

Senate Bill 965

Sponsored by COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS PROTECTION

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 person that issues credit card or debit card or that provides service as payment card network from restricting or prohibiting merchant from disclosing amount of interchange transaction fee or network fee merchant pays to person, specifying minimum dollar amount for which merchant will accept credit card or debit card as payment in retail transaction or offering purchaser in retail transaction discount for using payment method other than credit card or debit card.

Provides that violation is unlawful practice.
Becomes operative 91 days after effective date of Act.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to electronic payment instruments for retail transactions; creating new provisions; amend-
3 ing ORS 646.608; and declaring an emergency.

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

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

5
6 (a) **"Credit card" has the meaning given that term in ORS 646A.212.**

7 (b) **"Debit card" has the meaning given that term in 15 U.S.C. 1693o-2.**

8 (c) **"Interchange transaction fee" has the meaning given that term in 15 U.S.C. 1693o-2.**

9 (d) **"Merchant" means:**

10 (A) **An owner or operator of a retail mercantile establishment located in this state or the**
11 **owner's or operator's agent, employee, lessee, consignee, franchisee, officer or director;**

12 (B) **A person that receives a credit card or debit card from another person as a payment**
13 **instrument for purchasing something of value from the person in this state; or**

14 (C) **A person located in this state that submits a payment for processing to a payment**
15 **card network.**

16 (e) **"Network fee" has the meaning given that term in 15 U.S.C. 1693o-2.**

17 (f) **"Payment card network" has the meaning given that term in 15 U.S.C. 1693o-2.**

18 (2) **A person that issues a credit card or debit card or that provides a service as a pay-**
19 **ment card network may not, directly or through an agent, processor or member of the pay-**
20 **ment card network, restrict or prohibit a merchant by contract, requirement, condition,**
21 **penalty or otherwise from:**

22 (a) **Disclosing to another person the amount of the interchange transaction fee or net-**
23 **work fee the merchant pays to the person that issues the credit card or debit card or to the**
24 **person that provides a service as a payment card network;**

25 (b) **Specifying a minimum dollar amount for which the merchant will accept a credit card**
26 **or a debit card as payment in a retail transaction; or**

27 (c) **Offering a purchaser in a retail transaction a discount for using a payment method**
28 **other than a credit card or debit card.**

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 **(3) A violation of a provision of subsection (2) of this section is an unlawful practice un-**
 2 **der ORS 646.608 that is subject to enforcement under ORS 646.638.**

3 **SECTION 2.** ORS 646.608 is amended to read:

4 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
 5 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (r) Organizes or induces or attempts to induce membership in a pyramid club.
- 2 (s) Makes false or misleading representations of fact concerning the offering price of, or the
3 person's cost for real estate, goods or services.
- 4 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
5 known material defect or material nonconformity.
- 6 (u) Engages in any other unfair or deceptive conduct in trade or commerce.
- 7 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
8 ORS 698.640, whether in a commercial or noncommercial situation.
- 9 (w) Manufactures mercury fever thermometers.
- 10 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
11 law, or is:
 - 12 (A) Prescribed by a person licensed under ORS chapter 677; and
 - 13 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
14 on the proper cleanup of mercury should breakage occur.
- 15 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
16 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
17 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
18 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
19 graph, "thermostat" means a device commonly used to sense and, through electrical communication
20 with heating, cooling or ventilation equipment, control room temperature.
- 21 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
22 mercury light switches.
 - 23 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
 - 24 (bb) Violates ORS 646A.070 (1).
 - 25 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
 - 26 (dd) Violates the provisions of ORS 128.801 to 128.898.
 - 27 (ee) Violates ORS 646.883 or 646.885.
 - 28 (ff) Violates ORS 646.569.
 - 29 (gg) Violates the provisions of ORS 646A.142.
 - 30 (hh) Violates ORS 646A.360.
 - 31 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
 - 32 (jj) Violates ORS 646.563.
 - 33 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
 - 34 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
35 thereto.
 - 36 (mm) Violates ORS 646A.210 or 646A.214.
 - 37 (nn) Violates any provision of ORS 646A.124 to 646A.134.
 - 38 (oo) Violates ORS 646A.095.
 - 39 (pp) Violates ORS 822.046.
 - 40 (qq) Violates ORS 128.001.
 - 41 (rr) Violates ORS 646.649 (2) to (4).
 - 42 (ss) Violates ORS 646A.090 (2) to (4).
 - 43 (tt) Violates ORS 87.686.
 - 44 (uu) Violates ORS 646.651.
 - 45 (vv) Violates ORS 646A.362.

- 1 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
 2 (xx) Violates ORS 180.440 (1) or 180.486 (1).
 3 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
 4 (zz) Violates ORS 87.007 (2) or (3).
 5 (aaa) Violates ORS 92.405 (1), (2) or (3).
 6 (bbb) Engages in an unlawful practice under ORS 646.648.
 7 (ccc) Violates ORS 646A.365.
 8 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
 9 (eee) Sells a gift card in violation of ORS 646A.276.
 10 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
 11 (ggg) Violates ORS 646A.430 to 646A.450.
 12 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
 13 (iii) Violates a provision of ORS 646A.702 to 646A.720.
 14 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
 15 scribed in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the
 16 subject of the violation.
 17 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
 18 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
 19 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
 20 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
 21 (nnn) Violates ORS 646A.082.
 22 (ooo) Violates ORS 646.647.
 23 (ppp) Violates ORS 646A.115.
 24 (qqq) Violates a provision of ORS 646A.405.
 25 **(rrr) Violates a provision of section 1 of this 2011 Act.**
 26 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
 27 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
 28 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
 29 need not prove competition between the parties or actual confusion or misunderstanding.
 30 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
 31 torney General has first established a rule in accordance with the provisions of ORS chapter 183
 32 declaring the conduct to be unfair or deceptive in trade or commerce.
 33 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
 34 under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is lim-
 35 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.
 36 **SECTION 3. Section 1 of this 2011 Act and the amendments to ORS 646.608 by section 2**
 37 **of this 2011 Act apply to a contract or other arrangement or agreement into which a mer-**
 38 **chant enters with a person that issues a credit card or debit card or that provides a service**
 39 **as a payment card network on or after the operative date specified in section 4 of this 2011**
 40 **Act.**
 41 **SECTION 4. Section 1 of this 2011 Act and the amendments to ORS 646.608 by section 2**
 42 **of this 2011 Act become operative 91 days after the effective date of this 2011 Act.**
 43 **SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**
 44 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
 45 **on its passage.**

