audio disclosure, "clear and conspicuous" means
17 in a volume and cadence sufficient to be readily audible and understandable.

18 (3) "Consumer" means any individual who seeks or acquires, by purchase or lease, any
19 goods, services, money or credit for personal, family or household purposes.

20 (4) "Continuous service" means a plan or arrangement in which a paid subscription or
21 purchasing agreement continues until the consumer cancels the service.

22 (5) "Offer terms" means the following clear and conspicuous disclosures:

23 (a) That the subscription or purchasing agreement will continue until the consumer
24 cancels.

25 (b) The description of the cancellation policy that applies to the offer.

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) The recurring charges that will be charged to the consumer's credit or debit card or
2 payment account with a third party as part of the automatic renewal or continuous service
3 plan or arrangement, and, if the amount of the charge will change, the amount to which the
4 charge will change, if known.

5 (d) The length of the automatic renewal term or that the service is continuous, unless
6 the length of the term is chosen by the consumer.

7 (e) The minimum purchase obligation, if any.

8 (6) "Person" has the meaning given that term in ORS 646.605.

9 **SECTION 3.** (1) It is unlawful for a person that makes an automatic renewal or contin-
10 uous service offer to a consumer in this state to do any of the following:

11 (a) Fail to present the automatic renewal offer terms or continuous service offer terms
12 in a clear and conspicuous manner before a subscription or purchasing agreement is fulfilled
13 and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity,
14 to the request for consent to the offer.

15 (b) Charge the consumer's credit or debit card or payment account with a third party for
16 an automatic renewal or continuous service without first obtaining the consumer's affirma-
17 tive consent to the agreement containing the automatic renewal offer terms or continuous
18 service offer terms.

19 (c) Fail to provide an acknowledgment that includes the automatic renewal offer terms
20 or continuous service offer terms and information regarding how to cancel in a manner that
21 is capable of being retained by the consumer. If the offer includes a free trial, the person
22 shall also disclose in the acknowledgment how to cancel and allow the consumer to cancel
23 before the consumer pays for the goods or services.

24 (2) A person making automatic renewal or continuous service offers shall provide a toll-
25 free telephone number, electronic mail address, a post-office address only when the person
26 directly bills the consumer, or another cost-effective, timely and easy-to-use mechanism for
27 cancellation that must be described in the acknowledgment required by subsection (1)(c) of
28 this section.

29 (3) In the case of a material change in the terms of the automatic renewal or continuous
30 service offer that has been accepted by a consumer, the person shall provide the consumer
31 with a clear and conspicuous notice of the material change and provide information regard-
32 ing how to cancel in a manner that is capable of being retained by the consumer.

33 (4) The requirements of this section must be met prior to the completion of the initial
34 order for the automatic renewal or continuous service, except as follows:

35 (a) The requirement in subsection (1)(c) of this section may be fulfilled after completion
36 of the initial order.

37 (b) The requirement in subsection (3) of this section must be fulfilled prior to imple-
38 mentation of the material change.

39 (c) The requirements in subsection (1)(a) and (c) of this section may be fulfilled in the
40 initial billing statement or invoice provided to the consumer when the person directly bills
41 the consumer.

42 (5) In the event a person sends goods, wares, merchandise or products to a consumer
43 under a continuous service agreement or pursuant to an automatic renewal of a purchase
44 without first obtaining the consumer's affirmative consent as required in subsection (1) of
45 this section, the goods, wares, merchandise or products shall for all purposes be deemed an

1 unconditional gift to the consumer who may use or dispose of them in any manner the con-
2 sumer sees fit without any obligation to the person including, but not limited to, requiring
3 the consumer to ship, or bear the cost of shipping, any goods, wares, merchandise or pro-
4 ducts to the person.

5 (6) The following are exempt from the requirements of this section:

6 (a) A person that provides a service pursuant to a franchise issued by a political subdivi-
7 sion of the state or a license, franchise, certificate or other authorization issued by the
8 Public Utility Commission of Oregon.

9 (b) A person that provides a service regulated by the Public Utility Commission of
10 Oregon, the Federal Communications Commission or the Federal Energy Regulatory Com-
11 mission.

12 (c) A person regulated by the Department of Consumer and Business Services under the
13 Insurance Code.

14 (d) A bank, bank holding company, or the subsidiary or affiliate of either, or a credit
15 union or other financial institution or trust company as those terms are defined in ORS
16 706.008, that is licensed under state or federal law.

17 (e) A person that is regulated as a service contract seller under ORS 646A.150 to
18 646A.172.

19 (f) A consumer finance company licensed under ORS chapter 725.

20 (g) A person that provides direct-to-home satellite services subject to regulation by the
21 Federal Communications Commission.

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

23 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
24 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

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

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

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

- 1 (ee) Violates ORS 646.883 or 646.885.
2 (ff) Violates ORS 646.569.
3 (gg) Violates the provisions of ORS 646A.142.
4 (hh) Violates ORS 646A.360.
5 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
6 (jj) Violates ORS 646.563.
7 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
8 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
9 thereto.
10 (mm) Violates ORS 646A.210 or 646A.214.
11 (nn) Violates any provision of ORS 646A.124 to 646A.134.
12 (oo) Violates ORS 646A.095.
13 (pp) Violates ORS 822.046.
14 (qq) Violates ORS 128.001.
15 (rr) Violates ORS 646.649 (2) to (4).
16 (ss) Violates ORS 646A.090 (2) to (4).
17 (tt) Violates ORS 87.686.
18 (uu) Violates ORS 646.651.
19 (vv) Violates ORS 646A.362.
20 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
21 (xx) Violates ORS 180.440 (1) or 180.486 (1).
22 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
23 (zz) Violates ORS 87.007 (2) or (3).
24 (aaa) Violates ORS 92.405 (1), (2) or (3).
25 (bbb) Engages in an unlawful practice under ORS 646.648.
26 (ccc) Violates ORS 646A.365.
27 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
28 (eee) Sells a gift card in violation of ORS 646A.276.
29 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
30 (ggg) Violates ORS 646A.430 to 646A.450.
31 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
32 (iii) Violates a provision of ORS 646A.702 to 646A.720.
33 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
34 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
35 subject of the violation.
36 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
37 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
38 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
39 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
40 (nnn) Violates ORS 646A.082.
41 (ooo) Violates ORS 646.647.
42 (ppp) Violates ORS 646A.115.
43 (qqq) Violates a provision of ORS 646A.405.
44 **(rrr) Violates a provision of section 3 of this 2011 Act.**
45 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-

1 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

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

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

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

10 **SECTION 5. Sections 2 and 3 of this 2011 Act and the amendments to ORS 646.608 by**
11 **section 4 of this 2011 Act apply to automatic renewal and continuous service offers entered**
12 **into on or after the effective date of this 2011 Act.**

13