

House Bill 3396

Sponsored by Representative NOSSE

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 communications service providers, Internet service providers and television service providers to provide customers with written confirmation of verbally agreed upon rate, term or condition of service within 10 days of verbal agreement.

Makes violation of requirement unlawful trade practice.

A BILL FOR AN ACT

1
2 Relating to verbal agreements with service providers; creating new provisions; and amending ORS
3 646.608.

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

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

5
6 (a) **“Communications service provider” means a competitive telecommunications pro-**
7 **vider, a telecommunications utility or a radio common carrier, as those terms are defined**
8 **in ORS 759.005.**

9 (b) **“Customer” means the person in whose name a service is provided.**

10 (c) **“Internet service provider” means a provider of Internet access, as defined in ORS**
11 **305.822.**

12 (d) **“Television service provider” means a provider of cable television, direct satellite or**
13 **other video subscription services.**

14 (2) **A communications service provider, Internet service provider or television service**
15 **provider shall provide a customer with written confirmation of any rate, term or condition**
16 **of service to which the customer and the service provider or any authorized agent of the**
17 **service provider verbally agree. The service provider shall provide written confirmation**
18 **within 10 days of the verbal agreement.**

19 (3) **A violation of subsection (2) of this section is an unlawful practice under ORS 646.608**
20 **that is subject to an action under ORS 646.632 and 646.638.**

SECTION 2. ORS 646.608 is amended to read:

21
22 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,
23 vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (w) Manufactures mercury fever thermometers.

- 1 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
 2 law, or is:
- 3 (A) Prescribed by a person licensed under ORS chapter 677; and
- 4 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
 5 on the proper cleanup of mercury should breakage occur.
- 6 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
 7 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
 8 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
 9 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
 10 graph, “thermostat” means a device commonly used to sense and, through electrical communication
 11 with heating, cooling or ventilation equipment, control room temperature.
- 12 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
 13 mercury light switches.
- 14 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 15 (bb) Violates ORS 646A.070 (1).
- 16 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 17 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 18 (ee) Violates ORS 646.883 or 646.885.
- 19 (ff) Violates ORS 646.569.
- 20 (gg) Violates the provisions of ORS 646A.142.
- 21 (hh) Violates ORS 646A.360.
- 22 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 23 (jj) Violates ORS 646.563.
- 24 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 25 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
 26 thereto.
- 27 (mm) Violates ORS 646A.210 or 646A.214.
- 28 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 29 (oo) Violates ORS 646A.095.
- 30 (pp) Violates ORS 822.046.
- 31 (qq) Violates ORS 128.001.
- 32 (rr) Violates ORS 646A.800 (2) to (4).
- 33 (ss) Violates ORS 646A.090 (2) to (4).
- 34 (tt) Violates ORS 87.686.
- 35 (uu) Violates ORS 646A.803.
- 36 (vv) Violates ORS 646A.362.
- 37 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 38 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 39 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 40 (zz) Violates ORS 87.007 (2) or (3).
- 41 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 42 (bbb) Engages in an unlawful practice under ORS 646.648.
- 43 (ccc) Violates ORS 646A.365.
- 44 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 45 (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 or declaration de-
- 6 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 7 subject of the violation.
- 8 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 9 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 10 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 11 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 12 (nnn) Violates ORS 646A.082.
- 13 (ooo) Violates ORS 646.647.
- 14 (ppp) Violates ORS 646A.115.
- 15 (qqq) Violates a provision of ORS 646A.405.
- 16 (rrr) Violates ORS 646A.092.
- 17 (sss) Violates a provision of ORS 646.644.
- 18 (ttt) Violates a provision of ORS 646A.295.
- 19 (uuu) Violates ORS 646A.564.
- 20 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
- 21 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
- 22 do so or unless the person is an active member of the Oregon State Bar.
- 23 (www) Violates ORS 702.012, 702.029, 702.032 or 702.054.
- 24 (xxx) Violates ORS 646A.806.
- 25 (yyy) Violates ORS 646A.810 (2).
- 26 (zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws 2015.
- 27 **(aaaa) Violates section 1 of this 2017 Act.**
- 28 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
- 29 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- 30 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-
- 31 cuting attorney need not prove competition between the parties or actual confusion or misunder-
- 32 standing.
- 33 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
- 34 torney General has first established a rule in accordance with the provisions of ORS chapter 183
- 35 declaring the conduct to be unfair or deceptive in trade or commerce.
- 36 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or
- 37 suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attor-
- 38 ney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney
- 39 fees.
- 40 **SECTION 3.** ORS 646.608, as amended by section 10, chapter 523, Oregon Laws 2015, is
- 41 amended to read:
- 42 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,
- 43 vocation or occupation the person does any of the following:
- 44 (a) Passes off real estate, goods or services as the real estate, goods or services of another.
- 45 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-

1 proval, or certification of real estate, goods or services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (u) Engages in any other unfair or deceptive conduct in trade or commerce.
- 2 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,
3 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-
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- 6 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
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- 11 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
12 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
13 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
14 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
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- 3 (ccc) Violates ORS 646A.365.
- 4 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 5 (eee) Sells a gift card in violation of ORS 646A.276.
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- 8 (hhh) Violates a provision of ORS 744.318 to 744.384.
- 9 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 10 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 11 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 12 subject of the violation.
- 13 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 14 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 15 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 16 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
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- 23 (ttt) Violates a provision of ORS 646A.295.
- 24 (uuu) Violates ORS 646A.564.
- 25 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
- 26 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
- 27 do so or unless the person is an active member of the Oregon State Bar.
- 28 (www) Violates ORS 702.012, 702.029, 702.032 or 702.054.
- 29 (xxx) Violates ORS 646A.806.
- 30 (yyy) Violates ORS 646A.810 (2).

31 **(zzz) Violates section 1 of this 2017 Act.**

32 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-

33 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

34 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-

35 cuting attorney need not prove competition between the parties or actual confusion or misunder-

36 standing.

37 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-

38 torney General has first established a rule in accordance with the provisions of ORS chapter 183

39 declaring the conduct to be unfair or deceptive in trade or commerce.

40 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or

41 suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attor-

42 ney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney

43 fees.

44 **SECTION 4. Section 1 of this 2017 Act and the amendments to ORS 646.608 by sections**

45 **2 and 3 of this 2017 Act apply to a verbal agreement between a customer and a communi-**

1 **communications service provider, Internet service provider or television service provider that is en-**
2 **tered into on or after the effective date of this 2017 Act.**
3 _____