

House Bill 2637

Sponsored by Representative LIVELY; Representatives BARNHART, GOMBERG, NATHANSON, Senators DEMBROW, GELSER (Pre-session 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**.

Provides that material misrepresentations in commercial communications about mortgage credit products constitutes unlawful trade practice. Requires persons who disseminate commercial communications regarding mortgage credit products to maintain specified records demonstrating compliance with Act for 24-month retention period.

A BILL FOR AN ACT

1
2 Relating to advertising of mortgage-related services; creating new provisions; and amending ORS
3 646.608.

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

5 **SECTION 1. As used in sections 1 to 4 of this 2015 Act:**

6 (1) **“Commercial communication” means any written or oral statement, illustration or**
7 **depiction, whether in English or any other language, that is designed to effect a sale or**
8 **create interest in purchasing goods or services, whether it appears on or in a label, a pack-**
9 **age, a package insert, radio, television, cable television, a brochure, a newspaper, a maga-**
10 **zine, a pamphlet, a leaflet, a circular, a mailer, a book insert, a free standing insert, a letter,**
11 **a catalog, a poster, a chart, a billboard, a public transit card, a point of purchase display, a**
12 **film, a slide, an audio program transmitted over a telephone system, a telemarketing script,**
13 **an on-hold script, an upsell script, training materials provided to telemarketing firms, a**
14 **program-length infomercial commercial, the Internet, a cellular network or any other me-**
15 **dium.**

16 (2) **“Consumer” means a natural person to whom a mortgage credit product is offered**
17 **or extended.**

18 (3) **“Credit” means the right to defer payment of debt or to incur debt and defer its**
19 **payment.**

20 (4) **“Dwelling” means a residential structure that contains one to four housing units,**
21 **whether or not that structure is attached to real property, an individual condominium unit,**
22 **an individual cooperative unit, a manufactured home or a floating home.**

23 (5) **“Mortgage credit product” means any form of credit that is secured by real property**
24 **or a dwelling and that is offered or extended to a consumer primarily for personal, family**
25 **or household purposes.**

26 (6) **“Term” means any of the fees, costs, obligations or characteristics of or associated**
27 **with a mortgage credit product. It also includes any of the conditions on or related to the**
28 **availability of the product.**

29 **SECTION 2. It is an unlawful practice for any person to make any material misrepre-**
30 **sentation, expressly or by implication, in any commercial communication, regarding any**

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 term of any mortgage credit product, including but not limited to misrepresentations about
2 any of the following:

3 (1) The interest charged for the mortgage credit product, including but not limited to
4 misrepresentations concerning:

5 (a) The amount of interest that the consumer owes each month that is included in the
6 consumer's payments, loan amount or total amount due; or

7 (b) Whether the difference between the interest owed and the interest paid is added to
8 the total amount due from the consumer.

9 (2) The annual percentage rate, simple annual rate, periodic rate or any other rate.

10 (3) The existence, nature or amount of fees or costs to the consumer associated with the
11 mortgage credit product, including but not limited to misrepresentations that no fees are
12 charged.

13 (4) The existence, cost, payment terms or other terms associated with any additional
14 product or feature that is or may be sold in conjunction with the mortgage credit product,
15 including but not limited to credit insurance or credit disability insurance.

16 (5) The terms, amounts, payments or other requirements relating to taxes or insurance
17 associated with the mortgage credit product, including but not limited to misrepresentations
18 about:

19 (a) Whether separate payment of taxes or insurance is required; or

20 (b) The extent to which payment for taxes or insurance is included in the loan payments,
21 loan amount or total amount due from the consumer.

22 (6) Any prepayment penalty associated with the mortgage credit product, including but
23 not limited to misrepresentations concerning the existence, nature, amount or terms of such
24 penalty.

25 (7) The variability of interest, payments or other terms of the mortgage credit product,
26 including but not limited to misrepresentations using the word "fixed."

27 (8) Any comparison between:

28 (a) Any rate or payment that will be available for a period less than the full length of the
29 mortgage credit product; and

30 (b) Any actual or hypothetical rate or payment.

31 (9) The type of mortgage credit product, including but not limited to misrepresentations
32 that the product is or involves a fully amortizing mortgage.

33 (10) The amount of the obligation, or the existence, nature or amount of cash or credit
34 available to the consumer in connection with the mortgage credit product, including but not
35 limited to misrepresentations that the consumer will receive a certain amount of cash or
36 credit as part of a mortgage credit transaction.

37 (11) The existence, number, amount or timing of any minimum or required payments,
38 including but not limited to misrepresentations about any payments or that no payments are
39 required in a reverse mortgage or other mortgage credit product.

40 (12) The potential for default under the mortgage credit product, including but not lim-
41 ited to misrepresentations concerning the circumstances under which the consumer could
42 default for nonpayment of taxes, insurance or maintenance, or for failure to meet other ob-
43 ligations.

44 (13) The effectiveness of the mortgage credit product in helping the consumer resolve
45 difficulties in paying debts, including but not limited to misrepresentations that any mort-

1 gage credit product can reduce, eliminate or restructure debt or result in a waiver or
 2 forgiveness, in whole or in part, of the consumer's existing obligation with any person.

3 (14) The association of the mortgage credit product or any provider of such product with
 4 any other person or program, including but not limited to misrepresentations that:

5 (a) The provider is, or is affiliated with, any governmental entity or other organization;
 6 or

7 (b) The product is or relates to a government benefit, or is endorsed, sponsored by or
 8 affiliated with any government or other program, including but not limited to through the
 9 use of formats, symbols or logos that resemble those of such government or other program.

10 (15) The source of any commercial communication, including but not limited to misrep-
 11 resentations that a commercial communication is made by or on behalf of the consumer's
 12 current mortgage lender or servicer.

13 (16) The right of the consumer to reside in the dwelling that is the subject of the mort-
 14 gage credit product, or the duration of such right, including but not limited to misrepresen-
 15 tations concerning how long or under what conditions a consumer with a reverse mortgage
 16 can stay in the dwelling.

17 (17) The consumer's ability or likelihood to obtain any mortgage credit product or term,
 18 including but not limited to misrepresentations concerning whether the consumer has been
 19 preapproved or guaranteed for any such product or term.

20 (18) The consumer's ability or likelihood to obtain a refinancing or modification of any
 21 mortgage credit product or term, including but not limited to misrepresentations concerning
 22 whether the consumer has been preapproved or guaranteed for any such refinancing or
 23 modification.

24 (19) The availability, nature or substance of counseling services or any other expert ad-
 25 vice offered to the consumer regarding any mortgage credit product or term, including but
 26 not limited to the qualifications of those offering the services or advice.

27 **SECTION 3.** It is an unlawful practice for any person to obtain, or attempt to obtain, a
 28 waiver from any consumer of any protection provided by or any right of the consumer under
 29 sections 1 to 4 of this 2015 Act.

30 **SECTION 4.** (1) Any person subject to sections 1 to 4 of this 2015 Act shall keep, for a
 31 period of 24 months from the last date the person made or disseminated the applicable
 32 commercial communication regarding any term of any mortgage credit product, the following
 33 evidence of compliance with sections 1 to 4 of this 2015 Act:

34 (a) Copies of all materially different commercial communications as well as sales scripts,
 35 training materials and marketing materials, regarding any term of any mortgage credit
 36 product, that the person made or disseminated during the relevant time period;

37 (b) Documents describing or evidencing all mortgage credit products available to con-
 38 sumers during the time period in which the person made or disseminated each commercial
 39 communication regarding any term of any mortgage credit product, including but not limited
 40 to the names and terms of each such mortgage credit product available to consumers; and

41 (c) Documents describing or evidencing all additional products or services, such as credit
 42 insurance or credit disability insurance, that were offered or provided with the mortgage
 43 credit products available to consumers during the time period in which the person made or
 44 disseminated each commercial communication regarding any term of any mortgage credit
 45 product, including but not limited to the names and terms of each such additional product

1 or service available to consumers.

2 (2) Any person subject to sections 1 to 4 of this 2015 Act may keep the records required
 3 by subsection (1) of this section in any legible form, and in the same manner, format or place
 4 as the person keeps such records in the ordinary course of business.

5 (3) Failure to keep all records required under subsection (1) of this section shall be an
 6 unlawful practice.

7 **SECTION 5.** ORS 646.608, as amended by section 3, chapter 19, Oregon Laws 2014, is amended
 8 to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
 44 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
 45 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or

1 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
 2 discount or other value is contingent upon an event occurring after the time the customer enters
 3 into the transaction.

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

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

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

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

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

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

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

17 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

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

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

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

35 (ee) Violates ORS 646.883 or 646.885.

36 (ff) Violates ORS 646.569.

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

38 (hh) Violates ORS 646A.360.

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

40 (jj) Violates ORS 646.563.

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

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

44 (mm) Violates ORS 646A.210 or 646A.214.

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

- 1 (oo) Violates ORS 646A.095.
 2 (pp) Violates ORS 822.046.
 3 (qq) Violates ORS 128.001.
 4 (rr) Violates ORS 646A.800 (2) to (4).
 5 (ss) Violates ORS 646A.090 (2) to (4).
 6 (tt) Violates ORS 87.686.
 7 (uu) Violates ORS 646A.803.
 8 (vv) Violates ORS 646A.362.
 9 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
 10 (xx) Violates ORS 180.440 (1) or 180.486 (1).
 11 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
 12 (zz) Violates ORS 87.007 (2) or (3).
 13 (aaa) Violates ORS 92.405 (1), (2) or (3).
 14 (bbb) Engages in an unlawful practice under ORS 646.648.
 15 (ccc) Violates ORS 646A.365.
 16 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
 17 (eee) Sells a gift card in violation of ORS 646A.276.
 18 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
 19 (ggg) Violates ORS 646A.430 to 646A.450.
 20 (hhh) Violates a provision of ORS 744.318 to 744.384.
 21 (iii) Violates a provision of ORS 646A.702 to 646A.720.
 22 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
 23 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
 24 subject of the violation.
 25 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
 26 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
 27 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
 28 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
 29 (nnn) Violates ORS 646A.082.
 30 (ooo) Violates ORS 646.647.
 31 (ppp) Violates ORS 646A.115.
 32 (qqq) Violates a provision of ORS 646A.405.
 33 (rrr) Violates ORS 646A.092.
 34 (sss) Violates a provision of ORS 646.644.
 35 (ttt) Violates a provision of ORS 646A.295.
 36 (uuu) Violates ORS 646A.564.
 37 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
 38 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
 39 do so or unless the person is an active member of the Oregon State Bar.
 40 (www) Violates ORS 702.012, 702.029, 702.032 or 702.054.
 41 (xxx) Violates ORS 646A.806.
 42 (yyy) Violates section 2 (2), chapter 19, Oregon Laws 2014.
 43 **(zzz) Violates sections 1 to 4 of this 2015 Act.**
 44 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
 45 tion of any assertion by words or conduct, including, 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, a prosecuting attorney
2 need not prove competition between the parties or actual confusion or misunderstanding.

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

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

9 **SECTION 6. Sections 1 to 4 of this 2015 Act are added to and made a part of ORS 646.605**
10 **to 646.652.**

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