

House Bill 3071

Sponsored by Representatives HOLVEY, HOYLE; Representatives BARTON, BOONE, FREDERICK, GARRETT, GORSEK, GREENLICK, KOMP, WILLIAMSON, WITT

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**.

Requires consumer contract that provides for early termination fee to include clear and conspicuous disclosure of amount of fee and total amount consumer must pay under consumer contract to avoid early termination fee.

Provides that failure to give required notice or charging, collecting or attempting to collect or receiving early termination fee without consumer's express consent to contract after opportunity to read disclosure is unlawful practice and that early termination fee is void and unenforceable.

A BILL FOR AN ACT

1
2 Relating to unlawful practices in connection with consumer contracts; creating new provisions; and
3 amending ORS 646.608.

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

5 **SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS 646.605 to**
6 **646.652.**

7 **SECTION 2. (1) As used in this section:**

8 (a) "Clear and conspicuous" means language that is readily understandable and that is
9 presented in direct proximity to a request for consent in a contract offer in such a manner
10 as to be noticed and understood in comparison with other language by means of size, color,
11 contrast, location, audibility or cadence.

12 (b) "Consumer" means an individual who purchases or seeks to purchase real estate,
13 goods or services for personal, family or household purposes.

14 (c)(A) "Consumer contract" means an agreement or a renewal of an agreement between
15 a consumer and another person for the purchase or sale of real estate, goods or services for
16 personal, family or household purposes.

17 (B) "Consumer contract" does not include:

18 (i) An agreement for insurance;

19 (ii) A certificate of deposit;

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

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

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

23 (vi) A service contract, as described in ORS 646A.154.

24 (d) "Early termination fee" means any expense or obligation that a consumer incurs
25 under a contract as a result of the consumer's terminating or canceling the contract before
26 the contract ends in accordance with the contract's terms.

27 (e) "Express consent" means a consumer's agreement to become obligated under a con-
28 sumer contract, evidence for which a consumer gives by means of the consumer's signature,

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 oral words of acceptance or another indication of the consumer’s intent.

2 (2) A consumer contract that provides for an early termination fee must also provide the
3 following notice in a clear and conspicuous manner at the time a consumer executes, extends
4 or renews the consumer contract:

5 _____
6
7 OREGON FULL-COST DISCLOSURE: This contract includes a cancellation penalty of
8 \$_____. The total amount of payments that you will have to make under this con-
9 tract to avoid owing a cancellation penalty is \$_____.

10 _____
11
12 (3) A person may not charge, collect or attempt to collect or receive an early termination
13 fee unless the consumer gave express consent to the consumer contract that provides for
14 the fee after having an opportunity to read the notice described in subsection (2) of this
15 section at the time the consumer executed, extended or renewed the consumer contract.

16 (4) A person engages in an unlawful practice under ORS 646.608 if the person executes a
17 consumer contract with a consumer that provides for an early termination fee and does not
18 include the notice described in subsection (2) of this section or if the person charges, collects
19 or attempts to collect or receives an early termination fee without the consumer’s express
20 consent to the consumer contract that provides for the fee. In addition, the early termi-
21 nation fee provision in the consumer contract is void and unenforceable.

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

24 646.608. (1) A person engages in an unlawful practice when in the course of the person’s busi-
25 ness, vocation or occupation the person does any of the following:

- 26 (a) Passes off real estate, goods or services as those of another.
- 27 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
28 proval, or certification of real estate, goods or services.
- 29 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
30 ciation with, or certification by, another.
- 31 (d) Uses deceptive representations or designations of geographic origin in connection with real
32 estate, goods or services.
- 33 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
34 ingredients, uses, benefits, quantities or qualities that [*they*] **the real estate, goods or services** do
35 not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection
36 that the person does not have.
- 37 (f) Represents that real estate or goods are original or new if [*they*] **the real estate or goods**
38 are deteriorated, altered, reconditioned, reclaimed, used or secondhand.
- 39 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
40 or that real estate or goods are of a particular style or model, if [*they*] **the real estate, goods or**
41 **services** are of another.
- 42 (h) Disparages the real estate, goods, services, property or business of a customer or another
43 by false or misleading representations of fact.
- 44 (i) Advertises real estate, goods or services with intent not to provide [*them*] **the real estate,**
45 **goods or services** as advertised, or with intent not to supply reasonably expectable public demand,

1 unless the advertisement discloses a limitation of quantity.

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

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

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

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

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*] **occurring after**
19 the time the customer 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*] **the real estate, goods or services** 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 ORS 646A.092.
- 4 (sss) Violates a provision of ORS 646.644.
- 5 (ttt) Violates a provision of ORS 646A.295.
- 6 (uuu) Violates section 3, chapter 52, Oregon Laws 2012.

7 **(vvv) Violates a provision of section 2 (2) or (3) of this 2013 Act.**

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

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

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

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

18 **SECTION 4. Section 2 of this 2013 Act and the amendments to ORS 646.608 by section 3**
19 **of this 2013 Act apply to consumer contracts entered into on or after the effective date of**
20 **this 2013 Act.**

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