

House Bill 3485

Sponsored by Representative DOHERTY

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 from sending advertisement that is for mortgage loan services or other extensions of credit that are secured by real property and that has certain characteristics unless person has previous business relationship with recipient or unless advertisement meets certain criteria.

A BILL FOR AN ACT

1
2 Relating to advertisements for credit services; creating new provisions; and amending ORS 646.608.

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

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

5 (a) **"Advertisement" means a written or graphic statement or representation that a**
6 **person makes to a recipient in order to solicit a business transaction with the recipient or**
7 **with the intent or expectation that the recipient will respond in such a way as to enable the**
8 **person to solicit or enter into a business transaction with the recipient.**

9 (b) **"Communicate" means to send or transmit a message to a recipient through a me-**
10 **dium that includes, but is not limited to, direct mail, electronic mail or other electronic**
11 **communication via the Internet.**

12 (c) **"Official message" means a statement of account, account summary or account re-**
13 **cord, notice or other message that a person in the ordinary course of the person's business**
14 **might send to a recipient with whom the person has a previous business relationship, or to**
15 **whom the person has a fiduciary duty or an obligation that exists as a consequence of a law,**
16 **regulation or rule.**

17 (d) **"Person" means an individual, public or private corporation, nonprofit corporation,**
18 **joint stock or limited liability company, partnership, firm, association, trust company, busi-**
19 **ness trust or other business entity, government, political subdivision, governmental agency**
20 **or public body, as defined in ORS 174.109.**

21 (e) **"Previous business relationship" means a previous transaction or series of trans-**
22 **actions of a commercial or pecuniary character between a person and a recipient that oc-**
23 **curred within the 18 months that preceded the date on which the recipient received an**
24 **advertisement from the person.**

25 (f) **"Recipient" means an individual who resides in this state, or a member of the**
26 **individual's family, to whom a person communicates, or who receives, an advertisement that**
27 **is subject to this section.**

28 (2)(a) **Except as provided in paragraph (b) of this subsection, a person may not commu-**
29 **nicate to a recipient in this state with whom the person does not have a previous business**
30 **relationship an advertisement concerning a mortgage loan or other extension of credit that**
31 **is or would be secured by real property if the advertisement:**

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 (A) Mimics or resembles, or is intended to mimic or resemble, in a reasonable person's
2 estimation, an official message;

3 (B) Includes a logo, trademark, name, title, symbol, device or other designation that
4 identifies or belongs to a person other than the person that communicates the advertise-
5 ment;

6 (C) Conceals, obscures or makes unobtrusive or inconspicuous the purpose of the adver-
7 tisement or the identity of the person that communicates the advertisement in such a way
8 that a reasonable person:

9 (i) Would be misled as to the purpose of the advertisement or as to the identity of the
10 person that communicates the advertisement; or

11 (ii) Would have to give close or sustained attention to the advertisement in order to
12 discover the purpose of the advertisement or the identity of the person that communicates
13 the advertisement;

14 (D) Instructs the recipient to reply to the advertisement to check the status of the
15 recipient's mortgage loan or account or keep the advertisement or a copy of the advertise-
16 ment; or

17 (E) Does not include or displays information about the origin of the advertisement that
18 a reasonable person would deem incomplete, inconsistent or misleading in:

19 (i) A return address on an envelope that contains the advertisement; or

20 (ii) An electronic mail address or uniform resource locator for an Internet site.

21 (b) A person may send an advertisement described in paragraph (a) of this subsection to
22 a recipient if the advertisement conforms, as appropriate for the medium in which the per-
23 son communicates the advertisement, to the following requirements:

24 (A) The words "THIS IS AN ADVERTISEMENT" must appear in capital letters at the top
25 of any written material, without any other text on the same line and in a font or typeface
26 that has the same color and weight as and is as large as or larger than the font or typeface
27 that is otherwise most prominent in the written material.

28 (B) The name or other identity of the person that communicated the advertisement must
29 appear in the text of the advertisement before the text refers to the person with a pronoun
30 or refers to a government, political subdivision, governmental agency or public body, as de-
31 fined in ORS 174.109.

32 (C) A genuine return address for the person that communicated the advertisement must
33 appear on any envelope that contains the advertisement or a genuine electronic mail address
34 or uniform resource locator that would enable the recipient to identify and contact the per-
35 son that communicated the advertisement must appear in any electronic communication.

36 (3) A person's violation of this section is an unlawful practice under ORS 646.608 that is
37 subject to enforcement under ORS 646.632 or an action under ORS 646.638.

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 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 advertisements that a person communicates on or after the effective**
36 **date of this 2013 Act.**

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