

SENATE AMENDMENTS TO SENATE BILL 208

By COMMITTEE ON JUDICIARY

April 27

1 On page 1 of the printed bill, line 2, after “646.561” delete the rest of the line and line 3 and
2 insert “and 646.608; repealing ORS 646.567, 646.569, 646.572, 646.574, 646.576 and 646.578; and de-
3 claring an emergency.”.

4 Delete lines 18 through 28.

5 Delete pages 2 through 5 and insert:

6 **“SECTION 2. Section 3 of this 2005 Act is added to and made a part of ORS 646.561 to**
7 **646.565.**

8 **“SECTION 3. (1) In addition to the authority granted the Attorney General under 15**
9 **U.S.C. 6103, whenever the Attorney General has reason to believe that any person has en-**
10 **gaged or is engaging in a pattern or practice of telemarketing that violates any telemarket-**
11 **ing rule adopted by the Federal Trade Commission under 15 U.S.C. 6102, the Attorney**
12 **General may:**

13 **“(a) Bring an action in the appropriate circuit court in this state to enjoin the telemar-**
14 **keting or enforce compliance with telemarketing rules adopted by the Federal Trade Com-**
15 **mission under 15 U.S.C. 6102; or**

16 **“(b) Seek an assurance of voluntary compliance as described in ORS 646.632 from the**
17 **person.**

18 **“(2) In any action brought by the Attorney General under subsection (1) of this section,**
19 **the court may award:**

20 **“(a) Damages, restitution, other compensation or other relief the court considers appro-**
21 **priate; and**

22 **“(b) Reasonable attorney fees and costs, including investigative costs, to the Attorney**
23 **General if the Attorney General prevails in the action.**

24 **“SECTION 4. ORS 646.608 is amended to read:**

25 **“646.608. (1) A person engages in an unlawful practice when in the course of the person’s busi-**
26 **ness, vocation or occupation the person does any of the following:**

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

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

30 **“(c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-**
31 **ciation with, or certification by, another.**

32 **“(d) Uses deceptive representations or designations of geographic origin in connection with real**
33 **estate, goods or services.**

34 **“(e) Represents that real estate, goods or services have sponsorship, approval, characteristics,**
35 **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
14 the transaction or obligation incurred.

15 “(L) Makes false or misleading representations relating to commissions or other compensation
16 to 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
21 provides 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 pub-
29 licize 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
45 and 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*] (**ff**) Violates the provisions of ORS 646.859.

15 “[*hh*] (**gg**) Violates ORS 759.290.

16 “[*ii*] (**hh**) Violates ORS 646.872.

17 “[*jj*] (**ii**) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

18 “[*kk*] (**jj**) Violates ORS 646.563.

19 “[*LL*] (**kk**) Violates ORS 759.690 or any rule adopted pursuant thereto.

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

22 “[*nn*] (**mm**) Violates ORS 646.892 or 646.894.

23 “[*oo*] (**nn**) Violates any provision of ORS 646.249 to 646.259.

24 “[*pp*] (**oo**) Violates ORS 646.384.

25 “[*qq*] (**pp**) Violates ORS 646.871.

26 “[*rr*] (**qq**) Violates ORS 822.046.

27 “[*ss*] (**rr**) Violates ORS 128.001.

28 “[*tt*] (**ss**) Violates ORS 646.649 (2) to (4).

29 “[*uu*] (**tt**) Violates ORS 646.877 (2) to (4).

30 “[*vv*] (**uu**) Violates ORS 87.686.

31 “[*ww*] (**vv**) Violates ORS 646.651.

32 “[*xx*] (**ww**) Violates ORS 646.879.

33 “[*yy*] (**xx**) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.

34 “[*zz*] (**yy**) Violates ORS 180.440 (1).

35 “[*aaa*] (**zz**) Commits the offense of acting as a vehicle dealer without a certificate under ORS
36 822.005.

37 “[*bbb*] (**aaa**) Violates ORS 87.007 (2) or (3).

38 “(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifes-
39 tation 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 “(p) Makes any false or misleading statement about a prize, contest or promotion used to pub-

1 licize a product, business or service.

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

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

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

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

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

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

12 “(w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

27 “(bb) Violates ORS 646.850 (1).

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

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

30 “(ee) Violates ORS 646.883 or 646.885.

31 “(ff) Violates any provision of ORS 646.195.

32 “[*gg*] Violates ORS 646.569.]

33 “[*hh*] (**gg**) Violates the provisions of ORS 646.859.

34 “[*ii*] (**hh**) Violates ORS 759.290.

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36 “[*kk*] (**jj**) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

37 “[*LL*] (**kk**) Violates ORS 646.563.

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39 “[*nn*] (**mm**) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted
40 pursuant thereto.

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4 “[*ww*] (**vv**) Violates ORS 87.686.
5 “[*xx*] (**ww**) Violates ORS 646.651.
6 “[*yy*] (**xx**) Violates ORS 646.879.
7 “[*zz*] (**yy**) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.
8 “[*aaa*] (**zz**) Violates ORS 180.440 (1).
9 “[*bbb*] (**aaa**) Commits the offense of acting as a vehicle dealer without a certificate under ORS
10 822.005.
11 “[*ccc*] (**bbb**) Violates ORS 87.007 (2) or (3).
12 “(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifes-
13 tation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
14 “(3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
15 need not prove competition between the parties or actual confusion or misunderstanding.
16 “(4) No action or suit shall be brought under subsection (1)(u) of this section unless the Attorney
17 General has first established a rule in accordance with the provisions of ORS chapter 183 declaring
18 the conduct to be unfair or deceptive in trade or commerce.
19 “(5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is
20 brought under subsection [(1)(*aaa*)] (1)(**zz**) of this section by a person other than a prosecuting at-
21 torney, relief shall be limited to an injunction and the prevailing party may be awarded reasonable
22 attorney fees.
23 “**SECTION 6. ORS 646.567, 646.569, 646.572, 646.574, 646.576 and 646.578 are repealed.**
24 “**SECTION 7. Section 3 of this 2005 Act, the amendments to ORS 646.561 and 646.608 by**
25 **sections 1, 4 and 5 of this 2005 Act and the repeal of ORS 646.567, 646.569, 646.572, 646.574,**
26 **646.576 and 646.578 by section 6 of this 2005 Act apply to telephone solicitations made on or**
27 **after the effective date of this 2005 Act.**
28 “**SECTION 8. This 2005 Act being necessary for the immediate preservation of the public**
29 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
30 **on its passage.”.**
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