

SB 134-1
(LC 443)
3/17/17 (TSB/ps)

Requested by SENATE COMMITTEE ON BUSINESS AND TRANSPORTATION

**PROPOSED AMENDMENTS TO
SENATE BILL 134**

1 On page 1 of the printed bill, line 3, after “ORS” insert “646.608 and”.

2 On page 2, line 18, after the period delete the rest of the line and delete
3 lines 19 through 25 and insert “The charge may not exceed the rate per mile
4 allowed under federal law as a deduction for federal income tax purposes for
5 an ordinary and necessary business expense.

6 “(5) If the buyer makes a reasonable attempt to return the vehicle within
7 five days after the seller sends a notice under subsection (4)(b) of this sec-
8 tion, but the seller is not available to accept the return, the seller may not
9 charge the buyer under subsection (4)(b) of this subsection.”.

10 In line 26, delete “(5)(a)” and insert “(6)(a)”.

11 After line 31, insert:

12 **“SECTION 2.** ORS 646.608 is amended to read:

13 “646.608. (1) A person engages in an unlawful practice if in the course of
14 the person’s business, vocation or occupation the person does any of the
15 following:

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

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

21 “(c) Causes likelihood of confusion or of misunderstanding as to affil-

1 iation, connection, or association with, or certification by, another.

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

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

9 “(f) Represents that real estate or goods are original or new if the real
10 estate or goods are deteriorated, altered, reconditioned, reclaimed, used or
11 secondhand.

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

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

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

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

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

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

29 “(m) Performs service on or dismantles any goods or real estate if the
30 owner or apparent owner of the goods or real estate does not authorize the

1 service or dismantling.

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

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

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

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

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

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

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

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

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

27 “(w) Manufactures mercury fever thermometers.

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

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

1 “(B) Supplied with instructions on the careful handling of the
2 thermometer to avoid breakage and on the proper cleanup of mercury should
3 breakage occur.

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

12 “(z) Sells or offers for sale a motor vehicle manufactured after January
13 1, 2006, that contains 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
26 rule adopted pursuant 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.

1 “(qq) Violates ORS 128.001.
2 “(rr) Violates ORS 646A.800 (2) to (4).
3 “(ss) Violates ORS 646A.090 (2) to [(4)] (5).
4 “(tt) Violates ORS 87.686.
5 “(uu) Violates ORS 646A.803.
6 “(vv) Violates ORS 646A.362.
7 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or
8 646A.054.
9 “(xx) Violates ORS 180.440 (1) or 180.486 (1).
10 “(yy) Commits the offense of acting as a vehicle dealer without a certifi-
11 cate 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
23 or declaration described in ORS 646A.530 is issued for the children’s product,
24 as defined in ORS 646A.525, that is the subject of the violation.
25 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,
26 697.682, 697.692 or 697.707.
27 “(LLL) Violates the consumer protection provisions of the
28 Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on
29 January 1, 2010.
30 “(mmm) Violates a provision of ORS 646A.480 to 646A.495.

1 “(nnn) Violates ORS 646A.082.
2 “(ooo) Violates ORS 646.647.
3 “(ppp) Violates ORS 646A.115.
4 “(qqq) Violates a provision of ORS 646A.405.
5 “(rrr) Violates ORS 646A.092.
6 “(sss) Violates a provision of ORS 646.644.
7 “(ttt) Violates a provision of ORS 646A.295.
8 “(uuu) Violates ORS 646A.564.
9 “(vvv) Engages in the business of, or acts in the capacity of, an immi-
10 gration consultant, as defined in ORS 9.280, in this state and for compen-
11 sation, unless federal law authorizes the person to do so or unless the person
12 is an active member of the Oregon State Bar.
13 “(www) Violates ORS 702.012, 702.029, 702.032 or 702.054.
14 “(xxx) Violates ORS 646A.806.
15 “(yyy) Violates ORS 646A.810 (2).
16 “(zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws
17 2015.
18 “(2) A representation under subsection (1) of this section or ORS 646.607
19 may be any manifestation of any assertion by words or conduct, including,
20 but not limited to, a failure to disclose a fact.
21 “(3) In order to prevail in an action or suit under ORS 336.184 and 646.605
22 to 646.652, a prosecuting attorney need not prove competition between the
23 parties or actual confusion or misunderstanding.
24 “(4) An action or suit may not be brought under subsection (1)(u) of this
25 section unless the Attorney General has first established a rule in accord-
26 ance with the provisions of ORS chapter 183 declaring the conduct to be
27 unfair or deceptive in trade or commerce.
28 “(5) Notwithstanding any other provision of ORS 336.184 and 646.605 to
29 646.652, if an action or suit is brought under subsection (1)(xx) of this section
30 by a person other than a prosecuting attorney, relief is limited to an in-

1 junction and the prevailing party may be awarded reasonable attorney fees.

2 **“SECTION 3.** ORS 646.608, as amended by section 10, chapter 523, Oregon
3 Laws 2015, is amended to read:

4 “646.608. (1) A person engages in an unlawful practice if in the course of
5 the person’s business, vocation or occupation the person does any of the
6 following:

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

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

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

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

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

21 “(f) Represents that real estate or goods are original or new if the real
22 estate or goods are deteriorated, altered, reconditioned, reclaimed, used or
23 secondhand.

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

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

29 “(i) Advertises real estate, goods or services with intent not to provide
30 the real estate, goods or services as advertised, or with intent not to supply

1 reasonably expectable public demand, unless the advertisement discloses a
2 limitation of quantity.

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

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

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

11 “(m) Performs service on or dismantles any goods or real estate if the
12 owner or apparent owner of the goods or real estate does not authorize the
13 service or dismantling.

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

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

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

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

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29 club.

30 “(s) Makes false or misleading representations of fact concerning the of-

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

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3 vices fails to disclose any known material defect or material nonconformity.

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13 “(B) Supplied with instructions on the careful handling of the
14 thermometer to avoid breakage and on the proper cleanup of mercury should
15 breakage occur.

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17 labeled in a manner to inform the purchaser that mercury is present in the
18 thermostat and that the thermostat may not be disposed of until the mercury
19 is removed, reused, recycled or otherwise managed to ensure that the mer-
20 cury does not become part of the solid waste stream or wastewater. For
21 purposes of this paragraph, ‘thermostat’ means a device commonly used to
22 sense and, through electrical communication with heating, cooling or venti-
23 lation equipment, control room temperature.

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

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

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

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

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

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18 “(sss) Violates a provision of ORS 646.644.

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

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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 ORS 646A.810 (2).

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

1 “(3) In order to prevail in an action or suit under ORS 336.184 and 646.605
2 to 646.652, a prosecuting attorney need not prove competition between the
3 parties or 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 336.184 and 646.605 to
9 646.652, if an action or suit is brought under subsection (1)(xx) of this section
10 by a person other than a prosecuting attorney, relief is limited to an in-
11 junction and the prevailing party may be awarded reasonable attorney
12 fees.”.

13 Delete lines 32 through 34 and insert:

14 **“SECTION 4. The amendments to ORS 646.608 and 646A.090 by**
15 **sections 1 to 3 of this 2017 Act apply to retail installment contracts or**
16 **lease agreements into which a seller and buyer enter on and after the**
17 **effective date of this 2017 Act.”.**

18 _____