

**PROPOSED AMENDMENTS TO RESOLVE CONFLICTS TO
HOUSE BILL 2059**

1 On page 3 of the printed bill, delete lines 21 through 45.

2 Delete pages 4 through 6 and insert:

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

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

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

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

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

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

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

22 “(f) Represents that real estate or goods are original or new if [*they*] **the**

1 **real estate or goods** are deteriorated, altered, reconditioned, reclaimed,
2 used or secondhand.

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

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

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

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

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

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

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

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

25 “(o) In a sale, rental or other disposition of real estate, goods or services,
26 gives or offers to give a rebate or discount or otherwise pays or offers to pay
27 value to the customer in consideration of the customer giving to the person
28 the names of prospective purchasers, lessees, or borrowers, or otherwise
29 aiding the person in making a sale, lease, or loan to another person, if
30 earning the rebate, discount or other value is contingent upon [*occurrence*

1 of] an event [*subsequent to*] **occurring after** the time the customer enters
2 into the transaction.

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

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

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

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

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

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

16 “(v) Violates any of the provisions relating to auction sales, **consign-**
17 **ment sales**, auctioneers, **consignees** or auction marts under ORS 698.640,
18 whether in a commercial or noncommercial situation.

19 “(w) Manufactures mercury fever thermometers.

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

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

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

26 “(y) Sells a thermostat that contains mercury unless the thermostat is
27 labeled in a manner to inform the purchaser that mercury is present in the
28 thermostat and that the thermostat may not be disposed of until the mercury
29 is removed, reused, recycled or otherwise managed to ensure that the mer-
30 cury does not become part of the solid waste stream or wastewater. For

1 purposes of this paragraph, ‘thermostat’ means a device commonly used to
2 sense and, through electrical communication with heating, cooling or venti-
3 lation equipment, control room temperature.

4 “(z) Sells or offers for sale a motor vehicle manufactured after January
5 1, 2006, that contains mercury light switches.

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

7 “(bb) Violates ORS 646A.070 (1).

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

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

10 “(ee) Violates ORS 646.883 or 646.885.

11 “(ff) Violates ORS 646.569.

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

13 “(hh) Violates ORS 646A.360.

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

15 “(jj) Violates ORS 646.563.

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

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

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

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

21 “(oo) Violates ORS 646A.095.

22 “(pp) Violates ORS 822.046.

23 “(qq) Violates ORS 128.001.

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

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

26 “(tt) Violates ORS 87.686.

27 “(uu) Violates ORS 646.651.

28 “(vv) Violates ORS 646A.362.

29 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or
30 646A.054.

1 “(xx) Violates ORS 180.440 (1) or 180.486 (1).
2 “(yy) Commits the offense of acting as a vehicle dealer without a certifi-
3 cate under ORS 822.005.
4 “(zz) Violates ORS 87.007 (2) or (3).
5 “(aaa) Violates ORS 92.405 (1), (2) or (3).
6 “(bbb) Engages in an unlawful practice under ORS 646.648.
7 “(ccc) Violates ORS 646A.365.
8 “(ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
9 “(eee) Sells a gift card in violation of ORS 646A.276.
10 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.
11 “(ggg) Violates ORS 646A.430 to 646A.450.
12 “(hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
13 “(iii) Violates a provision of ORS 646A.702 to 646A.720.
14 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning
15 or declaration described in ORS 646A.530 is issued for the children’s product,
16 as defined in ORS 646A.525, that is the subject of the violation.
17 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,
18 697.682, 697.692 or 697.707.
19 “(LLL) Violates the consumer protection provisions of the
20 Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on
21 January 1, 2010.
22 “(mmm) Violates a provision of ORS 646A.480 to 646A.495.
23 “(nnn) Violates ORS 646A.082.
24 “(ooo) Violates ORS 646.647.
25 “(ppp) Violates ORS 646A.115.
26 “(qqq) Violates a provision of ORS 646A.405.
27 “(rrr) Violates ORS 646A.092.
28 “(sss) Violates a provision of ORS 646.644.
29 “(ttt) Violates a provision of ORS 646A.295.
30 “(uuu) Violates section 3, chapter 52, Oregon Laws 2012.

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

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

7 “(4) An action or suit may not be brought under subsection (1)(u) of this
8 section unless the Attorney General has first established a rule in accord-
9 ance with the provisions of ORS chapter 183 declaring the conduct to be
10 unfair or deceptive in trade or commerce.

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

15 **“SECTION 5. If House Bill 2573 becomes law, section 4 of this 2013**
16 **Act (amending ORS 646.608) is repealed and ORS 646.608, as amended**
17 **by section 6, chapter 52, Oregon Laws 2012, and section 1, chapter 77,**
18 **Oregon Laws 2013 (Enrolled House Bill 2573), is amended to read:**

19 “646.608. (1) A person engages in an unlawful practice [*when*] **if** in the
20 course of the person’s business, vocation or occupation the person does any
21 of the following:

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

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

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

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

1 “(e) Represents that real estate, goods or services have sponsorship, ap-
2 proval, characteristics, ingredients, uses, benefits, quantities or qualities that
3 the real estate, goods or services do not have or that a person has a spon-
4 sorship, approval, status, qualification, affiliation, or connection that the
5 person does not have.

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

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

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

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

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

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

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

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

30 “(n) Solicits potential customers by telephone or door to door as a seller

1 unless the person provides the information required under ORS 646.611.

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

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

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

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15 club.

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17 fering price of, or the person’s cost for real estate, goods or services.

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

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

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

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

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

1 breakage occur.

2 “(y) Sells a thermostat that contains mercury unless the thermostat is
3 labeled in a manner to inform the purchaser that mercury is present in the
4 thermostat and that the thermostat may not be disposed of until the mercury
5 is removed, reused, recycled or otherwise managed to ensure that the mer-
6 cury does not become part of the solid waste stream or wastewater. For
7 purposes of this paragraph, ‘thermostat’ means a device commonly used to
8 sense and, through electrical communication with heating, cooling or venti-
9 lation equipment, control room temperature.

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11 1, 2006, that contains mercury light switches.

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19 “(hh) Violates ORS 646A.360.

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21 “(jj) Violates ORS 646.563.

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

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

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

27 “(oo) Violates ORS 646A.095.

28 “(pp) Violates ORS 822.046.

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

1 “(ss) Violates ORS 646A.090 (2) to (4).
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3 “(uu) Violates ORS 646.651.
4 “(vv) Violates ORS 646A.362.
5 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or
6 646A.054.
7 “(xx) Violates ORS 180.440 (1) or 180.486 (1).
8 “(yy) Commits the offense of acting as a vehicle dealer without a certifi-
9 cate under ORS 822.005.
10 “(zz) Violates ORS 87.007 (2) or (3).
11 “(aaa) Violates ORS 92.405 (1), (2) or (3).
12 “(bbb) Engages in an unlawful practice under ORS 646.648.
13 “(ccc) Violates ORS 646A.365.
14 “(ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
15 “(eee) Sells a gift card in violation of ORS 646A.276.
16 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.
17 “(ggg) Violates ORS 646A.430 to 646A.450.
18 “(hhh) Violates a provision of ORS 744.318 to 744.384.
19 “(iii) Violates a provision of ORS 646A.702 to 646A.720.
20 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning
21 or declaration described in ORS 646A.530 is issued for the children’s product,
22 as defined in ORS 646A.525, that is the subject of the violation.
23 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,
24 697.682, 697.692 or 697.707.
25 “(LLL) Violates the consumer protection provisions of the
26 Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on
27 January 1, 2010.
28 “(mmm) Violates a provision of ORS 646A.480 to 646A.495.
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30 “(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) Engages in the business of, or acts in the capacity of, an immi-
8 gration consultant, as defined in ORS 9.280, in this state and for compen-
9 sation, unless federal law authorizes the person to do so or unless the person
10 is an active member of the Oregon State Bar.

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

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

17 “(4) An action or suit may not be brought under subsection (1)(u) of this
18 section unless the Attorney General has first established a rule in accord-
19 ance with the provisions of ORS chapter 183 declaring the conduct to be
20 unfair or deceptive in trade or commerce.

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

25 **“SECTION 6. The amendments to ORS 646.608, 698.635, 698.640 and**
26 **698.650 by sections 1 to 4 of this 2013 Act apply to auction sales and**
27 **consignment sales that occur on or after the effective date of this 2013**
28 **Act.**

29 **“SECTION 7.** If House Bill 2573 becomes law, section 6 of this 2013 Act
30 is amended to read:

1 **“Sec. 6.** The amendments to ORS 646.608, 698.635, 698.640 and 698.650 by
2 sections 1 to [4] **3 and 5** of this 2013 Act apply to auction sales and
3 consignment sales that occur on or after the effective date of this 2013 Act.

4 **“SECTION 8. If House Bill 3160 becomes law, sections 5 (amending**
5 **ORS 646.608) and 7 (amending section 6 of this 2013 Act) of this 2013**
6 **Act are repealed.”.**

7
