

CHAPTER 493

AN ACT

HB 2059

Relating to sales; creating new provisions; and amending ORS 646.608, 698.635, 698.640 and 698.650.

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

SECTION 1. ORS 698.635 is amended to read: 698.635. As used in ORS 698.640 and 698.650:

(1) "Auction" or "auction sale" means *[the]* a sale of or **an** offer to sell real or personal property *[by public outcry or]* to the highest *[bidders]* **bidder**.

(2) "Auctioneer" means *[any]* a person who sells or offers to sell property at auction, either on the person's own behalf or for another person.

(3) "Auction mart" means *[any]* a fixed or established place designed, intended or used *[for the conduct of]* **to conduct** auction sales where more than one sale has *[been held in any one]* **occurred during** a calendar year.

(4) "**Consignee**" means a person to whom another person offers, gives or entrusts personal property with the expectation that the person will sell the personal property in a manner other than at an auction sale and compensate the other person from the proceeds of the sale.

(5) "**Consignment sale**" means a sale of personal property, or a display of personal property for the purpose of selling the personal property, that a consignee conducts in public or with members of the public other than at a public auction.

SECTION 2. ORS 698.640 is amended to read:

698.640. (1) Except as provided in ORS 698.650[.]:

(a) This section establishes requirements for auction sales, **consignment sales**, auctioneers, **consignees** and auction marts. *[The requirements under this section are in addition to any provisions relating to auctions under ORS 72.3280.]*

(b) A person who violates *[any]* a requirement under this section commits an unlawful practice as described in ORS 646.608 (1)(v). *[The requirements under this section are]* **that is** subject to enforcement and penalty as provided under ORS 646.605 to 646.652.

(c) The requirements of this section are in addition to the provisions of ORS 72.3280 that relate to auctions and in addition to other provisions of law that govern consignment sales.

(2) The following requirements *[are established for]* **apply to** auction sales, **consignment sales**, auctioneers, **consignees** and auction marts as described:

[(1) Any] (a) **An** advertisement of an auction sale **or consignment sale** *[shall]* **must** include the name of the auctioneer who will conduct the auction sale or the person responsible for *[the conduct of]* **conducting** the auction sale **or consignment sale**.

[(2) (b)] **An** auctioneer, *[and the operator of an]* auction mart *[shall]* **operator or consignee may** not use any method of bidding at an auction **or selling at a consignment sale** that will allow **the auctioneer, auction mart operator or consignee to purchase** property *[to be purchased]* in an undisclosed manner on *[behalf of the auctioneer or auction mart operator]* **the auctioneer's, auction mart operator's or consignee's own behalf**.

[(3) (c)] **An** auctioneer, *[or]* auction mart operator *[shall]* **or consignee may** not use *[any]* a method of bidding at an auction **or selling at a consignment sale** that allows the auctioneer, *[or]* auction mart operator **or consignee** to avoid selling *[any]* property offered for sale at auction **or at a consignment sale**.

[(4) (d)] **An** auctioneer, *[or]* auction mart operator *[shall]* **or consignee may** not employ or use another person to act as a bidder or buyer at the auction **or consignment sale** on behalf of the auctioneer, *[or operator of the]* auction mart **operator or consignee**.

[(5) Any time an auctioneer or auction mart operator receives money that is owed to clients of the auctioneer or auction mart operator from the sale of the client's goods, the auctioneer or auction mart operator must comply with all of the following if the money is not immediately paid to the client at the time of auction:]

[(a) Any such money maintained in an account must be kept in a trust account where the money is held in trust for the client and identified and accounted for separately in a manner that will allow the money to be distinguished from the moneys of the auctioneer or operator that are subject to the debts of the auctioneer or operator. The account required by this paragraph must be separate from any account used by the auctioneer or operator for personal reasons or other business reasons.]

[(b) The client has a right to an accounting from the auctioneer or auction mart operator for any money that the auctioneer or auction mart operator received in payment for the client's goods that is not paid to the client.]

[(c) The auctioneer or auction mart operator must pay the client the money owed to the client before the end of 21 calendar days after the auction at which the client's goods were sold unless the parties have mutually agreed to another time of payment in writing.]

[(e) If an auctioneer, auction mart operator or consignee does not immediately pay moneys that the auctioneer, auction mart operator or consignee owes to a person after selling real or personal property that the person offered, gave or entrusted to the auctioneer, auction mart operator or consignee to sell on the person's behalf at auction or at a consignment sale, the auctioneer, auction mart operator or consignee shall:]

(A) **Maintain the moneys in trust for the person in a trust account that is separate from any account that the auctioneer, auction mart operator or consignee uses for personal reasons**

or other business reasons, and identify and account for the moneys so that the moneys may be distinguished from moneys that are subject to the auctioneer's, auction mart operator's or consignee's other debts;

(B) Account to the person for all moneys the auctioneer, auction mart operator or consignee receives in payment for the person's real or personal property;

(C) Pay the moneys the auctioneer, auction mart operator or consignee owes to the person within 21 calendar days after the date of the auction or the consignment sale at which the auctioneer, auction mart operator or consignee sold the person's real or personal property, unless the person and the auctioneer, auction mart operator or consignee have mutually agreed in writing to payment on a different date; and

(D) Return the person's unsold property within 21 calendar days after the auction or consignment sale unless the parties have mutually agreed in writing to another date.

SECTION 3. ORS 698.650 is amended to read:

698.650. *[This section establishes exemptions from the requirements for auctions, auction marts and auctioneers established under ORS 698.640. The exemptions are as described in the following]* **ORS 698.640 does not apply to:**

(1) *[Nothing in ORS 698.640 applies to any]* **An** auction, auctioneer or auction mart regulated under ORS chapter 599.

(2) *[Nothing in ORS 698.640 applies to]* The sale of timber at *[any]* **an** auction or auction mart or by *[any]* **an** auctioneer. In addition, the sale of timber at auction is with reserve unless the timber is in explicit terms put up without reserve.

(3) **A transaction that is described or regulated under ORS 359.200 to 359.255, 446.751, 585.010 to 585.220, 622.160, 650.120 to 650.170 or 822.060.**

(4) **An estate sale conducted under the authority of a court, or in accordance with procedures specified in ORS chapter 113, if the provisions of ORS 698.640 conflict with orders of the court or procedures set forth in ORS chapter 113.**

(5) **A going out of business sale regulated under ORS 646A.100 to 646A.110.**

SECTION 4. ORS 646.608, as amended by section 6, chapter 52, Oregon Laws 2012, is amended to read:

646.608. (1) A person engages in an unlawful practice *[when]* **if** 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]* **the real estate, goods or services** 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]* **the real estate, goods or services** 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]* **the real estate or goods** 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]* **the real estate, goods or services** 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]* **the real estate, goods or services** 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]* **if** the owner or apparent owner *[thereof]* **of the goods or real estate does not authorize the service or dismantling.**

(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] occurring after** 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]* **the real estate, goods or services** 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, **consignment sales**, auctioneers, **consignees** 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 ORS 646A.092.

(sss) Violates a provision of ORS 646.644.

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

(uuu) Violates section 3, chapter 52, Oregon Laws 2012.

(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. If House Bill 2573 becomes law, section 4 of this 2013 Act (amending ORS 646.608) is repealed and ORS 646.608, as amended by section 6, chapter 52, Oregon Laws 2012, and section 1, chapter 77, Oregon Laws 2013 (Enrolled House Bill 2573), is amended to read:

646.608. (1) A person engages in an unlawful practice *[when]* **if** 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]* **the real estate, goods or services** 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 the real estate, goods or services 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 the real estate or goods 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 the real estate, *[or]* goods **or services** are of another *[style or model]*.

(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 the real estate, goods or services 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]* **if** the owner or apparent owner of the goods or real estate does not authorize the service or dismantling.

(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 an event occurring after 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 the real estate, goods or services 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, **consignment sales**, auctioneers, **consignees** 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.

(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 section 3, chapter 52, Oregon Laws 2012.

(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.

(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 6. The amendments to ORS 646.608, 698.635, 698.640 and 698.650 by sections 1 to 4 of this 2013 Act apply to auction sales and consignment sales that occur on or after the effective date of this 2013 Act.

SECTION 7. If House Bill 2573 becomes law, section 6 of this 2013 Act is amended to read:

Sec. 6. The amendments to ORS 646.608, 698.635, 698.640 and 698.650 by sections 1 to [4] **3 and 5** of

this 2013 Act apply to auction sales and consignment sales that occur on or after the effective date of this 2013 Act.

SECTION 8. If House Bill 3160 becomes law, sections 5 (amending ORS 646.608) and 7

(amending section 6 of this 2013 Act) of this 2013 Act are repealed.

Approved by the Governor June 26, 2013
Filed in the office of Secretary of State June 26, 2013
Effective date January 1, 2014
