

A-Engrossed
House Bill 2383

Ordered by the House April 3
Including House Amendments dated April 3

Sponsored by Representative BARNHART; Representatives GREENLICK, MATTHEWS, NATHANSON, Senator DINGFELDER (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 merchant from requiring statement of account as condition for cardholder to obtain refund of amount in payment card transaction.

[Permits action by Attorney General or district attorney to restrain violation and obtain civil penalty of not more than \$1,000 per violation. Permits court to award attorney fees to prevailing party.]

Makes violation of prohibition unlawful practice that is subject to action under Unlawful Trade Practices Act.

A BILL FOR AN ACT

1
2 Relating to refunds of payment card transactions; creating new provisions; and amending ORS
3 646.608.

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

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

6 (a) **“Cardholder” means a person that a payment card is issued to or a person that is**
7 **authorized to use a payment card.**

8 (b) **“Merchant” means a person that, in the ordinary course of the person’s business,**
9 **accepts the use of a payment card to obtain goods or services by purchase or through an**
10 **extension of credit.**

11 (c) **“Payment card” means a credit card, charge card, debit card, stored value card or**
12 **other device that enables a cardholder to obtain goods or services from a merchant by pre-**
13 **senting the card or device as payment.**

14 (d) **“Payment card transaction” means an exchange in which a cardholder presents and**
15 **a merchant accepts a payment card as a method by which the cardholder obtains and the**
16 **merchant provides goods or services.**

17 (e) **“Person” means an individual, corporation, limited liability company, partnership or**
18 **other association or entity.**

19 (f) **“Statement of account” means a record or document that a person that issues a**
20 **payment card maintains, in any form or format, as evidence of and information about a**
21 **cardholder’s payment card transactions.**

22 (2)(a) **A merchant may not require a cardholder to present a statement of account to the**
23 **merchant in order for the cardholder to obtain a refund of all or a portion of the amount**
24 **of a payment card transaction to which the cardholder is otherwise entitled, whether or not**
25 **a receipt, a sales draft or any other record or evidence of the payment card transaction ex-**

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 **ists.**

2 **(b) Paragraph (a) of this subsection does not relieve a cardholder of the requirement to**
3 **comply with any other terms and conditions a merchant may lawfully impose on a**
4 **cardholder's right to obtain a refund for all or a portion of the amount of a payment card**
5 **transaction between the cardholder and the merchant.**

6 **(3) A merchant's violation of a provision of this section is an unlawful practice under**
7 **ORS 646.608 that is subject to an action under ORS 646.638.**

8 **SECTION 2.** ORS 646.608, as amended by section 6, chapter 52, Oregon Laws 2012, is amended
9 to read:

10 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
11 ness, vocation or occupation the person does any of the following:

12 (a) Passes off real estate, goods or services as *[those]* **the real estate, goods or services** of
13 another.

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

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

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

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

24 (f) Represents that real estate or goods are original or new if *[they]* **the real estate or goods**
25 are deteriorated, altered, reconditioned, reclaimed, used or secondhand.

26 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
27 or that real estate or goods are of a particular style or model, if *[they]* **the real estate, goods or**
28 **services** are of another.

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

31 (i) Advertises real estate, goods or services with intent not to provide *[them]* **the real estate,**
32 **goods or services** as advertised, or with intent not to supply reasonably expectable public demand,
33 unless the advertisement discloses a limitation of quantity.

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

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

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

41 (m) Performs service on or dismantles any goods or real estate when *[not authorized by]* the
42 owner or apparent owner *[thereof]* **of the goods or real estate does not authorize the service**
43 **or dismantling.**

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

1 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
2 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
3 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
4 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
5 discount or other value is contingent upon [*occurrence of*] an event [*subsequent to*] **occurring after**
6 the time the customer enters into the transaction.

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

9 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
10 not to deliver [*them*] **the real estate, goods or services** as promised.

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

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

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

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

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

19 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

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

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

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

37 (ee) Violates ORS 646.883 or 646.885.

38 (ff) Violates ORS 646.569.

39 (gg) Violates the provisions of ORS 646A.142.

40 (hh) Violates ORS 646A.360.

41 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

42 (jj) Violates ORS 646.563.

43 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

44 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
45 thereto.

- 1 (mm) Violates ORS 646A.210 or 646A.214.
2 (nn) Violates any provision of ORS 646A.124 to 646A.134.
3 (oo) Violates ORS 646A.095.
4 (pp) Violates ORS 822.046.
5 (qq) Violates ORS 128.001.
6 (rr) Violates ORS 646.649 (2) to (4).
7 (ss) Violates ORS 646A.090 (2) to (4).
8 (tt) Violates ORS 87.686.
9 (uu) Violates ORS 646.651.
10 (vv) Violates ORS 646A.362.
11 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
12 (xx) Violates ORS 180.440 (1) or 180.486 (1).
13 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
14 (zz) Violates ORS 87.007 (2) or (3).
15 (aaa) Violates ORS 92.405 (1), (2) or (3).
16 (bbb) Engages in an unlawful practice under ORS 646.648.
17 (ccc) Violates ORS 646A.365.
18 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
19 (eee) Sells a gift card in violation of ORS 646A.276.
20 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
21 (ggg) Violates ORS 646A.430 to 646A.450.
22 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
23 (iii) Violates a provision of ORS 646A.702 to 646A.720.
24 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
25 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
26 subject of the violation.
27 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
28 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
29 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
30 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
31 (nnn) Violates ORS 646A.082.
32 (ooo) Violates ORS 646.647.
33 (ppp) Violates ORS 646A.115.
34 (qqq) Violates a provision of ORS 646A.405.
35 (rrr) Violates ORS 646A.092.
36 (sss) Violates a provision of ORS 646.644.
37 (ttt) Violates a provision of ORS 646A.295.
38 (uuu) Violates section 3, chapter 52, Oregon Laws 2012.
39 **(vvv) Violates a provision of section 1 of this 2013 Act.**
40 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
41 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
42 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
43 need not prove competition between the parties or actual confusion or misunderstanding.
44 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
45 torney General has first established a rule in accordance with the provisions of ORS chapter 183

1 declaring the conduct to be unfair or deceptive in trade or commerce.

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

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