

House Bill 2840

Sponsored by Representative KOMP

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**.

Makes application of automatic renewal provision in consumer contract unlawful trade practice unless provision complies with notice and express consent requirements.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to automatic renewal provisions in consumer contracts; creating new provisions; amending
3 ORS 646.608; and declaring an emergency.

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

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

6 (a) **“Automatic renewal provision” means a provision in a consumer contract that ex-**
7 **tends the term of the consumer contract for a subsequent term after the original or current**
8 **term ends unless the consumer cancels the contract.**

9 (b) **“Clear and conspicuous language” means speech or text that is spoken with an**
10 **audibility, speed or cadence or written, printed, typed or otherwise presented in a size, color,**
11 **contrast or location that, compared to other language in a consumer contract or an offer for**
12 **a consumer contract, is:**

13 (A) **Noticeable;**

14 (B) **Separable from other language to which the language is close in proximity or time;**
15 **and**

16 (C) **Readily understandable.**

17 (c) **“Consumer” means an individual who purchases or seeks to purchase goods or ser-**
18 **vices for personal, family or household purposes.**

19 (d)(A) **“Consumer contract” means an agreement between a consumer and a person un-**
20 **der the terms of which the consumer purchases and the person sells goods or services for**
21 **personal, family or household purposes.**

22 (B) **“Consumer contract” does not include:**

23 (i) **An agreement for insurance;**

24 (ii) **A certificate of deposit;**

25 (iii) **A consumer finance loan, as defined in ORS 725.010;**

26 (iv) **A rental agreement, as defined in ORS 90.100;**

27 (v) **A lease-purchase agreement, as defined in ORS 646A.120;**

28 (vi) **A service contract, as defined in ORS 646A.154; or**

29 (vii) **A contract for services that are subject to the federal Communications Act of 1934,**
30 **47 U.S.C. 151 et seq., if the contract has an automatic renewal provision that extends the**
31 **contract term less than 32 days past the end of the original or current term of the contract**

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 and if the contract discloses in clear and conspicuous language, at the time the consumer
 2 enters or renews the contract, any fee a consumer must pay to terminate the contract be-
 3 fore the original or current term of the contract ends.

4 (e) "Express consent" means a consumer's agreement to become legally obligated under
 5 a consumer contract or a specific provision of a consumer contract, evidence of which the
 6 consumer provides by means of a written or electronic signature, words of acceptance or
 7 other indications.

8 (2)(a) A person may not apply an automatic renewal provision unless the person:

9 (A) Uses clear and conspicuous language to disclose the automatic renewal provision at
 10 the time the person offers a consumer contract or at the time a consumer enters into a
 11 consumer contract;

12 (B) Obtains the consumer's express consent to the automatic renewal provision; and

13 (C) Provides a procedure that the consumer may use to cancel the consumer contract
 14 that is substantially similar to the procedure by which the consumer entered into the con-
 15 tract, or an alternative procedure to which the consumer agrees expressly. If the consumer
 16 entered into the consumer contract by telephone, the person shall provide a toll-free tele-
 17 phone number the consumer may use to cancel the consumer contract and shall immediately
 18 confirm the cancellation or confirm the cancellation within three business days after re-
 19 ceiving a telephone message from the consumer.

20 (b) If an automatic renewal provision extends a consumer contract more than 31 days
 21 past the original or current term of the consumer contract, the person shall:

22 (A) Include a notice of the automatic renewal provision with each periodic statement of
 23 account or bill the person sends to the consumer. The notice must state that the contract
 24 will renew automatically unless the consumer cancels the contract in accordance with the
 25 procedure described in paragraph (a)(C) of this subsection.

26 (B) Notify the consumer of the automatic renewal provision in a separate mailing or a
 27 written communication separate from the periodic statement or bill described in subpara-
 28 graph (A) of this paragraph at least 30 days and not more than 60 days before the original
 29 or current term of the contract will end and the consumer contract will renew automatically.
 30 The notice must state that the contract will renew automatically unless the consumer can-
 31 cels the contract in accordance with the procedure described in paragraph (a)(C) of this
 32 subsection.

33 (3) A person's violation of a provision of subsection (2) of this section is an unlawful
 34 practice under ORS 646.608 that is subject to enforcement under ORS 646.632 or an action
 35 under ORS 646.638. In addition to any damages, penalties or other remedies that are available
 36 under ORS 646.632 or 646.638, a person's violation of subsection (2) of this section renders the
 37 automatic renewal provision of the consumer contract void and unenforceable.

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

40 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
 41 ness, vocation or occupation the person does any of the following:

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

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

45 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-

1 ciation with, or certification by, another.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
 2 ORS 698.640, whether in a commercial or noncommercial situation.
- 3 (w) Manufactures mercury fever thermometers.
- 4 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
 5 law, or is:
- 6 (A) Prescribed by a person licensed under ORS chapter 677; and
- 7 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
 8 on the proper cleanup of mercury should breakage occur.
- 9 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
 10 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
 11 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
 12 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
 13 graph, “thermostat” means a device commonly used to sense and, through electrical communication
 14 with heating, cooling or ventilation equipment, control room temperature.
- 15 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
 16 mercury light switches.
- 17 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 18 (bb) Violates ORS 646A.070 (1).
- 19 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 20 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 21 (ee) Violates ORS 646.883 or 646.885.
- 22 (ff) Violates ORS 646.569.
- 23 (gg) Violates the provisions of ORS 646A.142.
- 24 (hh) Violates ORS 646A.360.
- 25 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 26 (jj) Violates ORS 646.563.
- 27 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 28 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
 29 thereto.
- 30 (mm) Violates ORS 646A.210 or 646A.214.
- 31 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 32 (oo) Violates ORS 646A.095.
- 33 (pp) Violates ORS 822.046.
- 34 (qq) Violates ORS 128.001.
- 35 (rr) Violates ORS 646.649 (2) to (4).
- 36 (ss) Violates ORS 646A.090 (2) to (4).
- 37 (tt) Violates ORS 87.686.
- 38 (uu) Violates ORS 646.651.
- 39 (vv) Violates ORS 646A.362.
- 40 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 41 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 42 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 43 (zz) Violates ORS 87.007 (2) or (3).
- 44 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 45 (bbb) Engages in an unlawful practice under ORS 646.648.

- 1 (ccc) Violates ORS 646A.365.
- 2 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 3 (eee) Sells a gift card in violation of ORS 646A.276.
- 4 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 5 (ggg) Violates ORS 646A.430 to 646A.450.
- 6 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
- 7 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 8 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
9 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
10 subject of the violation.
- 11 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 12 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
13 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 14 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 15 (nnn) Violates ORS 646A.082.
- 16 (ooo) Violates ORS 646.647.
- 17 (ppp) Violates ORS 646A.115.
- 18 (qqq) Violates a provision of ORS 646A.405.
- 19 (rrr) Violates ORS 646A.092.
- 20 (sss) Violates a provision of ORS 646.644.
- 21 (ttt) Violates a provision of ORS 646A.295.
- 22 (uuu) Violates section 3, chapter 52, Oregon Laws 2012.

- 23 **(vvv) Violates section 1 (2) of this 2013 Act.**
- 24 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
25 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- 26 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
27 need not prove competition between the parties or actual confusion or misunderstanding.
- 28 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
29 torney General has first established a rule in accordance with the provisions of ORS chapter 183
30 declaring the conduct to be unfair or deceptive in trade or commerce.
- 31 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
32 under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is lim-
33 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.

34 **SECTION 3. Section 1 of this 2013 Act and the amendments to ORS 646.608 by section 2**
35 **of this 2013 Act apply to consumer contracts that a consumer enters into on or after the**
36 **effective date of this 2013 Act.**

37 **SECTION 4. This 2013 Act being necessary for the immediate preservation of the public**
38 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
39 **on its passage.**

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