

**PROPOSED AMENDMENTS TO RESOLVE CONFLICTS TO
A-ENGROSSED HOUSE BILL 3160**

1 On page 1 of the printed A-engrossed bill, line 3, after “646.648;” insert
2 “repealing sections 1 and 2, chapter ___, Oregon Laws 2013 (Enrolled House
3 Bill 2573);”.

4 On page 12, after line 2, insert:

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7 **is repealed and ORS 646.608, as amended by section 6, chapter 52,**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

9 “646.608. (1) A person engages in an unlawful practice if in the course of
10 the person’s business, vocation or occupation the person does any of the
11 following:

12 “(a) Passes off real estate, goods or services as the real estate, goods or
13 services of another.

14 “(b) Causes likelihood of confusion or of misunderstanding as to the
15 source, sponsorship, approval, or certification of real estate, goods or ser-
16 vices.

17 “(c) Causes likelihood of confusion or of misunderstanding as to affil-
18 iation, connection, or association with, or certification by, another.

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

21 “(e) Represents that real estate, goods or services have sponsorship, ap-
22 proval, characteristics, ingredients, uses, benefits, quantities or qualities that

1 the real estate, goods or services do not have or that a person has a spon-
2 sorship, approval, status, qualification, affiliation, or connection that the
3 person does not have.

4 “(f) Represents that real estate or goods are original or new if the real
5 estate or goods are deteriorated, altered, reconditioned, reclaimed, used or
6 secondhand.

7 “(g) Represents that real estate, goods or services are of a particular
8 standard, quality, or grade, or that real estate or goods are of a particular
9 style or model, if the real estate, goods or services are of another.

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

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

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

18 “(k) Makes false or misleading representations concerning credit avail-
19 ability or the nature of the transaction or obligation incurred.

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

24 “(m) Performs service on or dismantles any goods or real estate if the
25 owner or apparent owner of the goods or real estate does not authorize the
26 service or dismantling.

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

29 “(o) In a sale, rental or other disposition of real estate, goods or services,
30 gives or offers to give a rebate or discount or otherwise pays or offers to pay

1 value to the customer in consideration of the customer giving to the person
2 the names of prospective purchasers, lessees, or borrowers, or otherwise
3 aiding the person in making a sale, lease, or loan to another person, if
4 earning the rebate, discount or other value is contingent upon an event oc-
5 ccurring after the time the customer enters into the transaction.

6 “(p) Makes any false or misleading statement about a prize, contest or
7 promotion used to publicize a product, business or service.

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

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

13 “(s) Makes false or misleading representations of fact concerning the of-
14 fering price of, or the person’s cost for real estate, goods or services.

15 “(t) Concurrent with tender or delivery of any real estate, goods or ser-
16 vices fails to disclose any known material defect or material nonconformity.

17 “(u) Engages in any other unfair or deceptive conduct in trade or com-
18 merce.

19 “(v) Violates any of the provisions relating to auction sales, auctioneers
20 or auction marts under ORS 698.640, whether in a commercial or noncom-
21 mercial situation.

22 “(w) Manufactures mercury fever thermometers.

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

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

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

29 “(y) Sells a thermostat that contains mercury unless the thermostat is
30 labeled in a manner to inform the purchaser that mercury is present in the

1 thermostat and that the thermostat may not be disposed of until the mercury
2 is removed, reused, recycled or otherwise managed to ensure that the mer-
3 cury does not become part of the solid waste stream or wastewater. For
4 purposes of this paragraph, ‘thermostat’ means a device commonly used to
5 sense and, through electrical communication with heating, cooling or venti-
6 lation equipment, control room temperature.

7 “(z) Sells or offers for sale a motor vehicle manufactured after January
8 1, 2006, that contains mercury light switches.

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

10 “(bb) Violates ORS 646A.070 (1).

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

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

13 “(ee) Violates ORS 646.883 or 646.885.

14 “(ff) Violates ORS 646.569.

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

16 “(hh) Violates ORS 646A.360.

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

18 “(jj) Violates ORS 646.563.

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

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

22 “(mm) Violates ORS 646A.210 or 646A.214.

23 “(nn) Violates any provision of ORS 646A.124 to 646A.134.

24 “(oo) Violates ORS 646A.095.

25 “(pp) Violates ORS 822.046.

26 “(qq) Violates ORS 128.001.

27 “(rr) Violates ORS 646.649 (2) to (4).

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

29 “(tt) Violates ORS 87.686.

30 “(uu) Violates ORS 646.651.

1 “(vv) Violates ORS 646A.362.

2 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or
3 646A.054.

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

5 “(yy) Commits the offense of acting as a vehicle dealer without a certif-
6 icate under ORS 822.005.

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

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

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

10 “(ccc) Violates ORS 646A.365.

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

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

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

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

15 “(hhh) Violates a provision of ORS 744.318 to 744.384[, 744.991 and
16 744.992].

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

18 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning
19 or declaration described in ORS 646A.530 is issued for the children’s product,
20 as defined in ORS 646A.525, that is the subject of the violation.

21 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,
22 697.682, 697.692 or 697.707.

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

26 “(mmm) Violates a provision of ORS 646A.480 to 646A.495.

27 “(nnn) Violates ORS 646A.082.

28 “(ooo) Violates ORS 646.647.

29 “(ppp) Violates ORS 646A.115.

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

1 “(rrr) Violates ORS 646A.092.

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

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

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

5 “(vvv) Violates a provision of ORS 746.230.

6 “(www) **Engages in the business of, or acts in the capacity of, an**
7 **immigration consultant, as defined in ORS 9.280, in this state and for**
8 **compensation, unless federal law authorizes the person to do so or**
9 **unless the person is an active member of the Oregon State Bar.**

10 “(2) A representation under subsection (1) of this section or ORS 646.607
11 may be any manifestation of any assertion by words or conduct, including,
12 but not limited to, a failure to disclose a fact.

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

16 “(4) An action or suit may not be brought under subsection (1)(u) of this
17 section unless the Attorney General has first established a rule in accord-
18 ance with the provisions of ORS chapter 183 declaring the conduct to be
19 unfair or deceptive in trade or commerce. The Attorney General may not
20 establish a rule under this subsection with respect to conduct that is subject
21 to the Insurance Code unless the Attorney General first submits the proposed
22 rule to the Director of the Department of Consumer and Business Services
23 for review and approval.

24 “(5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an
25 action or suit is brought under subsection (1)(xx) of this section by a person
26 other than a prosecuting attorney, relief is limited to an injunction and the
27 prevailing party may be awarded reasonable attorney fees.

28 **“SECTION 11. If House Bill 2573 becomes law, the amendments to**
29 **ORS 646.608 by section 10 of this 2013 Act become operative January**
30 **1, 2014, and apply to violations that occur on or after January 1, 2014.**

1 **SECTION 12. If House Bill 2573 becomes law, section 2, chapter __,**
2 **Oregon Laws 2013 (Enrolled House Bill 2573), is repealed.”.**

3 In line 3, delete “10” and insert “13”.

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