

DRAFT

SUMMARY

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

Relating to restrictions on retail sales prices for prescription contact lenses; creating new provisions; amending ORS 646.608; and declaring an emergency.

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

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

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

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

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

(B) Is associated with a person that is authorized by law to pre-

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 **scribe contact lenses to consumers; or**

2 **(c) Otherwise limiting a retailer's ability to set a retail price for**
3 **prescription contact lenses that the person manufactures or distrib-**
4 **utes.**

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

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

9 646.608. (1) A person engages in an unlawful practice if in the course of
10 the person's business, vocation or occupation the person does any of the
11 following:

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

14 (b) Causes likelihood of confusion or of misunderstanding as to the
15 source, sponsorship, approval, or certification of real estate, goods or ser-
16 vices.

17 (c) Causes likelihood of confusion or of misunderstanding as to affiliation,
18 connection, or association with, or certification by, another.

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

21 (e) Represents that real estate, goods or services have sponsorship, ap-
22 proval, characteristics, ingredients, uses, benefits, quantities or qualities that
23 the real estate, goods or services do not have or that a person has a spon-
24 sorship, approval, status, qualification, affiliation, or connection that the
25 person does not have.

26 (f) Represents that real estate or goods are original or new if the real
27 estate or goods are deteriorated, altered, reconditioned, reclaimed, used or
28 secondhand.

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

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

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

7 (j) Makes false or misleading representations of fact concerning the rea-
8 sons for, existence of, or amounts of price reductions.

9 (k) Makes false or misleading representations concerning credit avail-
10 ability or the nature of the transaction or obligation incurred.

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

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

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

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

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

29 (q) Promises to deliver real estate, goods or services within a certain pe-
30 riod of time with intent not to deliver the real estate, goods or services as
31 promised.

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

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

5 (t) Concurrent with tender or delivery of any real estate, goods or ser-
6 vices fails to disclose any known material defect or material nonconformity.

7 (u) Engages in any other unfair or deceptive conduct in trade or com-
8 merce.

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

12 (w) Manufactures mercury fever thermometers.

13 (x) Sells or supplies mercury fever thermometers unless the thermometer
14 is required by federal 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
17 to avoid breakage and on the proper cleanup of mercury should breakage
18 occur.

19 (y) Sells a thermostat that contains mercury unless the thermostat is la-
20 beled in a manner to inform the purchaser that mercury is present in the
21 thermostat and that the thermostat may not be disposed of until the mercury
22 is removed, reused, recycled or otherwise managed to ensure that the mer-
23 cury does not become part of the solid waste stream or wastewater. For
24 purposes of this paragraph, "thermostat" means a device commonly used to
25 sense and, through electrical communication with heating, cooling or venti-
26 lation equipment, control room temperature.

27 (z) Sells or offers for sale a motor vehicle manufactured after January 1,
28 2006, that contains mercury light switches.

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

30 (bb) Violates ORS 646A.070 (1).

31 (cc) Violates any requirement of ORS 646A.030 to 646A.040.

- 1 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 2 (ee) Violates ORS 646.883 or 646.885.
- 3 (ff) Violates ORS 646.569.
- 4 (gg) Violates the provisions of ORS 646A.142.
- 5 (hh) Violates ORS 646A.360.
- 6 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 7 (jj) Violates ORS 646.563.
- 8 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 9 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any
- 10 rule adopted pursuant thereto.
- 11 (mm) Violates ORS 646A.210 or 646A.214.
- 12 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 13 (oo) Violates ORS 646A.095.
- 14 (pp) Violates ORS 822.046.
- 15 (qq) Violates ORS 128.001.
- 16 (rr) Violates ORS 646A.800 (2) to (4).
- 17 (ss) Violates ORS 646A.090 (2) to (4).
- 18 (tt) Violates ORS 87.686.
- 19 (uu) Violates ORS 646A.803.
- 20 (vv) Violates ORS 646A.362.
- 21 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or
- 22 646A.054.
- 23 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 24 (yy) Commits the offense of acting as a vehicle dealer without a certif-
- 25 icate under ORS 822.005.
- 26 (zz) Violates ORS 87.007 (2) or (3).
- 27 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 28 (bbb) Engages in an unlawful practice under ORS 646.648.
- 29 (ccc) Violates ORS 646A.365.
- 30 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 31 (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.

(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 ORS 646A.092.

(sss) Violates a provision of ORS 646.644.

(ttt) Violates a provision of ORS 646A.295.

(uuu) Violates ORS 646A.564.

(vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as defined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to do so or unless the person is an active member of the Oregon State Bar.

(www) Violates ORS 702.012, 702.029, 702.032 or 702.054.

(xxx) Violates ORS 646A.806.

(yyy) Violates ORS 646A.810 (2).

(zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws 2015.

(aaaa) Violates a provision of section 1 (1) of this 2016 Act.

(2) A representation under subsection (1) of this section or ORS 646.607

1 may be any manifestation of any assertion by words or conduct, including,
2 but not limited to, a failure to disclose a fact.

3 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605
4 to 646.652, a prosecuting attorney need not prove competition between the
5 parties or actual confusion or misunderstanding.

6 (4) An action or suit may not be brought under subsection (1)(u) of this
7 section unless the Attorney General has first established a rule in accord-
8 ance with the provisions of ORS chapter 183 declaring the conduct to be
9 unfair or deceptive in trade or commerce.

10 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to
11 646.652, if an action or suit is brought under subsection (1)(xx) of this section
12 by a person other than a prosecuting attorney, relief is limited to an in-
13 junction and the prevailing party may be awarded reasonable attorney fees.

14 **SECTION 3.** ORS 646.608, as amended by section 10, chapter 523, Oregon
15 Laws 2015, is amended to read:

16 646.608. (1) A person engages in an unlawful practice if in the course of
17 the person's business, vocation or occupation the person does any of the
18 following:

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

21 (b) Causes likelihood of confusion or of misunderstanding as to the
22 source, sponsorship, approval, or certification of real estate, goods or ser-
23 vices.

24 (c) Causes likelihood of confusion or of misunderstanding as to affiliation,
25 connection, or association with, or certification by, another.

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

28 (e) Represents that real estate, goods or services have sponsorship, ap-
29 proval, characteristics, ingredients, uses, benefits, quantities or qualities that
30 the real estate, goods or services do not have or that a person has a spon-
31 sorship, approval, status, qualification, affiliation, or connection that the

1 person does not have.

2 (f) Represents that real estate or goods are original or new if the real
3 estate or goods are deteriorated, altered, reconditioned, reclaimed, used or
4 secondhand.

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

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

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

14 (j) Makes false or misleading representations of fact concerning the rea-
15 sons for, existence of, or amounts of price reductions.

16 (k) Makes false or misleading representations concerning credit avail-
17 ability or the nature of the transaction or obligation incurred.

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

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

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

27 (o) In a sale, rental or other disposition of real estate, goods or services,
28 gives or offers to give a rebate or discount or otherwise pays or offers to pay
29 value to the customer in consideration of the customer giving to the person
30 the names of prospective purchasers, lessees, or borrowers, or otherwise
31 aiding the person in making a sale, lease, or loan to another person, if

1 earning the rebate, discount or other value is contingent upon an event oc-
2 ccurring after the time the customer enters into the transaction.

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

5 (q) Promises to deliver real estate, goods or services within a certain pe-
6 riod of time with intent not to deliver the real estate, goods or services as
7 promised.

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

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

12 (t) Concurrent with tender or delivery of any real estate, goods or ser-
13 vices fails to disclose any known material defect or material nonconformity.

14 (u) Engages in any other unfair or deceptive conduct in trade or com-
15 merce.

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

19 (w) Manufactures mercury fever thermometers.

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

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

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

26 (y) Sells a thermostat that contains mercury unless the thermostat is la-
27 beled in a manner to inform the purchaser that mercury is present in the
28 thermostat and that the thermostat may not be disposed of until the mercury
29 is removed, reused, recycled or otherwise managed to ensure that the mer-
30 cury does not become part of the solid waste stream or wastewater. For
31 purposes of this paragraph, "thermostat" means a device commonly used to

1 sense and, through electrical communication with heating, cooling or venti-
2 lation equipment, control room temperature.

3 (z) Sells or offers for sale a motor vehicle manufactured after January 1,
4 2006, that contains mercury light switches.

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

6 (bb) Violates ORS 646A.070 (1).

7 (cc) Violates any requirement of ORS 646A.030 to 646A.040.

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

9 (ee) Violates ORS 646.883 or 646.885.

10 (ff) Violates ORS 646.569.

11 (gg) Violates the provisions of ORS 646A.142.

12 (hh) Violates ORS 646A.360.

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

14 (jj) Violates ORS 646.563.

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

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

18 (mm) Violates ORS 646A.210 or 646A.214.

19 (nn) Violates any provision of ORS 646A.124 to 646A.134.

20 (oo) Violates ORS 646A.095.

21 (pp) Violates ORS 822.046.

22 (qq) Violates ORS 128.001.

23 (rr) Violates ORS 646A.800 (2) to (4).

24 (ss) Violates ORS 646A.090 (2) to (4).

25 (tt) Violates ORS 87.686.

26 (uu) Violates ORS 646A.803.

27 (vv) Violates ORS 646A.362.

28 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or
29 646A.054.

30 (xx) Violates ORS 180.440 (1) or 180.486 (1).

31 (yy) Commits the offense of acting as a vehicle dealer without a certif-

1 icate 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
13 or declaration described in ORS 646A.530 is issued for the children's product,
14 as defined in ORS 646A.525, that is the subject of the violation.

15 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,
16 697.682, 697.692 or 697.707.

17 (LLL) Violates the consumer protection provisions of the Servicemembers
18 Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on January 1, 2010.

19 (mmm) Violates a provision of ORS 646A.480 to 646A.495.

20 (nnn) Violates ORS 646A.082.

21 (ooo) Violates ORS 646.647.

22 (ppp) Violates ORS 646A.115.

23 (qqq) Violates a provision of ORS 646A.405.

24 (rrr) Violates ORS 646A.092.

25 (sss) Violates a provision of ORS 646.644.

26 (ttt) Violates a provision of ORS 646A.295.

27 (uuu) Violates ORS 646A.564.

28 (vvv) Engages in the business of, or acts in the capacity of, an immi-
29 gration consultant, as defined in ORS 9.280, in this state and for compen-
30 sation, unless federal law authorizes the person to do so or unless the person
31 is an active member of the Oregon State Bar.

(www) Violates ORS 702.012, 702.029, 702.032 or 702.054.

(xxx) Violates ORS 646A.806.

(yyy) Violates ORS 646A.810 (2).

(zzz) Violates a provision of section 1 (1) of this 2016 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 336.184 and 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 336.184 and 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 4. Section 1 of this 2016 Act and the amendments to ORS 646.608 by sections 2 and 3 of this 2016 Act apply to retail sales of prescription contact lenses that occur on or after the effective date of this 2016 Act.

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