

Enrolled
Senate Bill 487

Sponsored by Senator BONAMICI (Pre-session filed.)

CHAPTER

AN ACT

Relating to unlawful consumer charging practices; creating new provisions; and amending ORS 646.608.

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

SECTION 1. It is the intent of the Legislative Assembly to end the practice of ongoing charging of consumer credit or debit cards or third party payment accounts without the consumers' explicit consent for ongoing shipments of a product or ongoing deliveries of service.

SECTION 2. As used in this section and section 3 of this 2011 Act:

(1) "Automatic renewal" means a plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed at the end of a definite term for a subsequent term.

(2) "Clear and conspicuous" means in larger type than the surrounding text, or in contrasting type, font or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language. In the case of an audio disclosure, "clear and conspicuous" means in a volume and cadence sufficient to be readily audible and understandable.

(3) "Consumer" means any individual who seeks or acquires, by purchase or lease, any goods, services, money or credit for personal, family or household purposes.

(4) "Continuous service" means a plan or arrangement in which a paid subscription or purchasing agreement continues until the consumer cancels the service.

(5) "Offer terms" means the following clear and conspicuous disclosures:

(a) That the subscription or purchasing agreement will continue until the consumer cancels.

(b) The description of the cancellation policy that applies to the offer.

(c) The recurring charges that will be charged to the consumer's credit or debit card or payment account with a third party as part of the automatic renewal or continuous service plan or arrangement, and, if the amount of the charge will change, the amount to which the charge will change, if known.

(d) The length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer.

(e) The minimum purchase obligation, if any.

(6) "Person" has the meaning given that term in ORS 646.605.

SECTION 3. (1) It is unlawful for a person that makes an automatic renewal or continuous service offer to a consumer in this state to do any of the following:

(a) Fail to present the automatic renewal offer terms or continuous service offer terms in a clear and conspicuous manner before a subscription or purchasing agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer.

(b) Charge the consumer's credit or debit card or payment account with a third party for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms.

(c) Fail to provide an acknowledgment that includes the automatic renewal offer terms or continuous service offer terms and information regarding how to cancel in a manner that is capable of being retained by the consumer. If the offer includes a free trial, the person shall also disclose in the acknowledgment how to cancel and allow the consumer to cancel before the consumer pays for the goods or services.

(2) A person making automatic renewal or continuous service offers shall provide a toll-free telephone number, electronic mail address, a post-office address only when the person directly bills the consumer, or another cost-effective, timely and easy-to-use mechanism for cancellation that must be described in the acknowledgment required by subsection (1)(c) of this section.

(3) In the case of a material change in the terms of the automatic renewal or continuous service offer that has been accepted by a consumer, the person shall provide the consumer with a clear and conspicuous notice of the material change and provide information regarding how to cancel in a manner that is capable of being retained by the consumer.

(4) The requirements of this section must be met prior to the completion of the initial order for the automatic renewal or continuous service, except as follows:

(a) The requirement in subsection (1)(c) of this section may be fulfilled after completion of the initial order.

(b) The requirement in subsection (3) of this section must be fulfilled prior to implementation of the material change.

(c) The requirements in subsection (1)(a) and (c) of this section may be fulfilled in the initial billing statement or invoice provided to the consumer when the person directly bills the consumer.

(5) In the event a person sends goods, wares, merchandise or products to a consumer under a continuous service agreement or pursuant to an automatic renewal of a purchase without first obtaining the consumer's affirmative consent as required in subsection (1) of this section, the goods, wares, merchandise or products shall for all purposes be deemed an unconditional gift to the consumer who may use or dispose of them in any manner the consumer sees fit without any obligation to the person including, but not limited to, requiring the consumer to ship, or bear the cost of shipping, any goods, wares, merchandise or products to the person.

(6) The following are exempt from the requirements of this section:

(a) A person that provides a service pursuant to a franchise issued by a political subdivision of the state or a license, franchise, certificate or other authorization issued by the Public Utility Commission of Oregon.

(b) A person that provides a service regulated by the Public Utility Commission of Oregon, the Federal Communications Commission or the Federal Energy Regulatory Commission.

(c) A person regulated by the Department of Consumer and Business Services under the Insurance Code.

(d) A bank, bank holding company, or the subsidiary or affiliate of either, or a credit union or other financial institution or trust company as those terms are defined in ORS 706.008, that is licensed under state or federal law.

(e) A person that is regulated as a service contract seller under ORS 646A.150 to 646A.172.

(f) A consumer finance company licensed under ORS chapter 725.

(g) A person that provides direct-to-home satellite services subject to regulation by the Federal Communications Commission.

SECTION 4. 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) 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 646A.070 (1).
 - (cc) Violates any requirement of ORS 646A.030 to 646A.040.
 - (dd) Violates the provisions of ORS 128.801 to 128.898.
 - (ee) Violates ORS 646.883 or 646.885.
 - (ff) Violates ORS 646.569.
 - (gg) Violates the provisions of ORS 646A.142.
 - (hh) Violates ORS 646A.360.
 - (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
 - (jj) Violates ORS 646.563.
 - (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
 - (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.
 - (mm) Violates ORS 646A.210 or 646A.214.
 - (nn) Violates any provision of ORS 646A.124 to 646A.134.
 - (oo) Violates ORS 646A.095.
 - (pp) Violates ORS 822.046.
 - (qq) Violates ORS 128.001.
 - (rr) Violates ORS 646.649 (2) to (4).
 - (ss) Violates ORS 646A.090 (2) to (4).
 - (tt) Violates ORS 87.686.
 - (uu) Violates ORS 646.651.
 - (vv) Violates ORS 646A.362.
 - (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
 - (xx) Violates ORS 180.440 (1) or 180.486 (1).
 - (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
 - (zz) Violates ORS 87.007 (2) or (3).
 - (aaa) Violates ORS 92.405 (1), (2) or (3).
 - (bbb) Engages in an unlawful practice under ORS 646.648.
 - (ccc) Violates ORS 646A.365.
 - (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
 - (eee) Sells a gift card in violation of ORS 646A.276.
 - (fff) Violates ORS 646A.102, 646A.106 or 646A.108.

- (ggg) Violates ORS 646A.430 to 646A.450.
- (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
- (iii) Violates a provision of ORS 646A.702 to 646A.720.
- (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration described in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the subject of the violation.
- (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- (nnn) Violates ORS 646A.082.
- (ooo) Violates ORS 646.647.
- (ppp) Violates ORS 646A.115.
- (qqq) Violates a provision of ORS 646A.405.

(rrr) Violates a provision of section 3 of this 2011 Act.

- (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) An action or suit 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)(xx) of this section by a person other than a prosecuting attorney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

SECTION 5. Sections 2 and 3 of this 2011 Act and the amendments to ORS 646.608 by section 4 of this 2011 Act apply to automatic renewal and continuous service offers entered into on or after the effective date of this 2011 Act.

Passed by Senate April 27, 2011

Received by Governor:

Repassed by Senate June 10, 2011

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Approved:

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Robert Taylor, Secretary of Senate

.....M.,....., 2011

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Peter Courtney, President of Senate

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John Kitzhaber, Governor

Passed by House June 7, 2011

Filed in Office of Secretary of State:

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Bruce Hanna, Speaker of House

.....M.,....., 2011

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Arnie Roblan, Speaker of House

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Kate Brown, Secretary of State