

Enrolled
House Bill 2258

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CHAPTER

AN ACT

Relating to reference to sanctions for sale of lot, parcel or interest in subdivision or series partition; creating new provisions; and amending ORS 92.405 and 646.608.

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

SECTION 1. ORS 92.405 is amended to read:

92.405. (1) Unless the making of a public report has been waived, *[no person shall]* **a person may not** sell or lease *[any]* **a** lot, parcel or interest in a subdivision or series partition prior to the issuance of the report.

(2) A copy of the public report, when issued, *[shall]* **must** be given to the prospective purchaser by the subdivider, series partitioner or developer, or their agents, prior to the execution of a binding contract or agreement for the sale or lease of *[any]* **a** lot, parcel, or interest in a subdivision or series partition. The subdivider, series partitioner or developer, or their agents, shall take a receipt from *[such]* **the** prospective purchaser or lessee upon delivery of a copy of the Real Estate Commissioner's public report, and *[such receipts shall]* **the receipt must** be kept on file within this state in the possession of the subdivider, series partitioner or developer subject to inspection by the commissioner for a period of three years from the date the receipt is taken.

(3) The commissioner's public report *[shall]* **may** not be used for advertising purposes unless the report is used in its entirety. No portion of the report shall be underscored, italicized or printed in larger or heavier type than the balance of the report unless the true copy of the report so emphasizes such portion.

(4) The commissioner may furnish at cost copies of the public report for the use of subdividers, series partitioners and developers.

(5) The requirements of this section extend to lots, parcels or other interests sold by the subdivider, series partitioner or developer after repossession.

(6) *[Violations]* **In addition to other sanctions provided by law, a violation of subsection (1), (2) or (3) of this section [shall be subject to the provisions of ORS 646.605 to 646.656, 646.705 to 646.836, 646.868, 646.935 to 646.992 and 815.410, in addition to other sanctions provided by law] is an unlawful practice subject to ORS 646.608.**

SECTION 2. 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) Violates ORS 92.405 (1), (2) or (3).

(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] **An** action or suit [shall] **may not** 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] **is** limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

SECTION 3. 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.

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(LL) Violates ORS 646.563.

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

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(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] **An** action or suit [shall] **may not** 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] **is** limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

SECTION 4. (1) The amendments to ORS 92.405 and 646.608 by sections 1 to 3 of this 2005 Act apply to violations of ORS 92.405 (1), (2) or (3) and 646.608 committed on or after the effective date of this 2005 Act.

(2) The amendments to ORS 92.405 and 646.608 by sections 1 to 3 of this 2005 Act apply to violations of ORS 92.405 (1), (2) or (3) and 646.608 committed before the effective date of this 2005 Act unless, on the effective date of this 2005 Act, sanctions for the violation have been reduced to a judgment that is no longer subject to appeal.

Passed by House January 31, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate June 7, 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