

# House Bill 4083

Sponsored by Representatives MCKEOWN, WEIDNER; Representatives DOHERTY, GORSEK, KENY-GUYER, REARDON, Senator ROBLAN (Presession filed.)

## 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 person, before sending unsolicited check, draft or other payment instrument or offer to extend credit or lend money to consumer, either to send notice to consumer at least seven days in advance or to establish and use system by which consumer must affirmatively consent to receive check, draft or other payment instrument or offer to extend credit or lend money.

Provides that violation of requirement is unlawful practice subject to enforcement under Unlawful Trade Practices Act.

Becomes operative July 1, 2014.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to unsolicited offers of business; creating new provisions; amending ORS 646.607, 646.608  
3 and 646A.365; and declaring an emergency.

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

5 **SECTION 1.** ORS 646A.365 is amended to read:

6 646A.365. (1) A person may not mail or cause to be sent a check, draft or other payment in-  
7 strument that, when deposited or cashed, obligates the depositor or payee thereafter to make any  
8 payment. This *[section]* **subsection** does not apply to an extension of credit or an offer to lend  
9 money.

10 (2)(a) **As used in this subsection, "consumer" means an individual resident of this state.**

11 (b) **A person that sends any check, draft or other payment instrument or any offer to**  
12 **extend credit or lend money to a consumer who did not solicit the check, draft or payment**  
13 **instrument or the offer to extend credit or lend money, must first:**

14 (A) **Notify the consumer in writing at least seven days before sending the check, draft**  
15 **or payment instrument or the offer to extend credit or lend money that the person will send**  
16 **the check, draft or payment instrument or the offer to extend credit or lend money; or**

17 (B) **Establish and use a system that:**

18 (i) **Requires the consumer to affirmatively consent in writing to receive a check, draft**  
19 **or other payment instrument or an offer to extend credit or lend money; and**

20 (ii) **Permits the consumer to withdraw the consumer's consent at any time with not less**  
21 **than seven days' notice.**

22 (c) **The person shall provide the notification required under this subsection using the**  
23 **same method by which the person sends the check, draft or other payment instrument or**  
24 **the offer to extend credit or lend money.**

25 (3) **Violating a provision of subsection (2) of this section is an unlawful practice under**  
26 **ORS 646.607 that is subject to enforcement under ORS 646.618 and 646.632. A prosecuting**  
27 **attorney who intends to take an enforcement action under this subsection against a state**

**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 **regulated lender, as defined in ORS 646.633, may bring the person's conduct to the attention**  
 2 **of the Director of the Department of Consumer and Business Services but otherwise shall**  
 3 **comply with the provisions of ORS 646.633.**

4 **SECTION 2.** ORS 646.607 is amended to read:

5 646.607. A person engages in an unlawful practice if in the course of the person's business, vo-  
 6 cation or occupation the person:

7 (1) Employs any unconscionable tactic in connection with selling, renting or disposing of real  
 8 estate, goods or services, or collecting or enforcing an obligation;

9 (2) Fails to deliver all or any portion of real estate, goods or services as promised, and at a  
 10 customer's request, fails to refund money that the customer gave to the person to purchase the  
 11 undelivered real estate, goods or services and that the person does not retain pursuant to any right,  
 12 claim or defense the person may assert in good faith. This subsection does not create a warranty  
 13 obligation and does not apply to a dispute over the quality of real estate, goods or services delivered  
 14 to a customer;

15 (3) Violates ORS 401.965 (2);

16 (4) Violates a provision of ORS 646A.725 to 646A.750;

17 (5) Violates ORS 646A.530;

18 (6) Employs a collection practice that is unlawful under ORS 646.639;

19 (7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or 86.732 (1) or (2); [or]

20 (8) Violates ORS 646A.093[.]; **or**

21 **(9) Violates ORS 646A.365 (2).**

22 **SECTION 3.** ORS 646.608 is amended to read:

23 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,  
 24 vocation or occupation the person does any of the following:

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

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

28 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-  
 29 ciation with, or certification by, another.

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

32 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,  
 33 ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have  
 34 or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the  
 35 person does not have.

36 (f) Represents that real estate or goods are original or new if the real estate or goods are de-  
 37 teriorated, altered, reconditioned, reclaimed, used or secondhand.

38 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,  
 39 or that real estate or goods are of a particular style or model, if the real estate, goods or services  
 40 are of another.

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

43 (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or  
 44 services as advertised, or with intent not to supply reasonably expectable public demand, unless the  
 45 advertisement discloses a limitation of quantity.

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

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

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

8 (m) Performs service on or dismantles any goods or real estate if the owner or apparent owner  
9 of the goods or real estate does not authorize the service or dismantling.

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

12 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give  
13 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of  
14 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or  
15 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,  
16 discount or other value is contingent upon an event occurring after the time the customer enters  
17 into the transaction.

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

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

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

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

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

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

28 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,  
29 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-  
30 ation.

31 (w) Manufactures mercury fever thermometers.

32 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal  
33 law, or is:

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

35 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and  
36 on the proper cleanup of mercury should breakage occur.

37 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to  
38 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be  
39 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the  
40 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-  
41 graph, "thermostat" means a device commonly used to sense and, through electrical communication  
42 with heating, cooling or ventilation equipment, control room temperature.

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

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

- 1 (bb) Violates ORS 646A.070 (1).
- 2 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 3 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 4 (ee) Violates ORS 646.883 or 646.885.
- 5 (ff) Violates ORS 646.569.
- 6 (gg) Violates the provisions of ORS 646A.142.
- 7 (hh) Violates ORS 646A.360.
- 8 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 9 (jj) Violates ORS 646.563.
- 10 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 11 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 12 thereto.
- 13 (mm) Violates ORS 646A.210 or 646A.214.
- 14 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 15 (oo) Violates ORS 646A.095.
- 16 (pp) Violates ORS 822.046.
- 17 (qq) Violates ORS 128.001.
- 18 (rr) Violates ORS 646A.800 (2) to (4).
- 19 (ss) Violates ORS 646A.090 (2) to (4).
- 20 (tt) Violates ORS 87.686.
- 21 (uu) Violates ORS 646A.803.
- 22 (vv) Violates ORS 646A.362.
- 23 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 24 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 25 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 26 (zz) Violates ORS 87.007 (2) or (3).
- 27 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 28 (bbb) Engages in an unlawful practice under ORS 646.648.
- 29 (ccc) Violates ORS 646A.365 (1).
- 30 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 31 (eee) Sells a gift card in violation of ORS 646A.276.
- 32 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 33 (ggg) Violates ORS 646A.430 to 646A.450.
- 34 (hhh) Violates a provision of ORS 744.318 to 744.384.
- 35 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 36 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 37 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 38 subject of the violation.
- 39 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 40 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 41 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 42 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 43 (nnn) Violates ORS 646A.082.
- 44 (ooo) Violates ORS 646.647.
- 45 (ppp) Violates ORS 646A.115.

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

2 (rrr) Violates ORS 646A.092.

3 (sss) Violates a provision of ORS 646.644.

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

5 (uuu) Violates ORS 646A.564.

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

9 (www) Violates ORS 702.012, 702.029, 702.032 or 702.054.

10 (xxx) Violates ORS 646A.806.

11 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-  
12 tion of any assertion by words or conduct, including, 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, a prosecuting attorney  
14 need not prove competition between the parties or actual confusion or misunderstanding.

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

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

21 **SECTION 4. (1) The amendments to ORS 646.607, 646.608 and 646A.365 by sections 1 to 3**  
22 **of this 2014 Act become operative July 1, 2014.**

23 **(2) The Attorney General and the Director of the Department of Consumer and Business**  
24 **Services may take any action before the operative date specified in subsection (1) of this**  
25 **section that is necessary to enable the Attorney General or the director to exercise, on and**  
26 **after the operative date specified in subsection (1) of this section, all of the duties, functions**  
27 **and powers conferred on the Attorney General and the director by the amendments to ORS**  
28 **646.607, 646.608 and 646A.365 by sections 1 to 3 of this 2014 Act.**

29 **SECTION 5. This 2014 Act being necessary for the immediate preservation of the public**  
30 **peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect**  
31 **on its passage.**

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