

**Enrolled**  
**House Bill 2219**

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)

CHAPTER .....

AN ACT

Relating to unlawful trade practices committed by manufactured dwelling dealers; amending ORS 646.608 and 646.638.

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

**SECTION 1.** ORS 646.608 is amended to read:

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

- (a) Passes off real estate, goods or services as those of another.
- (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.
- (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.
- (d) Uses deceptive representations or designations of geographic origin in connection with real estate, goods or services.
- (e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.
- (f) Represents that real estate or goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.
- (g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if they are of another.
- (h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.
- (i) Advertises real estate, goods or services with intent not to provide them as advertised, or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.
- (j) Makes false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.
- (k) Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred.
- (L) Makes false or misleading representations relating to commissions or other compensation to be paid in exchange for permitting real estate, goods or services to be used for model or demonstration purposes or in exchange for submitting names of potential customers.

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

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

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

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

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

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

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

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

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

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

(w) Manufactures mercury fever thermometers.

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

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

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

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

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

(aa) Violates ORS 646.850 (1).

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

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

(dd) Violates ORS 646.883 or 646.885.

(ee) Violates any provision of ORS 646.195.

(ff) Violates ORS 646.569.

(gg) Violates the provisions of ORS 646.859.

(hh) Violates ORS 759.290.

(ii) Violates ORS 646.872.

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

(kk) Violates ORS 646.563.

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

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

(nn) Violates ORS 646.892 or 646.894.

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

(pp) Violates ORS 646.384.

- (qq) Violates ORS 646.871.
- (rr) Violates ORS 822.046.
- (ss) Violates ORS 128.001.
- (tt) Violates ORS 646.649 (2) to (4).
- (uu) Violates ORS 646.877 (2) to (4).
- (vv) Violates ORS 87.686.
- (ww) Violates ORS 646.651.
- (xx) Violates ORS 646.879.
- (yy) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.
- (zz) Violates ORS 180.440 (1).
- (aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- (bbb) Violates ORS 87.007 (2) or (3).

**(ccc) Engages in an unlawful practice under ORS 646.648.**

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

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

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

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

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

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

- (a) Passes off real estate, goods or services as those of another.
- (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.
- (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.
- (d) Uses deceptive representations or designations of geographic origin in connection with real estate, goods or services.
- (e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.
- (f) Represents that real estate or goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.
- (g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if they are of another.
- (h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.
- (i) Advertises real estate, goods or services with intent not to provide them as advertised, or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.
- (j) Makes false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.
- (k) Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred.

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

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

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

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

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

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

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

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

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

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

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

(w) Manufactures mercury fever thermometers.

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

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

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

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

(z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains mercury light switches.

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

(bb) Violates ORS 646.850 (1).

(cc) Violates any requirement of ORS 646.661 to 646.686.

(dd) Violates the provisions of ORS 128.801 to 128.898.

(ee) Violates ORS 646.883 or 646.885.

(ff) Violates any provision of ORS 646.195.

(gg) Violates ORS 646.569.

(hh) Violates the provisions of ORS 646.859.

(ii) Violates ORS 759.290.

(jj) Violates ORS 646.872.

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

(LL) Violates ORS 646.563.

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

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

(oo) Violates ORS 646.892 or 646.894.

(pp) Violates any provision of ORS 646.249 to 646.259.

(qq) Violates ORS 646.384.

(rr) Violates ORS 646.871.

(ss) Violates ORS 822.046.

(tt) Violates ORS 128.001.

(uu) Violates ORS 646.649 (2) to (4).

(vv) Violates ORS 646.877 (2) to (4).

(ww) Violates ORS 87.686.

(xx) Violates ORS 646.651.

(yy) Violates ORS 646.879.

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

(aaa) Violates ORS 180.440 (1).

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

(ccc) Violates ORS 87.007 (2) or (3).

**(ddd) Engages in an unlawful practice under ORS 646.648.**

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

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

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

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

**SECTION 3.** ORS 646.638 is amended to read:

646.638. (1) Except as provided in subsection (8) of this section, any person who suffers any ascertainable loss of money or property, real or personal, as a result of willful use or employment by another person of a method, act or practice declared unlawful by ORS 646.608 [*or 646.648*], may bring an individual action in an appropriate court to recover actual damages or \$200, whichever is greater. The court or the jury, as the case may be, may award punitive damages and the court may provide the equitable relief the court considers necessary or proper.

(2) Upon commencement of any action brought under subsection (1) of this section the party bringing the action shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of any judgment in the action, shall mail a copy of the judgment to the Attorney General. Failure to mail a copy of the complaint shall not be a jurisdictional defect, but a court may not enter judgment for the plaintiff until proof of mailing is filed with the court. Proof of mailing may be by affidavit or by return receipt of mailing.

(3) Except as provided in subsection (4) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(4) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (3) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(5) Any permanent injunction or final judgment or order of the court made under ORS 646.632 or 646.636 is prima facie evidence in an action brought under this section that the respondent used or employed a method, act or practice declared unlawful by ORS 646.608 [*or 646.648*], but an assurance of voluntary compliance, whether or not approved by the court, shall not be evidence of the violation.

(6) Actions brought under this section shall be commenced within one year from the discovery of the unlawful method, act or practice. However, whenever any complaint is filed by a prosecuting attorney to prevent, restrain or punish violations of ORS 646.608 [*or 646.648*], running of the statute of limitations with respect to every private right of action under this section and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof.

(7) Notwithstanding subsection (6) of this section, in any action brought by a seller or lessor against a purchaser or lessee of real estate, goods or services, the purchaser or lessee may assert any counterclaim the purchaser or lessee has arising out of a violation of ORS 646.605 to 646.652.

(8) This section does not apply to any method, act or practice described in ORS 646.608 (1)(z). Actions for violation of laws relating to odometers are provided under ORS 815.410 and 815.415.

**SECTION 4.** ORS 646.638, as amended by section 18, chapter 924, Oregon Laws 2001, is amended to read:

646.638. (1) Except as provided in subsection (8) of this section, any person who suffers any ascertainable loss of money or property, real or personal, as a result of willful use or employment by another person of a method, act or practice declared unlawful by ORS 646.608 [*or 646.648*], may bring an individual action in an appropriate court to recover actual damages or \$200, whichever is greater. The court or the jury, as the case may be, may award punitive damages and the court may provide the equitable relief the court considers necessary or proper.

(2) Upon commencement of any action brought under subsection (1) of this section the party bringing the action shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of any judgment in the action, shall mail a copy of the judgment to the Attorney General. Failure to mail a copy of the complaint shall not be a jurisdictional defect, but a court may not enter judgment for the plaintiff until proof of mailing is filed with the court. Proof of mailing may be by affidavit or by return receipt of mailing.

(3) Except as provided in subsection (4) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(4) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (3) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(5) Any permanent injunction or final judgment or order of the court made under ORS 646.632 or 646.636 is prima facie evidence in an action brought under this section that the respondent used or employed a method, act or practice declared unlawful by ORS 646.608 [*or 646.648*], but an assurance of voluntary compliance, whether or not approved by the court, shall not be evidence of the violation.

(6) Actions brought under this section shall be commenced within one year from the discovery of the unlawful method, act or practice. However, whenever any complaint is filed by a prosecuting attorney to prevent, restrain or punish violations of ORS 646.608 [*or 646.648*], running of the statute of limitations with respect to every private right of action under this section and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof.

(7) Notwithstanding subsection (6) of this section, in any action brought by a seller or lessor against a purchaser or lessee of real estate, goods or services, the purchaser or lessee may assert any counterclaim the purchaser or lessee has arising out of a violation of ORS 646.605 to 646.652.

(8) This section does not apply to any method, act or practice described in ORS 646.608 (1)(aa). Actions for violation of laws relating to odometers are provided under ORS 815.410 and 815.415.

**Passed by House March 1, 2005**

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Chief Clerk of House

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Speaker of House

**Passed by Senate April 27, 2005**

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President of Senate

**Received by Governor:**

.....M,....., 2005

**Approved:**

.....M,....., 2005

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Governor

**Filed in Office of Secretary of State:**

.....M,....., 2005

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Secretary of State