

SENATE AMENDMENTS TO RESOLVE CONFLICTS TO A-ENGROSSED HOUSE BILL 2383

By COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS
PROTECTION

June 4

1 On page 2 of the printed A-engrossed bill, delete lines 8 through 45.

2 Delete pages 3 through 5 and insert:

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

5 “646.608. (1) A person engages in an unlawful practice [*when*] **if** in the course of the person’s
6 business, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

31 “(k) Makes false or misleading representations concerning credit availability or the nature of
32 the transaction or obligation incurred.

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

1 “(m) Performs service on or dismantles any goods or real estate [*when not authorized by*] **if the**
2 owner or apparent owner [*thereof*] **of the goods or real estate does not authorize the service**
3 **or dismantling.**

4 “(n) Solicits potential customers by telephone or door to door as a seller unless the person
5 provides the information required under ORS 646.611.

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

12 “(p) Makes any false or misleading statement about a prize, contest or promotion used to pub-
13 licize a product, business or service.

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

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

17 “(s) Makes false or misleading representations of fact concerning the offering price of, or the
18 person’s cost for real estate, goods or services.

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

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

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

24 “(w) Manufactures mercury fever thermometers.

25 “(x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
26 law, or is:

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

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

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

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

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

39 “(bb) Violates ORS 646A.070 (1).

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

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

42 “(ee) Violates ORS 646.883 or 646.885.

43 “(ff) Violates ORS 646.569.

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

45 “(hh) Violates ORS 646A.360.

1 “(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
2 “(jj) Violates ORS 646.563.
3 “(kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
4 “(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
5 thereto.
6 “(mm) Violates ORS 646A.210 or 646A.214.
7 “(nn) Violates any provision of ORS 646A.124 to 646A.134.
8 “(oo) Violates ORS 646A.095.
9 “(pp) Violates ORS 822.046.
10 “(qq) Violates ORS 128.001.
11 “(rr) Violates ORS 646.649 (2) to (4).
12 “(ss) Violates ORS 646A.090 (2) to (4).
13 “(tt) Violates ORS 87.686.
14 “(uu) Violates ORS 646.651.
15 “(vv) Violates ORS 646A.362.
16 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
17 “(xx) Violates ORS 180.440 (1) or 180.486 (1).
18 “(yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
19 “(zz) Violates ORS 87.007 (2) or (3).
20 “(aaa) Violates ORS 92.405 (1), (2) or (3).
21 “(bbb) Engages in an unlawful practice under ORS 646.648.
22 “(ccc) Violates ORS 646A.365.
23 “(ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
24 “(eee) Sells a gift card in violation of ORS 646A.276.
25 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.
26 “(ggg) Violates ORS 646A.430 to 646A.450.
27 “(hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
28 “(iii) Violates a provision of ORS 646A.702 to 646A.720.
29 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
30 scribed in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the
31 subject of the violation.
32 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
33 “(LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
34 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
35 “(mmm) Violates a provision of ORS 646A.480 to 646A.495.
36 “(nnn) Violates ORS 646A.082.
37 “(ooo) Violates ORS 646.647.
38 “(ppp) Violates ORS 646A.115.
39 “(qqq) Violates a provision of ORS 646A.405.
40 “(rrr) Violates ORS 646A.092.
41 “(sss) Violates a provision of ORS 646.644.
42 “(ttt) Violates a provision of ORS 646A.295.
43 “(uuu) Violates section 3, chapter 52, Oregon Laws 2012.
44 “(vvv) **Violates a provision of section 1 of this 2013 Act.**
45 “(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifes-

1 tation 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
8 brought under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief
9 is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

10 **“SECTION 3. If House Bill 2573 becomes law, section 2 of this 2013 Act (amending ORS**
11 **646.608) is repealed and ORS 646.608, as amended by section 6, chapter 52, Oregon Laws 2012,**
12 **and section 1, chapter 77, Oregon Laws 2013 (Enrolled House Bill 2573), is amended to read:**

13 “646.608. (1) A person engages in an unlawful practice [*when*] **if** in the course of the person’s
14 business, vocation or occupation the person does any of the following:

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

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

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

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

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

27 “(f) Represents that real estate or goods are original or new if the real estate or goods are de-
28 teriorated, altered, reconditioned, reclaimed, used or secondhand.

29 “(g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
30 or that real estate or goods are of a particular style or model, if the real estate, [*or*] goods **or**
31 **services** are of another [*style or model*].

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

34 “(i) Advertises real estate, goods or services with intent not to provide the real estate, goods
35 or services as advertised, or with intent not to supply reasonably expectable public demand, unless
36 the advertisement discloses a limitation of quantity.

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

39 “(k) Makes false or misleading representations concerning credit availability or the nature of
40 the transaction or obligation incurred.

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

44 “(m) Performs service on or dismantles any goods or real estate [*when*] **if** the owner or apparent
45 owner of the goods or real estate does not authorize the service or dismantling.

1 “(n) Solicits potential customers by telephone or door to door as a seller unless the person
2 provides the information required under ORS 646.611.

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

9 “(p) Makes any false or misleading statement about a prize, contest or promotion used to pub-
10 licize a product, business or service.

11 “(q) Promises to deliver real estate, goods or services within a certain period of time with intent
12 not to deliver the real estate, goods or services as promised.

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17 known material defect or material nonconformity.

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

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28 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
29 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
30 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
31 graph, ‘thermostat’ means a device commonly used to sense and, through electrical communication
32 with heating, cooling or ventilation equipment, control room temperature.

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2 thereto.

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9 “(ss) Violates ORS 646A.090 (2) to (4).

10 “(tt) Violates ORS 87.686.

11 “(uu) Violates ORS 646.651.

12 “(vv) Violates ORS 646A.362.

13 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

14 “(xx) Violates ORS 180.440 (1) or 180.486 (1).

15 “(yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

16 “(zz) Violates ORS 87.007 (2) or (3).

17 “(aaa) Violates ORS 92.405 (1), (2) or (3).

18 “(bbb) Engages in an unlawful practice under ORS 646.648.

19 “(ccc) Violates ORS 646A.365.

20 “(ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

21 “(eee) Sells a gift card in violation of ORS 646A.276.

22 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.

23 “(ggg) Violates ORS 646A.430 to 646A.450.

24 “(hhh) Violates a provision of ORS 744.318 to 744.384.

25 “(iii) Violates a provision of ORS 646A.702 to 646A.720.

26 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
27 scribed in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the
28 subject of the violation.

29 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.

30 “(LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
31 U.S.C. App. 501 et seq., as in effect on January 1, 2010.

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33 “(nnn) Violates ORS 646A.082.

34 “(ooo) Violates ORS 646.647.

35 “(ppp) Violates ORS 646A.115.

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

37 “(rrr) Violates ORS 646A.092.

38 “(sss) Violates a provision of ORS 646.644.

39 “(ttt) Violates a provision of ORS 646A.295.

40 “(uuu) Violates section 3, chapter 52, Oregon Laws 2012.

41 “(vvv) **Violates a provision of section 1 of this 2013 Act.**

42 “[vvv] (www) Engages in the business of, or acts in the capacity of, an immigration consultant,
43 as defined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person
44 to do so or unless the person is an active member of the Oregon State Bar.

45 “(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifes-

1 tation 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
8 brought under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief
9 is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.
10 **“SECTION 4. If House Bill 3160 becomes law, section 3 of this 2013 Act (amending ORS**
11 **646.608) is repealed.”.**
12 _____