

Requested by SENATE COMMITTEE ON HEALTH CARE

**PROPOSED AMENDMENTS TO
SENATE BILL 133**

1 On page 1 of the printed bill, after “care;” delete the rest of the line and
2 insert “creating new provisions; amending ORS 646.608; and prescribing an
3 effective date.”.

4 Delete lines 4 through 30 and delete page 2 and insert:

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

6 **“(a) ‘Advertisement’ means a public notice, announcement or**
7 **communication in any form or by means of any media that describes**
8 **a mental health or substance abuse treatment service or facility for**
9 **the purpose of promoting, soliciting the purchase of or selling sub-**
10 **stance abuse, problem gambling or mental health services and support**
11 **that a person provides to residents of this state.**

12 **“(b)(A) ‘Person’ means a natural person, a partnership, a limited**
13 **partnership, a limited liability partnership, a corporation, a profes-**
14 **sional corporation, a nonprofit corporation, a limited liability com-**
15 **pany, a business trust or another business entity.**

16 **“(B) ‘Person’ does not include a public body, as defined in ORS**
17 **174.109, or the Oregon Health and Science University.**

18 **“(c) ‘Substance abuse, problem gambling or mental health services**
19 **and support’ means all services and supports necessary to treat sub-**
20 **stance abuse, problem gambling or other mental health issues, such**
21 **as outpatient behavioral health services and supports for children and**

1 **adults, intensive treatment services for children, outpatient and resi-**
2 **dential substance use disorders treatment services and outpatient and**
3 **residential problem gambling treatment services.**

4 **“(2) A person that provides substance abuse, problem gambling or**
5 **mental health services and support may not:**

6 **“(a) Accept from another person, or pay to another person, a fee,**
7 **commission, bonus, rebate or other compensation for a referral of, or**
8 **to refer, a resident of this state for substance abuse, problem gambling**
9 **or mental health services and support.**

10 **“(b) Issue, engage, pay for, disseminate or otherwise make available**
11 **an advertisement that falsely states or misrepresents the need for a**
12 **resident of this state to obtain substance abuse, problem gambling or**
13 **mental health services and support outside this state or at a facility**
14 **that is located outside this state.**

15 **“(c) Intentionally misrepresent or falsely state in an advertisement**
16 **a resident of this state’s eligibility to participate in a medical assist-**
17 **ance program.**

18 **“(3) A person that violates a prohibition set forth in this section**
19 **engages in an unlawful practice under ORS 646.608 that is enforceable**
20 **under ORS 646.632 and is subject to an action under ORS 646.638.**

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

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

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

27 **“(b) Causes likelihood of confusion or of misunderstanding as to the**
28 **source, sponsorship, approval, or certification of real estate, goods or ser-**
29 **vices.**

30 **“(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 759.680 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 (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 98.853, 98.854, 98.856 or 98.858 or a rule adopted un-
17 der ORS 98.864.
18 “(eee) Sells a gift card in violation of ORS 646A.276.
19 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.
20 “(ggg) Violates ORS 646A.430 to 646A.450.
21 “(hhh) Violates a provision of ORS 744.318 to 744.384.
22 “(iii) Violates a provision of ORS 646A.702 to 646A.720.
23 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning
24 or declaration described in ORS 646A.530 is issued for the children’s product,
25 as defined in ORS 646A.525, that is the subject of the violation.
26 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,
27 697.682, 697.692 or 697.707.
28 “(LLL) Violates the consumer protection provisions of the
29 Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on
30 January 1, 2010.

1 “(mmm) Violates a provision of ORS 646A.480 to 646A.495.
2 “(nnn) Violates ORS 646A.082.
3 “(ooo) Violates ORS 646.647.
4 “(ppp) Violates ORS 646A.115.
5 “(qqq) Violates a provision of ORS 646A.405.
6 “(rrr) Violates ORS 646A.092.
7 “(sss) Violates a provision of ORS 646.644.
8 “(ttt) Violates a provision of ORS 646A.295.
9 “(uuu) Violates ORS 646A.564.
10 “(vvv) Engages in the business of, or acts in the capacity of, an immi-
11 gration consultant, as defined in ORS 9.280, in this state and for compen-
12 sation, unless federal law authorizes the person to do so or unless the person
13 is an active member of the Oregon State Bar.
14 “(www) Violates ORS 702.012, 702.029 or 702.054.
15 “(xxx) Violates ORS 646A.806.
16 “(yyy) Violates ORS 646A.810 (2).
17 “(zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws
18 2015.
19 “(aaaa) Violates ORS 443.376.
20 “**(bbbb) Violates section 1 of this 2019 Act.**
21 “(2) A representation under subsection (1) of this section or ORS 646.607
22 may be any manifestation of any assertion by words or conduct, including,
23 but not limited to, a failure to disclose a fact.
24 “(3) In order to prevail in an action or suit under ORS 336.184 and 646.605
25 to 646.652, a prosecuting attorney need not prove competition between the
26 parties or actual confusion or misunderstanding.
27 “(4) An action or suit may not be brought under subsection (1)(u) of this
28 section unless the Attorney General has first established a rule in accord-
29 ance with the provisions of ORS chapter 183 declaring the conduct to be
30 unfair or deceptive in trade or commerce.

1 “(5) Notwithstanding any other provision of ORS 336.184 and 646.605 to
2 646.652, if an action or suit is brought under subsection (1)(xx) of this section
3 by a person other than a prosecuting attorney, relief is limited to an in-
4 junction and the prevailing party may be awarded reasonable attorney fees.

5 **“SECTION 3.** ORS 646.608, as amended by section 10, chapter 523, Oregon
6 Laws 2015, section 15, chapter 113, Oregon Laws 2017, section 3, chapter 241,
7 Oregon Laws 2017, section 16, chapter 480, Oregon Laws 2017, and section
8 6, chapter 656, Oregon Laws 2017, 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 affil-
18 iation, connection, or association with, or certification by, another.

19 “(d) Uses deceptive representations or designations of geographic origin
20 in 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.

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30 standard, quality, or grade, or that real estate or goods are of a particular

1 style or model, if the real estate, goods or services are of another.

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

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

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

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11 ability or the nature of the transaction or obligation incurred.

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13 or other compensation to be paid in exchange for permitting real estate,
14 goods or services to be used for model or demonstration purposes or in ex-
15 change for submitting names of potential customers.

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17 owner or apparent owner of the goods or real estate does not authorize the
18 service or dismantling.

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19 thermometer to avoid breakage and on the proper cleanup of mercury should
20 breakage occur.

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22 labeled in a manner to inform the purchaser that mercury is present in the
23 thermostat and that the thermostat may not be disposed of until the mercury
24 is removed, reused, recycled or otherwise managed to ensure that the mer-
25 cury does not become part of the solid waste stream or wastewater. For
26 purposes of this paragraph, ‘thermostat’ means a device commonly used to
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6 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.
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10 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning
11 or declaration described in ORS 646A.530 is issued for the children’s product,
12 as defined in ORS 646A.525, that is the subject of the violation.
13 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,
14 697.682, 697.692 or 697.707.
15 “(LLL) Violates the consumer protection provisions of the
16 Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on
17 January 1, 2010.
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25 “(ttt) Violates a provision of ORS 646A.295.
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27 “(vvv) Engages in the business of, or acts in the capacity of, an immi-
28 gration consultant, as defined in ORS 9.280, in this state and for compen-
29 sation, unless federal law authorizes the person to do so or unless the person
30 is an active member of the Oregon State Bar.

1 “(www) Violates ORS 702.012, 702.029 or 702.054.

2 “(xxx) Violates ORS 646A.806.

3 “(yyy) Violates ORS 646A.810 (2).

4 “(zzz) Violates ORS 443.376.

5 **“(aaaa) Violates section 1 of this 2019 Act.**

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

9 “(3) In order to prevail in an action or suit under ORS 336.184 and 646.605
10 to 646.652, a prosecuting attorney need not prove competition between the
11 parties or actual confusion or misunderstanding.

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

16 “(5) Notwithstanding any other provision of ORS 336.184 and 646.605 to
17 646.652, if an action or suit is brought under subsection (1)(xx) of this section
18 by a person other than a prosecuting attorney, relief is limited to an in-
19 junction and the prevailing party may be awarded reasonable attorney fees.

20 **“SECTION 4. This 2019 Act takes effect on the 91st day after the**
21 **date on which the 2019 regular session of the Eightieth Legislative**
22 **Assembly adjourns sine die.”**

23
