

House Bill 2620

Sponsored by Representative HOLVEY (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**.

Punishes violation of laws that regulate home solicitation sales as unlawful practice under Unlawful Trade Practices Act.

Takes effect on 91st day after adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to unlawful practices in home solicitation sales; amending ORS 83.990 and 646.608; and
3 prescribing an effective date.

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

5 **SECTION 1.** ORS 83.990 is amended to read:

6 83.990. (1) Any person who violates any provision of ORS 83.510 to 83.680 commits a Class A
7 violation.

8 (2) A willful violation of ORS 83.520 to 83.600 or 83.650 to 83.670 by any person [*shall bar*] **bars**
9 recovery of any finance charge, delinquency or collection charge or refinancing charge on the retail
10 installment contract involved.

11 (3) Notwithstanding the provisions of [*subsections (1) to (3)*] **subsection (1) or (2)** of this section,
12 any failure to comply with any provision of ORS 83.510 to 83.680 may be corrected within 10 days
13 after the holder is notified [*thereof*] **of the failure** in writing by the buyer, and, if so corrected,
14 neither the seller nor the holder [*shall be*] **is** subject to any penalty.

15 (4) Any person who willfully and intentionally violates any provision of ORS 83.010 to 83.190
16 commits a Class B misdemeanor. Violation of any order or injunction issued pursuant to ORS 83.010
17 to 83.190 [*shall constitute*] **constitutes** prima facie proof of a violation of this subsection.

18 **(5) A person that violates a provision of ORS 83.710 to 83.750 engages in an unlawful**
19 **practice under ORS 646.608 for which a person may bring an action under ORS 646.638.**

20 **SECTION 2.** ORS 646.608 is amended to read:

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

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

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

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

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

30 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
31 ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have

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 or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the
 2 person does not have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (w) Manufactures mercury fever thermometers.

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

- 1 (A) Prescribed by a person licensed under ORS chapter 677; and
2 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
3 on the proper cleanup of mercury should breakage occur.
- 4 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
5 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
6 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
7 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
8 graph, “thermostat” means a device commonly used to sense and, through electrical communication
9 with heating, cooling or ventilation equipment, control room temperature.
- 10 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
11 mercury light switches.
- 12 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
13 (bb) Violates ORS 646A.070 (1).
14 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
15 (dd) Violates the provisions of ORS 128.801 to 128.898.
16 (ee) Violates ORS 646.883 or 646.885.
17 (ff) Violates ORS 646.569.
18 (gg) Violates the provisions of ORS 646A.142.
19 (hh) Violates ORS 646A.360.
20 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
21 (jj) Violates ORS 646.563.
22 (kk) Violates ORS 759.680 or any rule adopted pursuant thereto.
23 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
24 thereto.
- 25 (mm) Violates ORS 646A.210 or 646A.214.
26 (nn) Violates any provision of ORS 646A.124 to 646A.134.
27 (oo) Violates ORS 646A.095.
28 (pp) Violates ORS 822.046.
29 (qq) Violates ORS 128.001.
30 (rr) Violates ORS 646A.800 (2) to (4).
31 (ss) Violates ORS 646A.090 (2) to (5).
32 (tt) Violates ORS 87.686.
33 (uu) Violates ORS 646A.803.
34 (vv) Violates ORS 646A.362.
35 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
36 (xx) Violates ORS 180.440 (1) or 180.486 (1).
37 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
38 (zz) Violates ORS 87.007 (2) or (3).
39 (aaa) Violates ORS 92.405 (1), (2) or (3).
40 (bbb) Engages in an unlawful practice under ORS 646.648.
41 (ccc) Violates ORS 646A.365.
42 (ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858.
43 (eee) Sells a gift card in violation of ORS 646A.276.
44 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
45 (ggg) Violates ORS 646A.430 to 646A.450.

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

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

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

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

7 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
8 U.S.C. 3901 et seq., as in effect on January 1, 2010.

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

10 (nnn) Violates ORS 646A.082.

11 (ooo) Violates ORS 646.647.

12 (ppp) Violates ORS 646A.115.

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

14 (rrr) Violates ORS 646A.092.

15 (sss) Violates a provision of ORS 646.644.

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

17 (uuu) Violates ORS 646A.564.

18 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
19 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
20 do so or unless the person is an active member of the Oregon State Bar.

21 (www) Violates ORS 702.012, 702.029 or 702.054.

22 (xxx) Violates ORS 646A.806.

23 (yyy) Violates ORS 646A.810 (2).

24 (zzz) Violates ORS 443.376.

25 (aaaa) Violates a provision of ORS 646A.770 to 646A.787.

26 **(bbbb) Violates a provision of ORS 83.710 to 83.750.**

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

29 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-
30 cuting attorney need not prove competition between the parties or actual confusion or misunder-
31 standing.

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

35 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or
36 suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attor-
37 ney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney
38 fees.

39 **SECTION 3. This 2023 Act takes effect on the 91st day after the date on which the 2023**
40 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**