

# D R A F T

## SUMMARY

Prohibits retailer from selling, leasing, offering for sale or lease or otherwise distributing cellular telephone unless cellular telephone and packaging bear specific label.

Makes violation unlawful trade practice.

Becomes operative July 1, 2016.

## A BILL FOR AN ACT

1  
2 Relating to cellular telephones; creating new provisions; and amending ORS  
3 646.608.

4 The Legislative Assembly finds that:

5 (1) The expanding use of radio-frequency technology, particularly the use  
6 of cellular telephones, has resulted in speculation concerning the potential  
7 dangers of human exposure to radio-frequency radiation.

8 (2) The Federal Communications Commission is required under the Na-  
9 tional Environmental Policy Act, 42 U.S.C. 4321 et seq., to evaluate the effect  
10 of emissions from cellular telephones on the quality of the human environ-  
11 ment, including the effects from radio-frequency radiation.

12 (3) As part of carrying out the commission's responsibilities, the commis-  
13 sion adopted the specific absorption rate limits for general public exposure  
14 to radio-frequency radiation from cellular telephones operating within close  
15 proximity to the human body at a level of 1.6 watts per kilogram, as averaged  
16 over any one gram of tissue, effective August 6, 1996. FCC Report and Or-  
17 der, FCC 96-326; 47 C.F.R. 2.1093(d)(2).

18 (4) Federal law requires the commission to authorize cellular telephones  
19 before they may be marketed for public consumption. Applicants for au-

1 thorization of cellular telephones must have a statement that confirms that  
2 the cellular telephone complies with the specific absorption rate limits that  
3 the commission adopted, 47 C.F.R. 2.1093.

4 (5) Biological effects on humans can result from exposure to radio-  
5 frequency radiation is undisputed. Biological effects that result from heating  
6 tissue are “thermal” effects. Biological effects that occur at relatively low  
7 levels of exposure to radio-frequency radiation are “nonthermal” effects.

8 (6) The specific absorption rate limits that the commission adopted apply  
9 only to radio-frequency radiation exposure at the 100 kHz to 6 GHz frequency  
10 ranges, levels that the commission considers sufficient to heat body tissues.  
11 47 C.F.R. 2.1093(d). The commission’s specific absorption rate levels apply,  
12 therefore, only to radio-frequency radiation exposure that can produce ther-  
13 mal biological effects and not to radio-frequency radiation exposure that can  
14 produce nonthermal biological effects.

15 (7) The commission’s Office of Engineering and Technology published, in  
16 print and online, an informational bulletin to address increasing public in-  
17 terest and concern about the potential dangers to humans of exposure to  
18 radio-frequency radiation-emitting devices, including cellular telephones.  
19 This bulletin provides information about the biological effects of radio-  
20 frequency radiation exposure. OET Bulletin 56: Questions and Answers about  
21 Biological Effects and Potential Hazards of Radiofrequency Electromagnetic  
22 Fields (Fourth Edition, August 1999).

23 (8)(a) OET Bulletin 56 states, on page 8:

24 (A) “At relatively low levels of exposure to [radio-frequency] radiation,  
25 i.e., field intensities lower than those that would produce significant and  
26 measurable heating, the evidence for production of harmful biological effects  
27 is ambiguous and unproven. Such effects have sometimes been referred to as  
28 ‘non-thermal’ effects.”

29 (B) “Several years ago publications began appearing in the scientific lit-  
30 erature, largely overseas, reporting the observation of a wide range of low-  
31 level biological effects. However, in many of these cases further experimental

1 research was unable to reproduce these effects. Furthermore, there has been  
2 no determination that such effects might indicate a human health hazard,  
3 particularly with regard to long-term exposure.”

4 (C) “More recently, other scientific laboratories in North America,  
5 Europe and elsewhere have reported certain biological effects after exposure  
6 of animals (‘in vivo’) and animal tissue (‘in vitro’) to relatively low levels  
7 of [radio-frequency] radiation. These reported effects have included certain  
8 changes in the immune system, neurological effects, behavioral effects, evi-  
9 dence for a link between microwave exposure and the action of certain drugs  
10 and compounds, a ‘calcium efflux’ effect in brain tissue (exposed under very  
11 specific conditions), and effects on DNA.”

12 (b) The OET Bulletin 56, on page 8, concludes: “In general, while the  
13 possibility of ‘non-thermal’ biological effects may exist, whether or not such  
14 effects might indicate a human health hazard is not presently known. Fur-  
15 ther research is needed to determine the generality of such effects and their  
16 possible relevance, if any, to human health.”

17 (9) The commission notes that, while the commission “authorizes and li-  
18 censes devices, transmitters and facilities that generate [radio-frequency]  
19 radiation. . . . the [commission’s] primary jurisdiction does not lie in the  
20 health and safety area, and it must rely on other agencies and organizations  
21 for guidance in these matters.” Federal Communications Commission  
22 website, Radio Frequency Safety, Frequently Asked Questions, “Why Has  
23 The FCC Adopted Guidelines for RF Exposures?”.

24 (10) The United States Food and Drug Administration “does not review  
25 the safety of radiation-emitting consumer products such as cell phones and  
26 similar wireless devices before they can be sold, as it does with new drugs  
27 or medical devices.” U.S. Food and Drug Administration website.

28 (11) Given the absence of any federal entity with primary jurisdiction to  
29 evaluate and regulate the health and safety effects of cellular telephones on  
30 humans, given the lack of federal regulation of radio-frequency radiation-  
31 emitting devices that transmit in a frequency range that results in non-

1 thermal biological effects and given the current state of research in which  
2 uncertainty and controversy exists as to the degree to which cellular tele-  
3 phone usage can cause non-thermal biological effects or be hazardous to hu-  
4 man health, the State of Oregon may lawfully exercise health and safety  
5 police powers to prohibit cellular telephone retailers from selling, leasing  
6 or otherwise distributing cellular telephones in this state unless the cellular  
7 telephones and packaging for the cellular telephones have a visible written  
8 label that advises consumers of possible risks and steps that consumers can  
9 take to reduce the risk of radio-frequency radiation exposure from cellular  
10 telephone use.

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

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

13 (a) **“Cellular telephone” means a portable wireless telephone device**  
14 **that can send or receive transmissions through a cellular**  
15 **radiotelephone service, as defined in 47 C.F.R. 22.99.**

16 (b) **“Consumer” means an individual who buys, leases or otherwise**  
17 **comes to possess a cellular telephone from a retailer.**

18 (c) **“Retailer” means a person that, in the ordinary course of busi-**  
19 **ness, sells or leases, offers for sale or lease or otherwise distributes**  
20 **cellular telephones to consumers in this state.**

21 (2) **A retailer may not willfully or knowingly sell or lease, offer for**  
22 **sale or lease or otherwise distribute a cellular telephone in this state**  
23 **unless the cellular telephone bears a label that:**

24 (a) **Is conspicuous, legible and nonremovable;**

25 (b) **States in bold letters: “WARNING: This is a radio-frequency**  
26 **(RF), radiation-emitting device that has nonthermal biological effects**  
27 **for which no safety guidelines have yet been established. Controversy**  
28 **exists as to whether these effects are harmful to humans. You may**  
29 **limit your exposure to RF radiation by limiting your use of this device**  
30 **and keeping it away from the head and body.”;**

31 (c) **Is affixed to both the front and back of the packaging of a cel-**

1 **lular telephone; and**

2 **(d) Is affixed to the back of a cellular telephone and occupies at**  
3 **least 30 percent of the back surface of the cellular telephone.**

4 **(3) A retailer's violation of subsection (2) of this section is an un-**  
5 **lawful practice under ORS 646.608 that is subject to an action under**  
6 **ORS 646.638.**

7 **SECTION 2.** ORS 646.608, as amended by section 3, chapter 19, Oregon  
8 Laws 2014, 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 affiliation,  
18 connection, or association with, or certification by, another.

19 (d) Uses deceptive representations or designations of geographic origin in  
20 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  
23 the real estate, goods or services do not have or that a person has a spon-  
24 sorship, approval, status, qualification, affiliation, or connection that the  
25 person does not have.

26 (f) Represents that real estate or goods are original or new if the real  
27 estate or goods are deteriorated, altered, reconditioned, reclaimed, used or  
28 secondhand.

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

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

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

7 (j) Makes false or misleading representations of fact concerning the rea-  
8 sons for, existence of, or amounts of price reductions.

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

11 (L) Makes false or misleading representations relating to commissions or  
12 other compensation to be paid in exchange for permitting real estate, goods  
13 or services to be used for model or demonstration purposes or in exchange  
14 for submitting names of potential customers.

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

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

20 (o) In a sale, rental or other disposition of real estate, goods or services,  
21 gives or offers to give a rebate or discount or otherwise pays or offers to pay  
22 value to the customer in consideration of the customer giving to the person  
23 the names of prospective purchasers, lessees, or borrowers, or otherwise  
24 aiding the person in making a sale, lease, or loan to another person, if  
25 earning the rebate, discount or other value is contingent upon an event oc-  
26 ccurring after the time the customer enters into the transaction.

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

29 (q) Promises to deliver real estate, goods or services within a certain pe-  
30 riod of time with intent not to deliver the real estate, goods or services as  
31 promised.

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

3 (s) Makes false or misleading representations of fact concerning the of-  
4 fering price of, or the person's cost for real estate, goods or services.

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

7 (u) Engages in any other unfair or deceptive conduct in trade or com-  
8 merce.

9 (v) Violates any of the provisions relating to auction sales, consignment  
10 sales, auctioneers, consignees or auction marts under ORS 698.640, whether  
11 in a commercial or noncommercial situation.

12 (w) Manufactures mercury fever thermometers.

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

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

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

19 (y) Sells a thermostat that contains mercury unless the thermostat is la-  
20 beled in a manner to inform the purchaser that mercury is present in the  
21 thermostat and that the thermostat may not be disposed of until the mercury  
22 is removed, reused, recycled or otherwise managed to ensure that the mer-  
23 cury does not become part of the solid waste stream or wastewater. For  
24 purposes of this paragraph, "thermostat" means a device commonly used to  
25 sense and, through electrical communication with heating, cooling or venti-  
26 lation equipment, control room temperature.

27 (z) Sells or offers for sale a motor vehicle manufactured after January 1,  
28 2006, that contains mercury light switches.

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

30 (bb) Violates ORS 646A.070 (1).

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

- 1 (dd) Violates the provisions of ORS 128.801 to 128.898.  
2 (ee) Violates ORS 646.883 or 646.885.  
3 (ff) Violates ORS 646.569.  
4 (gg) Violates the provisions of ORS 646A.142.  
5 (hh) Violates ORS 646A.360.  
6 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.  
7 (jj) Violates ORS 646.563.  
8 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.  
9 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any  
10 rule adopted pursuant thereto.  
11 (mm) Violates ORS 646A.210 or 646A.214.  
12 (nn) Violates any provision of ORS 646A.124 to 646A.134.  
13 (oo) Violates ORS 646A.095.  
14 (pp) Violates ORS 822.046.  
15 (qq) Violates ORS 128.001.  
16 (rr) Violates ORS 646A.800 (2) to (4).  
17 (ss) Violates ORS 646A.090 (2) to (4).  
18 (tt) Violates ORS 87.686.  
19 (uu) Violates ORS 646A.803.  
20 (vv) Violates ORS 646A.362.  
21 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or  
22 646A.054.  
23 (xx) Violates ORS 180.440 (1) or 180.486 (1).  
24 (yy) Commits the offense of acting as a vehicle dealer without a certif-  
25 icate 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.  
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.



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

2 (ggg) Violates ORS 646A.430 to 646A.450.

3 (hhh) Violates a provision of ORS 744.318 to 744.384.

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

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

8 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,  
9 697.682, 697.692 or 697.707.

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

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

13 (nnn) Violates ORS 646A.082.

14 (ooo) Violates ORS 646.647.

15 (ppp) Violates ORS 646A.115.

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

17 (rrr) Violates ORS 646A.092.

18 (sss) Violates a provision of ORS 646.644.

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

20 (uuu) Violates ORS 646A.564.

21 (vvv) Engages in the business of, or acts in the capacity of, an immi-  
22 gration consultant, as defined in ORS 9.280, in this state and for compen-  
23 sation, unless federal law authorizes the person to do so or unless the person  
24 is an active member of the Oregon State Bar.

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

26 (xxx) Violates ORS 646A.806.

27 (yyy) Violates section 2 (2), chapter 19, Oregon Laws 2014.

28 **(zzz) Violates section 1 of this 2015 Act.**

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

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

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

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

12 **SECTION 3. (1) Section 1 of this 2015 Act and the amendments to**  
13 **ORS 646.608 by section 2 of this 2015 Act become operative on July 1,**  
14 **2016.**

15 **(2) A retailer in this state may take any action before the operative**  
16 **date specified in subsection (1) of this section that is necessary to**  
17 **comply with the provisions of section 1 of this 2015 Act on and after**  
18 **the operative date specified in subsection (1) of this section.**

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