

Senate Bill 1576

Sponsored by Senator MONROE, Representative HOYLE; Representatives BARKER, GILLIAM, OLSON (Presession filed.)

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**.

Prohibits person that manufactures or distributes prescription contact lenses from preventing retailer from advertising or selling prescription contact lenses at price for consumers that is less than price that person sets or specifies.

Provides that violation of prohibition is unlawful practice that is subject to enforcement and action under Unlawful Trade Practices Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to restrictions on retail sales prices for prescription contact lenses; creating new pro-
3 visions; amending ORS 646.608; and declaring an emergency.

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

5 **SECTION 1. (1) A person that manufactures or distributes prescription contact lenses**
6 **may not prevent a retailer from advertising or selling prescription contact lenses that the**
7 **person manufactures or distributes at a price for consumers that is less than a price that**
8 **the person sets or specifies, whether the person sets or specifies, or attempts to set or**
9 **specify, a price by:**

10 (a) **Entering into a contract or other enforceable agreement with the retailer;**

11 (b) **Discriminating as to how the person distributes the prescription contact lenses for**
12 **retail sale on the basis of whether the retailer:**

13 (A) **Falls within a specific channel of trade or retailing category or is located within a**
14 **particular distribution region; or**

15 (B) **Is associated with a person that is authorized by law to prescribe contact lenses to**
16 **consumers; or**

17 (c) **Otherwise limiting a retailer's ability to set a retail price for prescription contact**
18 **lenses that the person manufactures or distributes.**

19 (2) **A person's violation of the provisions of subsection (1) of this section is an unlawful**
20 **practice that is subject to enforcement under ORS 646.632 and an action under ORS 646.638.**

21 **SECTION 2. ORS 646.608 is amended to read:**

22 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,
23 vocation or occupation the person does any of the following:

24 (a) Passes off real estate, goods or services as the real estate, goods or services of another.

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

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

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

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

7 (f) Represents that real estate or goods are original or new if the real estate or goods are de-
8 teriorated, altered, reconditioned, reclaimed, used or secondhand.

9 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
10 or that real estate or goods are of a particular style or model, if the real estate, goods or services
11 are of another.

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

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

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

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

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

24 (m) Performs service on or dismantles any goods or real estate if the owner or apparent owner
25 of the goods or real estate does not authorize the service or dismantling.

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

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

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

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

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

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

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

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

44 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,
45 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-

- 1 ation.
- 2 (w) Manufactures mercury fever thermometers.
- 3 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
4 law, or is:
- 5 (A) Prescribed by a person licensed under ORS chapter 677; and
- 6 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
7 on the proper cleanup of mercury should breakage occur.
- 8 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
9 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
10 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
11 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
12 graph, "thermostat" means a device commonly used to sense and, through electrical communication
13 with heating, cooling or ventilation equipment, control room temperature.
- 14 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
15 mercury light switches.
- 16 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 17 (bb) Violates ORS 646A.070 (1).
- 18 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 19 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 20 (ee) Violates ORS 646.883 or 646.885.
- 21 (ff) Violates ORS 646.569.
- 22 (gg) Violates the provisions of ORS 646A.142.
- 23 (hh) Violates ORS 646A.360.
- 24 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 25 (jj) Violates ORS 646.563.
- 26 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 27 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
28 thereto.
- 29 (mm) Violates ORS 646A.210 or 646A.214.
- 30 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 31 (oo) Violates ORS 646A.095.
- 32 (pp) Violates ORS 822.046.
- 33 (qq) Violates ORS 128.001.
- 34 (rr) Violates ORS 646A.800 (2) to (4).
- 35 (ss) Violates ORS 646A.090 (2) to (4).
- 36 (tt) Violates ORS 87.686.
- 37 (uu) Violates ORS 646A.803.
- 38 (vv) Violates ORS 646A.362.
- 39 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 40 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 41 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 42 (zz) Violates ORS 87.007 (2) or (3).
- 43 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 44 (bbb) Engages in an unlawful practice under ORS 646.648.
- 45 (ccc) Violates ORS 646A.365.

- 1 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
 2 (eee) Sells a gift card in violation of ORS 646A.276.
 3 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
 4 (ggg) Violates ORS 646A.430 to 646A.450.
 5 (hhh) Violates a provision of ORS 744.318 to 744.384.
 6 (iii) Violates a provision of ORS 646A.702 to 646A.720.
 7 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
 8 scribed in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the
 9 subject of the violation.
 10 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
 11 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
 12 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
 13 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
 14 (nnn) Violates ORS 646A.082.
 15 (ooo) Violates ORS 646.647.
 16 (ppp) Violates ORS 646A.115.
 17 (qqq) Violates a provision of ORS 646A.405.
 18 (rrr) Violates ORS 646A.092.
 19 (sss) Violates a provision of ORS 646.644.
 20 (ttt) Violates a provision of ORS 646A.295.
 21 (uuu) Violates ORS 646A.564.
 22 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
 23 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
 24 do so or unless the person is an active member of the Oregon State Bar.
 25 (www) Violates ORS 702.012, 702.029, 702.032 or 702.054.
 26 (xxx) Violates ORS 646A.806.
 27 (yyy) Violates ORS 646A.810 (2).
 28 (zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws 2015.
 29 **(aaaa) Violates a provision of section 1 (1) of this 2016 Act.**
 30 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
 31 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
 32 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-
 33 cuting attorney need not prove competition between the parties or actual confusion or misunder-
 34 standing.
 35 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
 36 torney General has first established a rule in accordance with the provisions of ORS chapter 183
 37 declaring the conduct to be unfair or deceptive in trade or commerce.
 38 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or
 39 suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attor-
 40 ney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney
 41 fees.
 42 **SECTION 3.** ORS 646.608, as amended by section 10, chapter 523, Oregon Laws 2015, is
 43 amended to read:
 44 646.608. (1) A person engages in an unlawful practice if in the course of the person’s business,
 45 vocation or occupation the person does any of the following:

- 1 (a) Passes off real estate, goods or services as the real estate, goods or services of another.
- 2 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
3 proval, or certification of real estate, goods or services.
- 4 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
5 ciation with, or certification by, another.
- 6 (d) Uses deceptive representations or designations of geographic origin in connection with real
7 estate, goods or services.
- 8 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
9 ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have
10 or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the
11 person does not have.
- 12 (f) Represents that real estate or goods are original or new if the real estate or goods are de-
13 teriorated, altered, reconditioned, reclaimed, used or secondhand.
- 14 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
15 or that real estate or goods are of a particular style or model, if the real estate, goods or services
16 are of another.
- 17 (h) Disparages the real estate, goods, services, property or business of a customer or another
18 by false or misleading representations of fact.
- 19 (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or
20 services as advertised, or with intent not to supply reasonably expectable public demand, unless the
21 advertisement discloses a limitation of quantity.
- 22 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,
23 or amounts of price reductions.
- 24 (k) Makes false or misleading representations concerning credit availability or the nature of the
25 transaction or obligation incurred.
- 26 (L) Makes false or misleading representations relating to commissions or other compensation to
27 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
28 stration purposes or in exchange for submitting names of potential customers.
- 29 (m) Performs service on or dismantles any goods or real estate if the owner or apparent owner
30 of the goods or real estate does not authorize the service or dismantling.
- 31 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
32 vides the information required under ORS 646.611.
- 33 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
34 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
35 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
36 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
37 discount or other value is contingent upon an event occurring after the time the customer enters
38 into the transaction.
- 39 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
40 cize a product, business or service.
- 41 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
42 not to deliver the real estate, goods or services as promised.
- 43 (r) Organizes or induces or attempts to induce membership in a pyramid club.
- 44 (s) Makes false or misleading representations of fact concerning the offering price of, or the
45 person's cost for real estate, goods or services.

- 1 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
 2 known material defect or material nonconformity.
- 3 (u) Engages in any other unfair or deceptive conduct in trade or commerce.
- 4 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,
 5 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-
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- 8 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
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- 10 (A) Prescribed by a person licensed under ORS chapter 677; and
- 11 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
 12 on the proper cleanup of mercury should breakage occur.
- 13 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
 14 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
 15 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
 16 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
 17 graph, “thermostat” means a device commonly used to sense and, through electrical communication
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- 19 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
 20 mercury light switches.
- 21 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 22 (bb) Violates ORS 646A.070 (1).
- 23 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 24 (dd) Violates the provisions of ORS 128.801 to 128.898.
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- 27 (gg) Violates the provisions of ORS 646A.142.
- 28 (hh) Violates ORS 646A.360.
- 29 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 30 (jj) Violates ORS 646.563.
- 31 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 32 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
 33 thereto.
- 34 (mm) Violates ORS 646A.210 or 646A.214.
- 35 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 36 (oo) Violates ORS 646A.095.
- 37 (pp) Violates ORS 822.046.
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- 39 (rr) Violates ORS 646A.800 (2) to (4).
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- 41 (tt) Violates ORS 87.686.
- 42 (uu) Violates ORS 646A.803.
- 43 (vv) Violates ORS 646A.362.
- 44 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 45 (xx) Violates ORS 180.440 (1) or 180.486 (1).

- 1 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 2 (zz) Violates ORS 87.007 (2) or (3).
- 3 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 4 (bbb) Engages in an unlawful practice under ORS 646.648.
- 5 (ccc) Violates ORS 646A.365.
- 6 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 7 (eee) Sells a gift card in violation of ORS 646A.276.
- 8 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 9 (ggg) Violates ORS 646A.430 to 646A.450.
- 10 (hhh) Violates a provision of ORS 744.318 to 744.384.
- 11 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 12 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 13 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 14 subject of the violation.
- 15 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 16 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 17 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 18 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 19 (nnn) Violates ORS 646A.082.
- 20 (ooo) Violates ORS 646.647.
- 21 (ppp) Violates ORS 646A.115.
- 22 (qqq) Violates a provision of ORS 646A.405.
- 23 (rrr) Violates ORS 646A.092.
- 24 (sss) Violates a provision of ORS 646.644.
- 25 (ttt) Violates a provision of ORS 646A.295.
- 26 (uuu) Violates ORS 646A.564.
- 27 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
- 28 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
- 29 do so or unless the person is an active member of the Oregon State Bar.
- 30 (www) Violates ORS 702.012, 702.029, 702.032 or 702.054.
- 31 (xxx) Violates ORS 646A.806.
- 32 (yyy) Violates ORS 646A.810 (2).
- 33 **(zzz) Violates a provision of section 1 (1) of this 2016 Act.**
- 34 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
- 35 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- 36 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-
- 37 cuting attorney need not prove competition between the parties or actual confusion or misunder-
- 38 standing.
- 39 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
- 40 torney General has first established a rule in accordance with the provisions of ORS chapter 183
- 41 declaring the conduct to be unfair or deceptive in trade or commerce.
- 42 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or
- 43 suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attor-
- 44 ney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney
- 45 fees.

1 **SECTION 4.** Section 1 of this 2016 Act and the amendments to ORS 646.608 by sections
2 **2 and 3 of this 2016 Act apply to retail sales of prescription contact lenses that occur on or**
3 **after the effective date of this 2016 Act.**

4 **SECTION 5.** This 2016 Act being necessary for the immediate preservation of the public
5 **peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect**
6 **on its passage.**

7
