

House Bill 2218

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Department of Justice)

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 that telecommunications service provider provide written contract to customer after providing new services or changing services provided to customer. Requires telecommunications service provider to allow new customer to cancel contract within 30 days after activation of service. Requires telecommunications service provider to allow current customer to cancel contract, or elect different services, if services provided to customer are changed.

Provides that violation of requirements is unlawful trade practice.

A BILL FOR AN ACT

1
2 Relating to service plan contracts of telecommunications service providers; creating new provisions;
3 and amending ORS 646.608.

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

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

6 (a) **"Service plan contract" means an oral or written agreement between a telecommu-**
7 **nications service provider and a customer that specifies the services that are provided to the**
8 **customer and the terms and conditions for the provision of those services.**

9 (b) **"Telecommunications service provider" means a person who is in the business of**
10 **providing:**

11 (A) **Two-way switched access and transport of voice communications; or**

12 (B) **Voice communication services provided by a radio common carrier as defined by ORS**
13 **759.005.**

14 (2) **A telecommunications service provider shall send a written copy of the service plan**
15 **contract to a customer of the provider by first class mail if:**

16 (a) **The customer requests a new service or a change in services; or**

17 (b) **The provider makes a material change in the customer's service without the request**
18 **of the customer.**

19 (3) **A copy of a service plan contract must be mailed under subsection (2) of this section**
20 **within 10 days after a new service or a change in services is requested by the customer or**
21 **within 10 days after the telecommunications service provider makes a material change in the**
22 **customer's service without the request of the customer. The contract must clearly indicate**
23 **the nature of the new service or the change in services. The contract must include a state-**
24 **ment informing the customer of the customer's right to change or cancel services as pro-**
25 **vided in subsections (4) and (5) of this section.**

26 (4) **A telecommunications service provider shall allow new customers of the provider to**
27 **cancel the customer's service plan contract within 30 days after the service is activated. A**
28 **cancellation of services under this subsection may be made by telephone or by mail. If a**

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 customer cancels a service plan contract under this subsection, the customer must comply
 2 with the telecommunications service provider's policies on return or exchange of equipment.
 3 If a cancellation is made under this subsection within three days after the service is acti-
 4 vated, the telecommunications service provider shall refund to the customer all amounts
 5 paid by the customer as activation fees, switching fees or other fees not based on usage of
 6 the services. If a cancellation is made under this subsection within 30 days after the service
 7 is activated, the telecommunications service provider may not impose any early termination
 8 fee or require that the customer pay any fees that were waived by the provider.

9 (5) A telecommunications service provider shall allow a current customer of the provider
 10 to cancel the customer's service plan contract or to elect to receive different services from
 11 the provider if the services provided to the customer are materially changed without the
 12 request of the customer. If a customer elects to receive different services under this sub-
 13 section, the election is limited to another service, or package of services, that is offered by
 14 the telecommunications service provider to the public at the time the election is made. A
 15 request for cancellation of a service plan contract or for different services under this sub-
 16 section must be received by the telecommunications service provider within 30 days after the
 17 notice of a change of services is given under subsection (2) of this section. If a notice of
 18 cancellation is made under this subsection within the time allowed, the telecommunications
 19 provider may not impose an early termination fee. A notice of cancellation or request for
 20 different services under this subsection may be made by telephone or by mail.

21 (6) Except as provided in subsection (7) of this section, a service plan contract is mate-
 22 rially changed for the purposes of this section if:

23 (a) There is a change to the terms of service, the plan features, the coverage areas or
 24 the fees or charges; or

25 (b) There is any other modification to a term or condition of the plan, addition of a term
 26 or condition of the plan or deletion of a term or condition of the plan that could result in a
 27 change to the benefits provided by the service plan contract.

28 (7) A service plan contract is not materially changed for the purposes of this section
 29 solely by reason of an increase of the price of the services that is attributable to the im-
 30 position of, or increase in, taxes or fees that the telecommunications service provider is re-
 31 quired by law to collect from the customer.

32 **SECTION 2.** Section 1 of this 2005 Act applies only to service plan contracts entered into
 33 on or after the effective date of this 2005 Act.

34 **SECTION 3.** ORS 646.608 is amended to read:

35 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
 36 ness, vocation or occupation the person does any of the following:

37 (a) Passes off real estate, goods or services as those of another.

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

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

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

44 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
 45 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a

1 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

2 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,
3 reconditioned, reclaimed, used or secondhand.

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

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

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

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

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

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

18 (m) Performs service on or dismantles any goods or real estate when not authorized by the
19 owner or apparent owner thereof.

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

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

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

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

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

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

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

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

38 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
39 ORS 698.640, whether in a commercial or noncommercial situation.

40 (w) Manufactures mercury fever thermometers.

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

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

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

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

7 (z) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

8 (aa) Violates ORS 646.850 (1).

9 (bb) Violates any requirement of ORS 646.661 to 646.686.

10 (cc) Violates the provisions of ORS 128.801 to 128.898.

11 (dd) Violates ORS 646.883 or 646.885.

12 (ee) Violates any provision of ORS 646.195.

13 (ff) Violates ORS 646.569.

14 (gg) Violates the provisions of ORS 646.859.

15 (hh) Violates ORS 759.290.

16 (ii) Violates ORS 646.872.

17 (jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

18 (kk) Violates ORS 646.563.

19 (LL) Violates ORS 759.690 or any rule adopted pursuant thereto.

20 (mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
 21 thereto.

22 (nn) Violates ORS 646.892 or 646.894.

23 (oo) Violates any provision of ORS 646.249 to 646.259.

24 (pp) Violates ORS 646.384.

25 (qq) Violates ORS 646.871.

26 (rr) Violates ORS 822.046.

27 (ss) Violates ORS 128.001.

28 (tt) Violates ORS 646.649 (2) to (4).

29 (uu) Violates ORS 646.877 (2) to (4).

30 (vv) Violates ORS 87.686.

31 (ww) Violates ORS 646.651.

32 (xx) Violates ORS 646.879.

33 (yy) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.

34 (zz) Violates ORS 180.440 (1).

35 (aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

36 (bbb) Violates ORS 87.007 (2) or (3).

37 **(ccc) Violates section 1 of this 2005 Act.**

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

40 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
 41 need not prove competition between the parties or actual confusion or misunderstanding.

42 (4) No action or suit shall be brought under subsection (1)(u) of this section unless the Attorney
 43 General has first established a rule in accordance with the provisions of ORS chapter 183 declaring
 44 the conduct to be unfair or deceptive in trade or commerce.

45 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought

1 under subsection (1)(zz) of this section by a person other than a prosecuting attorney, relief shall
 2 be limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

3 **SECTION 4.** ORS 646.608, as amended by section 13, chapter 924, Oregon Laws 2001, section
 4 2, chapter 133, Oregon Laws 2003, section 3, chapter 486, Oregon Laws 2003, section 5, chapter 778,
 5 Oregon Laws 2003, and section 19, chapter 801, Oregon Laws 2003, is amended to read:

6 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
 7 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

18 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,
 19 reconditioned, reclaimed, used or secondhand.

20 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
 21 or that real estate or goods are of a particular style or model, if they are of another.

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

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

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

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

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

34 (m) Performs service on or dismantles any goods or real estate when not authorized by the
 35 owner or apparent owner thereof.

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

38 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
 39 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
 40 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
 41 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
 42 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
 43 tomer enters into the transaction.

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

- 1 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
 2 not to deliver them as promised.
- 3 (r) Organizes or induces or attempts to induce membership in a pyramid club.
- 4 (s) Makes false or misleading representations of fact concerning the offering price of, or the
 5 person's cost for real estate, goods or services.
- 6 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
 7 known material defect or material nonconformity.
- 8 (u) Engages in any other unfair or deceptive conduct in trade or commerce.
- 9 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
 10 ORS 698.640, whether in a commercial or noncommercial situation.
- 11 (w) Manufactures mercury fever thermometers.
- 12 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
 13 law, or is:
- 14 (A) Prescribed by a person licensed under ORS chapter 677; and
- 15 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
 16 on the proper cleanup of mercury should breakage occur.
- 17 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
 18 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
 19 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
 20 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
 21 graph, "thermostat" means a device commonly used to sense and, through electrical communication
 22 with heating, cooling or ventilation equipment, control room temperature.
- 23 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
 24 mercury light switches.
- 25 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 26 (bb) Violates ORS 646.850 (1).
- 27 (cc) Violates any requirement of ORS 646.661 to 646.686.
- 28 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 29 (ee) Violates ORS 646.883 or 646.885.
- 30 (ff) Violates any provision of ORS 646.195.
- 31 (gg) Violates ORS 646.569.
- 32 (hh) Violates the provisions of ORS 646.859.
- 33 (ii) Violates ORS 759.290.
- 34 (jj) Violates ORS 646.872.
- 35 (kk) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 36 (LL) Violates ORS 646.563.
- 37 (mm) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 38 (nn) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
 39 thereto.
- 40 (oo) Violates ORS 646.892 or 646.894.
- 41 (pp) Violates any provision of ORS 646.249 to 646.259.
- 42 (qq) Violates ORS 646.384.
- 43 (rr) Violates ORS 646.871.
- 44 (ss) Violates ORS 822.046.
- 45 (tt) Violates ORS 128.001.

- 1 (uu) Violates ORS 646.649 (2) to (4).
- 2 (vv) Violates ORS 646.877 (2) to (4).
- 3 (ww) Violates ORS 87.686.
- 4 (xx) Violates ORS 646.651.
- 5 (yy) Violates ORS 646.879.
- 6 (zz) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.
- 7 (aaa) Violates ORS 180.440 (1).
- 8 (bbb) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 9 (ccc) Violates ORS 87.007 (2) or (3).
- 10 **(ddd) Violates section 1 of this 2005 Act.**
- 11 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
- 12 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- 13 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
- 14 need not prove competition between the parties or actual confusion or misunderstanding.
- 15 (4) No action or suit shall be brought under subsection (1)(u) of this section unless the Attorney
- 16 General has first established a rule in accordance with the provisions of ORS chapter 183 declaring
- 17 the conduct to be unfair or deceptive in trade or commerce.
- 18 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
- 19 under subsection (1)(aaa) of this section by a person other than a prosecuting attorney, relief shall
- 20 be limited to an injunction and the prevailing party may be awarded reasonable attorney fees.
- 21