

Senate Bill 679

Sponsored by Senator SHIELDS; Senators BATES, MONNES ANDERSON, MONROE, Representatives CANNON, THOMPSON (at the request of David Morrison)

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 retailer from selling, leasing, offering for sale or lease or otherwise distributing cellular telephone unless cellular telephone and packaging bear specific label.

Makes violation unlawful trade practice.

Becomes operative July 1, 2012.

A BILL FOR AN ACT

1
2 Relating to cellular telephones; creating new provisions; and amending ORS 646.608.

3 The Legislative Assembly finds that:

4 (1) The expanding use of radio-frequency technology, particularly the use of cellular telephones,
5 has resulted in speculation concerning the potential dangers of human exposure to radio-frequency
6 radiation.

7 (2) The Federal Communications Commission is required by the National Environmental Policy
8 Act of 1969 (42 U.S.C. 4321 et seq.) to evaluate the effect of emissions from cellular telephones on
9 the quality of the human environment, including radio-frequency radiation.

10 (3) As part of carrying out its responsibilities, the Federal Communications Commission adopted
11 the specific absorption rate limits for general public exposure to radio-frequency radiation from
12 cellular telephones operating within close proximity to the body at a level of 1.6 watts per kilogram,
13 as averaged over any one gram of tissue, effective August 6, 1996. FCC Report and Order, FCC
14 96-326; 47 C.F.R. 2.1093(d)(2).

15 (4) Federal law requires the Federal Communications Commission to authorize cellular tele-
16 phones before they may be marketed for public consumption. Applications for authorization of cel-
17 lular telephones must contain a statement confirming compliance with the specific absorption rate
18 limits adopted by the Federal Communications Commission. 47 C.F.R. 2.1093.

19 (5) It is undisputed that biological effects to humans can result from exposure to radio-frequency
20 radiation. Biological effects that result from heating of tissue are referred to as "thermal" effects.
21 Biological effects that occur at relatively low levels of exposure to radio-frequency radiation are
22 referred to as "nonthermal" effects.

23 (6) The specific absorption rate limits adopted by the Federal Communications Commission apply
24 only to radio-frequency radiation exposure at levels the Federal Communications Commission con-
25 siders sufficient to produce heating of body tissues--i.e., at the 100 kHz to 6 GHz frequency ranges.
26 47 C.F.R. 2.1093(d). Thus, the Federal Communications Commission's specific absorption rate levels
27 apply only to radio-frequency radiation exposure that can produce thermal biological effects and not
28 to radio-frequency radiation exposure that can produce nonthermal biological effects.

29 (7) The Federal Communications Commission's Office of Engineering and Technology has pub-
30 lished, in both printed and online versions, an informational bulletin written as a result of increasing

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 interest and concern of the public with respect to the issue of the potential dangers to humans of
2 exposure to radio-frequency radiation-emitting devices, including cellular telephones. This informa-
3 tional bulletin provides information about the biological effects of radio-frequency radiation expo-
4 sure. OET Bulletin 56: Questions and Answers about Biological Effects and Potential Hazards of
5 Radiofrequency Electromagnetic Fields (Fourth Edition, August 1999).

6 (8)(a) OET Bulletin 56 states, on page 8:

7 (A) "At relatively low levels of exposure to [radio-frequency] radiation, i.e., field intensities
8 lower than those that would produce significant and measurable heating, the evidence for production
9 of harmful biological effects is ambiguous and unproven. Such effects have sometimes been referred
10 to as 'non-thermal' effects."

11 (B) "Several years ago publications began appearing in the scientific literature, largely overseas,
12 reporting the observation of a wide range of low-level biological effects. However, in many of these
13 cases further experimental research was unable to reproduce these effects. Furthermore, there has
14 been no determination that such effects might indicate a human health hazard, particularly with
15 regard to long-term exposure."

16 (C) "More recently, other scientific laboratories in North America, Europe and elsewhere have
17 reported certain biological effects after exposure of animals ('in vivo') and animal tissue ('in vitro')
18 to relatively low levels of [radio-frequency] radiation. These reported effects have included certain
19 changes in the immune system, neurological effects, behavioral effects, evidence for a link between
20 microwave exposure and the action of certain drugs and compounds, a 'calcium efflux' effect in brain
21 tissue (exposed under very specific conditions), and effects on DNA."

22 (b) The OET Bulletin 56, on page 8, concludes: "In general, while the possibility of
23 'non-thermal' biological effects may exist, whether or not such effects might indicate a human health
24 hazard is not presently known. Further research is needed to determine the generality of such ef-
25 fects and their possible relevance, if any, to human health."

26 (9) While the Federal Communications Commission "authorizes and licenses devices, transmit-
27 ters and facilities that generate [radio-frequency] radiation. . . . the [commission's] primary juris-
28 diction does not lie in the health and safety area, and it must rely on other agencies and
29 organizations for guidance in these matters." Federal Communications Commission's website, Radio
30 Frequency Safety, Frequently Asked Questions, "Why Has The FCC Adopted Guidelines for RF Ex-
31 posures?"

32 (10) The United States Food and Drug Administration "does not review the safety of radiation-
33 emitting consumer products such as cell phones and similar wireless devices before they can be sold,
34 as it does with new drugs or medical devices." U.S. Food and Drug Administration website.

35 (11) Given the absence of any federal entity with primary jurisdiction to evaluate and regulate
36 the health and safety effects of cellular telephones on humans, given the lack of federal regulation
37 of radio-frequency radiation-emitting devices transmitting in the frequency range that results in
38 non-thermal biological effects, and given the current state of research such that uncertainty and
39 controversy exists as to the degree to which nonthermal biological effects of cellular telephone use
40 are hazardous to human health, the State of Oregon may lawfully exercise its health and safety and
41 police powers to prohibit cellular telephone retailers from selling, leasing or otherwise distributing
42 cellular telephones in this state unless the cellular telephones and their packaging contain a visible,
43 written label advising consumers of possible risks and steps a consumer can take to reduce the risk
44 of radio-frequency radiation exposure from cellular telephone use.

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

SECTION 1. (1) As used in this section:

(a) “Cellular telephone” means a portable wireless telephone device that is designed to send or receive transmissions through a cellular radiotelephone service as defined in 47 C.F.R. 22.99.

(b) “Consumer” means a person that buys, leases or otherwise comes into the possession of a cellular telephone from a retailer.

(c) “Person” has the meaning given that term in ORS 646.605.

(d) “Retailer” means a person that, in the ordinary course of business, sells or leases, offers for sale or lease or otherwise distributes cellular telephones to consumers in this state.

(2) A retailer may not willfully or knowingly sell or lease, offer for sale or lease or, in any other way, distribute a cellular telephone in this state unless the cellular telephone bears a label that:

(a) Is conspicuous, legible and nonremovable;

(b) Contains the statement, in bold letters: “WARNING: This is a radio-frequency (RF), radiation-emitting device that has nonthermal biological effects for which no safety guidelines have yet been established. Controversy exists as to whether these effects are harmful to humans. Exposure to RF radiation may be reduced by limiting your use of this device and keeping it away from the head and body.”;

(c) Is affixed to both the front and back of the packaging of a cellular telephone; and

(d) Is affixed to the back of a cellular telephone such that the label occupies at least 30 percent of the back surface of the cellular telephone.

(3) A person that violates subsection (2) of this section commits an unlawful practice under ORS 646.608. The requirements under subsection (2) of this section are subject to enforcement and penalty as provided under ORS 646.605 to 646.652.

SECTION 2. ORS 646.608 is amended to read:

646.608. (1) A person engages in an unlawful practice when in the course of the person’s business, vocation or occupation the person does any of the following:

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

(b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.

(c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.

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

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

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

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

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

(i) Advertises real estate, goods or services with intent not to provide them as advertised, or

1 with intent not to supply reasonably expectable public demand, unless the advertisement discloses
2 a limitation of quantity.

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

- 1 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 2 (bb) Violates ORS 646A.070 (1).
- 3 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 4 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 5 (ee) Violates ORS 646.883 or 646.885.
- 6 (ff) Violates ORS 646.569.
- 7 (gg) Violates the provisions of ORS 646A.142.
- 8 (hh) Violates ORS 646A.360.
- 9 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 10 (jj) Violates ORS 646.563.
- 11 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 12 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 13 thereto.
- 14 (mm) Violates ORS 646A.210 or 646A.214.
- 15 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 16 (oo) Violates ORS 646A.095.
- 17 (pp) Violates ORS 822.046.
- 18 (qq) Violates ORS 128.001.
- 19 (rr) Violates ORS 646.649 (2) to (4).
- 20 (ss) Violates ORS 646A.090 (2) to (4).
- 21 (tt) Violates ORS 87.686.
- 22 (uu) Violates ORS 646.651.
- 23 (vv) Violates ORS 646A.362.
- 24 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 25 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 26 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 27 (zz) Violates ORS 87.007 (2) or (3).
- 28 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 29 (bbb) Engages in an unlawful practice under ORS 646.648.
- 30 (ccc) Violates ORS 646A.365.
- 31 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 32 (eee) Sells a gift card in violation of ORS 646A.276.
- 33 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 34 (ggg) Violates ORS 646A.430 to 646A.450.
- 35 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
- 36 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 37 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 38 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 39 subject of the violation.
- 40 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 41 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 42 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 43 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 44 (nnn) Violates ORS 646A.082.
- 45 (ooo) Violates ORS 646.647.

1 (ppp) Violates ORS 646A.115.

2 (qqq) Violates a provision of ORS 646A.405.

3 **(rrr) Violates a provision of section 1 of this 2011 Act.**

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

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

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

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

14 **SECTION 3. Section 1 of this 2011 Act and the amendments to ORS 646.608 by section 2**
15 **of this 2011 Act become operative on July 1, 2012.**

16 **SECTION 4. Retailers in this state may take any action before the operative date speci-**
17 **fied in section 3 of this 2011 Act that is necessary to implement the provisions of section 1**
18 **of this 2011 Act on and after the operative date specified in section 3 of this 2011 Act.**

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