

Enrolled
House Bill 3037

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER.....

AN ACT

Relating to consumer protection; creating new provisions; amending ORS 646.605 and 646.990; repealing ORS 646.210, 646.220, 646.230, 646.615, 646.625, 646.635, 646.645, 646.655, 646.810, 646.820, 646.830 and 646.840; appropriating money; providing penalties; and declaring an emergency.

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

SECTION 1. Sections 2 to 4 of this Act are added to and made a part of ORS chapter 83.

SECTION 2. (1) In any contract for the sale or lease of consumer goods or services on credit entered into between a retail seller and a retail buyer, such contract, note or any instrument or evidence of indebtedness of the buyer shall have printed on the face thereof the words "consumer paper", and such contract, note, instrument or evidence of indebtedness with the words "consumer paper" printed thereon shall not be a negotiable instrument within the meaning of the Uniform Commercial Code-Commercial Paper. However, this section shall have no force or effect on the negotiability of any contract, promissory note, instrument or other evidence of indebtedness owned or guaranteed or insured by any state or federal governmental agency even though said contract, note, instrument or other evidence of indebtedness shall contain the wording required by this subsection.

(2) Notwithstanding the absence of such notice on a contract, note, instrument or evidence of indebtedness arising out of a consumer credit sale or consumer lease as described in this section, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease. Any agreement to the contrary shall be of no force or effect in limiting the rights of a consumer under this section. The assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. The restrictions imposed hereby shall not apply with respect to any promissory note, contract, instrument or other evidence of indebtedness owned or guaranteed or insured by any state or federal governmental agency even though said note, contract, instrument or other evidence of indebtedness shall contain the words required by subsection (1) of this section.

(3) An assignee of "consumer paper" who in good faith enforces a security interest in property held by the buyer or lessee shall not be liable to such buyer or lessee for punitive damages in an action for wrongful repossession. The fact that a seller or lessor has broken his warranties with regard to the property sold or leased shall not, of itself, make an assignee's repossession wrongful.

SECTION 3. (1) Notwithstanding any other provision of law:

(a) If the buyer defaults in the performance of a retail instalment contract or retail charge agreement subject to ORS 83.010 to 83.190 or 83.510 to 83.680 which is for the sale or lease of consumer goods or services, and if the seller repossesses or voluntarily accepts surrender of the goods or motor vehicles, and if at the time of default the unpaid time balance or time sale price is less than \$700, the buyer shall not be personally liable to the seller for any deficiency between the amount of his unpaid obligation and the amount realized by the seller on resale or other disposition of the goods or motor vehicles. However, the buyer is liable in damages to the seller for any repossessed or surrendered goods or motor vehicles that have been wrongfully damaged.

(b) If the unpaid time balance or time sale price at the time of default is \$700 or more, the seller may recover from the buyer any deficiency that results from deducting the fair market value of the goods or motor vehicles from the unpaid time balance or time sale price. However, the action by the seller against the buyer for the recovery of the deficiency must be commenced not later than 90 days after the date on which the seller repossessed or voluntarily accepted surrender of the goods or motor vehicles.

(c) If the seller brings an action and obtains judgment against the buyer for the unpaid time balance or time sale price without having first repossessed or voluntarily accepted surrender of the goods or motor vehicles, and if under the provisions of paragraph (a) of this subsection the seller would not be entitled to a deficiency judgment, the seller may not repossess the goods or motor vehicles after obtaining judgment for the unpaid time balance or time sale price.

(2) As used in this section:

(a) "Unpaid time balance or time sale price" means that amount the buyer would have been required to pay if the buyer's obligation had been paid in full at the time of default.

(b) "Seller" includes the assignee of the seller.

SECTION 4. (1) Notwithstanding any other provision of law:

(a) If the borrower defaults in the repayment of a loan that was made for the purchase of goods or motor vehicles, and if the lender repossesses or voluntarily accepts surrender of the goods or motor vehicles, and if the unpaid balance of the loan obligation at the time of default is less than \$700, the borrower shall not be personally liable to the lender for any deficiency between the amount of his unpaid loan obligation and the amount realized by the lender on resale or other disposition of the goods or motor vehicles. However, the borrower is liable in damages to the lender for any repossessed or surrendered goods or motor vehicles that have been wrongfully damaged.

(b) If the amount of the borrower's unpaid loan obligation at the time of default in the repayment of a loan made for the purchase of goods or motor vehicles is \$700 or more, the lender may recover from the borrower any deficiency that results from deducting the fair market value of the goods or motor vehicles from the amount of the unpaid loan obligation. However, the action by the lender against the borrower for the recovery of the deficiency must be commenced not later than 90 days after the date on which the lender repossessed or voluntarily accepted surrender of the goods or motor vehicles for the purchase of which the loan was made.

(c) If the lender brings an action and obtains judgment against the borrower for the amount of the unpaid loan obligation without having first repossessed or voluntarily accepted surrender of the goods or motor vehicles, and if under the provisions of paragraph (a) of this subsection the lender would not be entitled to a deficiency judgment, the lender may not repossess the goods or motor vehicles after obtaining judgment for the unpaid loan obligation.

- (2) As used in this section:
- (a) "Goods" has the meaning for that term provided in ORS 83.010.
 - (b) "Motor vehicles" has the meaning for that term provided in ORS 83.510 purchased primarily for personal, family or household purposes and not primarily for business or commercial purposes.
 - (c) "Lender" includes the assignee of the lender.

Section 5. ORS 646.605 is amended to read:

646.605. As used in [ORS 646.605 to 646.645] sections 5 to 19 of this 1971

Act:

(1) ["Seller" means any person or his agent who sells or offers for sale any product, property or service.] "Trade" and "commerce" mean the advertising, offering for sale, sale or distribution of any services or any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this state.

(2) ["Purchaser" means any person who purchases or is solicited to purchase any product, property or service.] "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(3) ["Product" means any goods or merchandise.] "Examination" of documentary material shall include the inspection, study, or copying of any such material, and the taking of testimony under oath or acknowledgment in respect of any such documentary material or copy thereof.

[(4) "Equipment" means any household furnishings, appliance or fixture and any machinery, mechanical device or vehicle.]

[(5)] (4) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity except bodies or officers acting under statutory authority of this state or the United States.

[(6)] (5) "Prosecuting [officer] attorney" means the Attorney General or the district attorney of any county in which a violation of [ORS 646.605 to 646.645] sections 5 to 19 of this 1971 Act is alleged to have occurred.

[(7)] (6) "Appropriate court" means the district or circuit court of a county:

- (a) Where one or more of the defendants reside; or
- (b) Where one or more of the defendants maintain a principal place of business; or
- (c) Where one or more of the defendants are alleged to have committed an act prohibited by [ORS 646.605 to 646.645] sections 5 to 19 of this 1971 Act; or
- (d) With the defendant's consent, where the prosecuting officer maintains his office.

(7) "Goods or services" means those which are used or bought primarily for personal, family or household purposes, but does not include insurance.

(8) A wilful violation occurs when the person committing the violation knew or should have known that his conduct was a violation.

SECTION 6. ORS 646.615 is repealed and section 7 of this Act is enacted in lieu thereof.

SECTION 7. (1) A person engages in a practice hereby declared to be unlawful when in the course of his business, vocation or occupation he:

- (a) Passes off goods or services as those of another;
- (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of 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 goods or services;

(e) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that he does not have;

(f) Represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or second-hand;

(g) Represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(h) Disparages the goods, services, property or business of the buyer or another by false or misleading representations of fact;

(i) Advertises goods and services with intent not to sell 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 the availability of credit 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 property to be used for model or demonstration purposes or in exchange for submitting names of other purchasers to the seller;

(m) Performs service on or dismantles any household furnishings, appliance or fixture or any machinery, mechanical device or vehicle at a residence when not authorized by the owner or apparent owner;

(n) Solicits by telephone or door to door as a seller unless the seller, within 30 seconds after beginning the conversation, identifies himself, whom he represents and the purpose of his call;

(o) In a sale of goods or services, gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the buyer in consideration of the buyer giving to the seller the names of prospective purchasers, lessees, or borrowers, or otherwise aiding the seller in making a sale, lease, or loan to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer 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 goods or services within a certain period of time with intent not to deliver them as promised;

(r) Engages in any other conduct which similarly creates a likelihood of confusion.

(2) A representation under subsection (1) of this section 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 sections 5 to 19 of this 1971 Act, a prosecuting attorney need not prove competition between the parties or actual confusion or misunderstanding.

(4) No action or suit shall be brought under paragraph (r) of subsection (1) 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 confusing to the consumer.

SECTION 8. Sections 9 to 19 of this Act are added to and made a part of ORS 646.605 to 646.645.

Note: Section 9 was deleted by amendment.

SECTION 10. The provisions of section 7 of this 1971 Act do not apply to:

(1) Conduct in compliance with the orders or rules of, or a statute administered by a federal, state or local governmental agency.

(2) Acts done by the publisher, owner, agent or employe of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, when the publisher, owner, agent or employe did not have knowledge of the false, misleading or deceptive character of the advertisement.

SECTION 11. (1) Whenever the prosecuting attorney has probable cause to believe that a person is engaging in, has engaged in, or is about to engage in an unlawful trade practice, he may bring suit in the name of the State of Oregon in the appropriate court to restrain such person from engaging in the alleged unlawful trade practice.

(2) Before filing a suit under subsection (1) of this section, the prosecuting attorney shall in writing notify the person charged of the alleged unlawful trade practice and the relief to be sought. Such notice shall be served in the manner set forth in section 15 of this 1971 Act for the service of investigative demands. The person charged thereupon shall have 10 days within which to execute and deliver to the prosecuting attorney an assurance of voluntary compliance. Such assurance shall set forth what actions, if any, the person charged intends to take with respect to the alleged unlawful trade practice. The assurance of voluntary compliance shall not be considered an admission of a violation for any purpose. If the prosecuting attorney is satisfied with the assurance of voluntary compliance, it may be submitted to an appropriate court for approval and if approved shall thereafter be filed with the clerk of the court. Violation of an assurance of voluntary compliance which has been approved by and filed with the court shall constitute a contempt of court. The notice of the prosecuting attorney under this subsection shall not be deemed a public record until the expiration of 10 days from the service of the notice.

(3) Notwithstanding subsection (2) of this section, where the prosecuting attorney alleges that he has reason to believe that the delay caused by complying with the provisions of subsection (2) of this section would cause immediate harm to the public health, safety or welfare, the prosecuting attorney may immediately institute a suit under subsection (1) of this section.

(4) A temporary restraining order may be granted without prior notice to the person if the court finds there is a threat of immediate harm to the public health, safety or welfare. Such a temporary restraining order shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the person restrained consents that it may be extended for a longer period.

(5) The court may award reasonable attorney fees to the prevailing party in a suit brought under this section. If the defendant prevails in such suit and the court finds that the defendant had in good faith submitted to the prosecuting attorney a satisfactory assurance of voluntary compliance prior to the institution of the suit or that the prosecuting attorney, in a suit brought under subsection (3) of this section, did not have reasonable grounds to proceed under that subsection, the court shall award reasonable attorney fees to the defendant. If the state prevails, the reasonable expenses of investigation, preparation and prosecution shall be taxed against the defendant, upon application of the prosecuting attorney, in the same manner as costs are taxed and shall be in addition thereto.

SECTION 12. The court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, of which he was deprived by means of any

practice declared to be unlawful in section 7 of this 1971 Act, or as may be necessary to insure cessation of unlawful trade practices.

SECTION 13. (1) Any person who purchases or leases goods or services and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the wilful use or employment by another person of a method, act or practice declared unlawful by section 7 of this 1971 Act, may bring an individual action in an appropriate court to recover actual damages or \$200, whichever is greater. The court or the jury, as the case may be, may award punitive damages and the court may provide such equitable relief as it deems necessary or proper.

(2) Upon commencement of any action brought under subsection (1) of this section the clerk of the court shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the Attorney General.

(3) In any action brought by a person under this section, the court may award, in addition to the relief provided in this section, reasonable attorney fees and costs.

(4) Any permanent injunction or final judgment or order of the court made under section 11 or 12 of this 1971 Act shall be prima facie evidence in an action brought under this section that the respondent used or employed a method, act or practice declared unlawful by section 7 of this 1971 Act, but an assurance of voluntary compliance, whether or not approved by the court, shall not be evidence of such violation.

(5) Actions brought under this section shall be commenced within one year from the discovery of the unlawful method, act or practice. However, whenever any complaint is filed by a prosecuting attorney to prevent, restrain or punish violations of section 7 of this 1971 Act, the running of the statute of limitations with respect to every private right of action under this section and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof.

(6) Notwithstanding subsection (5) of this section, in any action brought by a seller or lessor against a purchaser or lessee of goods or services, such purchaser or lessee may assert any counterclaim he has arising out of a violation of sections 5 to 19 of this 1971 Act.

SECTION 14. (1) When it appears to the prosecuting attorney that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by section 7 of this 1971 Act, he may execute in writing and cause to be served an investigative demand upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation. The investigative demand shall require such person, under oath or otherwise, to appear and testify or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand, or to do any of the foregoing, concerning the advertisement, sale or offering for sale of any goods or services or the conduct of any trade or commerce which is the subject matter of the investigation.

(2) At any time before the return date specified in an investigative demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause including privileged material, may be filed in the appropriate court.

SECTION 15. Service of any investigative demand under section 14 of this 1971 Act shall be made personally within this state. If personal

service cannot be made, substituted service therefor may be made in the following manner:

- (1) Personal service thereof without this state;
- (2) The mailing thereof by registered or certified mail to the last-known place of business, residence or abode within or without this state of such person for whom the same is intended;
- (3) As to any person other than a natural person, in the manner provided for service of summons in an action or suit; or
- (4) Such service as the court may direct in lieu of personal service within this state.

SECTION 16. (1) If any person after being served with an investigative demand under section 15 of this 1971 Act, fails or refuses to obey an investigative demand issued by the prosecuting attorney, the prosecuting attorney may, after notice, apply to an appropriate court and, after hearing thereon, request an order:

(a) Granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation;

(b) Granting such other relief as may be required, until the person obeys the investigative demand.

(2) Any disobedience of any final order of a court under this section shall be punished as a contempt of court.

SECTION 17. (1) Any person who wilfully violates the terms of an injunction issued under section 11 of this 1971 Act shall forfeit and pay to the state a civil penalty of not more than \$25,000 per violation. For the purposes of this section, the court issuing the injunction shall retain jurisdiction and the cause shall be continued, and in such cases the prosecuting attorney acting in the name of the state may petition for recovery of civil penalties.

(2) Any person who by an assurance of voluntary compliance submitted under section 11 of this 1971 Act agrees not to engage in a particular act, method or practice made unlawful by section 7 of this 1971 Act and thereafter wilfully violates such assurance, shall forfeit and pay to the state a civil penalty of not more than \$25,000 per violation. The prosecuting attorney may apply to an appropriate court for recovery of such civil penalty.

(3) In any suit brought under section 11 of this 1971 Act, if the court finds that a person is wilfully using or has wilfully used a method, act or practice declared unlawful by section 7 of this 1971 Act, the prosecuting attorney, upon petition to the court, may recover, on behalf of the state, a civil penalty of not exceeding \$2,000 per violation.

SECTION 18. Upon petition by the prosecuting attorney, the court may, in its discretion, order the dissolution or suspension or forfeiture of the license or franchise of any person who violates the terms of any injunction issued under section 11 of this 1971 Act.

SECTION 19. A district attorney shall make a full report to the Attorney General of any action, suit, or proceeding prosecuted by such district attorney under sections 5 to 19 of this 1971 Act, including the final disposition of the matter, and shall file with the Attorney General copies of all assurances of voluntary compliance accepted under section 11 of this 1971 Act.

SECTION 20. Section 21 of this Act is added to and made a part of ORS chapter 83.

SECTION 21. (1) "Home solicitation sale" means a sale of goods or services as defined in ORS 83.010 other than insurance, farm equipment, or motor vehicles in which the seller or a person acting for him engages in a personal solicitation of the sale at a residence other than that of the seller and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him. It does not include a sale made pursuant

to a preexisting revolving charge account, a contract in writing for the sale or lease of a house or business property or the construction of a new house or business property, a sale made pursuant to prior business negotiations relevant to such sale between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, or a sale for cash or check in the amount of \$50 or less.

(2) (a) Except as provided in paragraph (e) of this subsection, in addition to any other right to revoke an offer or rescind a transaction which the buyer may have, the buyer has the right to cancel a home solicitation sale until 12 midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with this section or pays by cash or check.

(b) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

(c) Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.

(d) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by a form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(e) The buyer may not cancel a home solicitation sale if the buyer in a separate signed writing not furnished by the seller requests the seller to provide goods or services without delay because of an emergency, and

(A) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation, and

(B) In case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

(3) (a) In a home solicitation sale the seller must present to the buyer and obtain his signature to a written agreement or offer to purchase which designates as the date of the transaction the date on which the buyer actually signs and contains a statement of the buyer's right which complies with paragraph (b) of this subsection.

(b) The statement must be in conspicuous type, 8-point or larger, and must read as follows:

BUYER'S RIGHT TO CANCEL

If this agreement was solicited at a residence other than that of the seller and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before 12 midnight of the third business day after you sign this agreement. The notice must be mailed to: _____

(insert name and mailing address of seller)

IF YOU CANCEL, THE SELLER MAY RETAIN AS A CANCELLATION FEE 5 PERCENT OF THE CASH PRICE, BUT NOT EXCEEDING YOUR CASH DOWN PAYMENT, OR \$10, WHICHEVER IS THE LESSER.

However: You may not cancel if you have requested the seller to provide goods or services without delay because of an emergency, and

(1) The seller in good faith makes a substantial beginning of performance of the contract before you give notice of cancellation, and

(2) In the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

(c) If disclosure is made in accordance with the provisions of ORS 83.810, then in addition thereto the seller must give the portion of the statement required by paragraph (b) of this subsection which advises that

if the buyer cancels the seller may retain as a cancellation fee five percent of the cash price, but not exceeding the cash down payment, or \$10, whichever is the lesser.

(d) Until the seller has complied with this subsection the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

(4) (a) Except as provided in this subsection, the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness within 10 days after a home solicitation sale has been canceled or an offer to purchase has been revoked.

(b) If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this subsection, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(c) The seller may retain as a cancellation fee five percent of the cash price but not exceeding the amount of the cash down payment, or \$10, whichever is the lesser. If the seller fails to comply with an obligation imposed by this subsection, or if the buyer avoids the sale on any ground independent of his right to cancel pursuant to paragraph (a) of subsection (2) of this section, or revokes his offer to purchase prior to acceptance thereof by the seller, the seller is not entitled to retain a cancellation fee.

(d) The buyer may retain possession of goods delivered to him by the seller, and has a lien on the goods in his possession or control for any recovery to which he is entitled, until the seller has complied with the obligations imposed by this subsection.

(5) (a) Except as provided by paragraph (d) of subsection (4) of this section, within a reasonable time after a home solicitation sale has been canceled or an offer to purchase revoked, the buyer must tender to the seller upon demand any goods delivered by the seller pursuant to the sale, but he is not obliged to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this subsection, 20 days is presumed to be a reasonable time.

(b) The buyer has a duty to take reasonable care of the goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

(c) If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation except the cancellation fee provided in this section.

SECTION 21a. The remedies provided in sections 5 to 19 of this 1971 Act are in addition to all other remedies, civil or criminal, existing at common law or under the laws of this state.

SECTION 22. Section 23 of this Act is added to and made a part of ORS 20.010 to 20.180.

SECTION 23. (1) In any action for damages for breach of an express or implied warranty in a sale of consumer goods or services where the amount pleaded is \$1,000 or less and the plaintiff prevails in the action, there shall be taxed and allowed to the plaintiff, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the action, if the court finds that written demand for the payment of such claim was made on the defendant not less than 30 days before commencement of the action and that the defendant was allowed within said 30 days reasonable opportunity to inspect any property pertaining to the claim; provided, that no attorney fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the

plaintiff, prior to the commencement of the action, an amount not less than the damages awarded to the plaintiff.

(2) If the defendant prevails in an action in which the plaintiff requests attorney fees under subsection (1) of this section, the court may in its discretion allow reasonable attorney fees to the defendant if it finds the action to have been frivolous.

Section 24. ORS 646.990 is amended to read:

646.990. (1) Each violation of any of the provisions of ORS 646.010 to 646.180 by any person, firm or corporation, whether as principal, agent, officer or director, for himself or itself, or for another person, or for any firm or corporation, is punishable, upon conviction, by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail not exceeding six months, or by both.

[(2) Violation of ORS 646.220 and each separate offense under ORS 646.230 is punishable, upon conviction, by a fine not exceeding \$500 or by imprisonment in the county jail not exceeding six months, or by both.]

[(3)] (2) Violation of ORS 646.260 is punishable, upon conviction, by a fine of not less than \$500 nor more than \$5,000, or by imprisonment in the county jail not exceeding one year, or by both.

[(4)] (3) Violation of ORS 646.460 is punishable, upon conviction, by a fine of not more than \$5,000 or by imprisonment in the penitentiary for not more than five years or in the county jail for not more than one year, or by both such fine and imprisonment.

[(5) Violation of ORS 646.810 is punishable, upon conviction, by a fine of not more than \$100 or by imprisonment in the county jail not exceeding 30 days.]

[(6) Violation of ORS 646.820 or 646.830 is punishable, upon conviction, by a fine of not more than \$5,000 or by imprisonment in the county jail for not more than one year, or by both.]

[(7) Violation of ORS 646.840 is punishable, upon conviction, by a fine of not less than \$50 nor more than \$250, or by imprisonment in the county jail for not less than 20 nor more than 90 days, or by both.]

[(8)] (4) Violation of ORS 646.860 is a misdemeanor.

SECTION 25. There is established within the Department of Justice the Consumer Protection Division to carry out the functions of the Attorney General under this 1971 Act. The Consumer Protection Division shall be maintained, operated and controlled by the Attorney General, who may employ personnel necessary to carry out the duties and functions of the division and fix their compensation, subject to any applicable provisions of the State Merit System Law.

SECTION 26. In addition to and not in lieu of appropriations made by section 1, chapter 93, Oregon Laws 1971 (Enrolled House Bill 2073), there hereby is appropriated to the Department of Justice for the biennium beginning July 1, 1971, out of the General Fund, the sum of \$200,000 for expenses of the Consumer Protection Division.

SECTION 27. ORS 646.210, 646.220, 646.230, 646.625, 646.635, 646.645, 646.655, 646.810, 646.820, 646.830 and 646.840 are repealed.

SECTION 28. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act shall take effect on July 1, 1971.

Chapter

, Oregon Laws 1971

ENROLLED

House Bill 3037

Passed by House May 4, 1971
Repassed by House June 10, 1971

Chief Clerk of House

Speaker of House

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President of Senate

Received by Executive Department:

M., 1971.

Approved: , 1971.

Governor

Filed in Office of Secretary of State:

M., 1971.

Secretary of State

Enrolled

Re-Eng - Re-Engrossed

House Bill 3037

Sponsored by COMMITTEE ON JUDICIARY

Re-eng
and
Engrossed
VII
Re-eng
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et al

CHAPTER.....

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**.

Revises laws relating to deceptive trade practices. Permits buyer to assert defenses against holders in due course of evidence of indebtedness on consumer goods purchases. Allows attorney fees in certain breach of warranty actions and allows private suits for damages for deceptive trade practices. Declares consumer paper to be nonnegotiable except regarding governmental units. Authorizes assessment of punitive damages for unlawful trade practices except against security interest assignee. Denies deficiency judgments after repossession if time balance is less than \$500. Denies repossession where deficiency judgment for less than \$500 is obtained. Authorizes Attorney General (in addition to district attorneys) to sue to enforce laws against or to restrain deceptive trade practices. Establishes procedure for court-supervised assurance of voluntary compliance by seller and declares violation of assurance provisions to be contempt of court. Grants right to cancel to home solicitation buyers and requires notice of right in home solicitation sales. Provides civil and criminal penalties.

Declares an emergency.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

A BILL FOR AN ACT

1
2 Relating to consumer protection; creating new provisions; amending ORS

3 646.605 and 646.990; repealing ORS 646.210, 646.220, 646.230, 646.615,
4 646.625, 646.635, 646.645, 646.655, 646.810, 646.820, 646.830 and 646.840;^{appropriately money;}

5 providing penalties; and declaring an emergency.

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

7 **SECTION 1.** Sections 2 to 4 of this Act are added to and made a part
8 of ORS chapter 83.

9 **SECTION 2.** (1) In any contract for the sale or lease of consumer
10 goods or services on credit entered into between a retail seller and a
11 retail buyer, such contract, note or any instrument or evidence of indebt-
12 edness of the buyer shall have printed on the face thereof the words
13 "consumer paper", and such contract, note, instrument or evidence of in-
14 debtedness with the words "consumer paper" printed thereon shall not
15 be a negotiable instrument within the meaning of the Uniform Commercial
16 Code-Commercial Paper. However, this section shall have no force or
17 effect on the negotiability of any contract, promissory note, instrument
18 or other evidence of indebtedness owned or guaranteed or insured by
19 any state or federal governmental agency even though said contract, note,
20 instrument or other evidence of indebtedness shall contain the wording
21 required by this subsection.

22 (2) Notwithstanding the absence of such notice on a contract, note, in-
23 strument or evidence of indebtedness arising out of a consumer credit
24 sale or consumer lease as described in this section, an assignee of the
25 rights of the seller or lessor is subject to all claims and defenses of the
26 buyer or lessee against the seller or lessor arising out of the sale or lease.
27 Any agreement to the contrary shall be of no force or effect in limiting
28 the rights of a consumer under this section. The assignee's liability under
29 this section may not exceed the amount owing to the assignee at the time
30 the claim or defense is asserted against the assignee. The restrictions im-
31 posed hereby shall not apply with respect to any promissory note, con-
32 tract, instrument or other evidence of indebtedness owned or guaranteed
33 or insured by any state or federal governmental agency even though said

1 note, contract, instrument or other evidence of indebtedness shall contain
2 the words required by subsection (1) of this section.

3 (3) An assignee of "consumer paper" who in good faith enforces a
4 security interest in property held by the buyer or lessee shall not be
5 liable to such buyer or lessee for punitive damages in an action for wrong-
6 ful repossession. The fact that a seller or lessor has broken his warranties
7 with regard to the property sold or leased shall not, of itself, make an as-
8 signee's repossession wrongful.

9 **SECTION 3.** (1) Notwithstanding any other provision of law:

10 (a) If the buyer defaults in the performance of a retail instalment
11 contract or retail charge agreement subject to ORS 83.010 to 83.190 or
12 ~~83.510 to 83.680~~ *which do not apply to lease of consumer goods and services* and if the seller repossesses or voluntarily accepts sur-
13 render of the goods or motor vehicles, and if at the time of default the
14 unpaid time balance or time sale price is less than ~~\$500~~ ^{\$1,000} ~~400~~ ⁷⁰⁰, the buyer shall
15 not be personally liable to the seller for any deficiency between the
16 amount of his unpaid obligation and the amount realized by the seller
17 on resale or other disposition of the goods or motor vehicles. However,
18 the buyer is liable in damages to the seller for any repossessed or sur-
19 rendered goods or motor vehicles that have been wrongfully damaged.

20 (b) If the unpaid time balance or time sale price at the time of default is
21 ~~\$500~~ ^{\$1,000} ~~700~~ or more, the seller may recover from the buyer any deficiency that
22 results from deducting the fair market value of the goods or motor vehicles
23 from the unpaid time balance or time sale price. ⁽¹⁾

24 (c) If the seller brings an action and obtains judgment against the
25 buyer for the unpaid time balance or time sale price without having
26 first repossessed or voluntarily accepted surrender of the goods or motor
27 vehicles, and if under the provisions of paragraph (a) of this subsection
28 the seller would not be entitled to a deficiency judgment, the seller may
29 not repossess the goods or motor vehicles after obtaining judgment for
30 the unpaid time balance or time sale price.

31 (2) As used in this section:

32 (a) "Unpaid time balance or time sale price" means that amount the
33 buyer would have been required to pay if the buyer's obligation had been
34 paid in full at the time of default.

Insert 1

1 note, contract, instrument or other evidence of indebtedness shall contain
2 the words required by subsection (1) of this section.

3 (3) An assignee of "consumer paper" who in good faith enforces a
4 security interest in property held by the buyer or lessee shall not be
5 liable to such buyer or lessee for punitive damages in an action for wrong-
6 ful repossession. The fact that a seller or lessor has broken his warranties
7 with regard to the property sold or leased shall not, of itself, make an as-
8 signee's repossession wrongful.

9 SECTION 3. (1) Notwithstanding any other provision of law:

10 (a) If the buyer defaults in the performance of a retail instalment
11 contract or retail charge agreement subject to ORS 83.010 to 83.190 or
12 ~~83.510 to 83.680~~ ^{which is for the sale or lease of consumer goods or services} and if the seller repossesses or voluntarily accepts sur-
13 render of the goods or motor vehicles, and if at the time of default the
14 unpaid time balance or time sale price is less than ~~\$500~~ ^{\$1,000} the buyer shall
15 not be personally liable to the seller for any deficiency between the
16 amount of his unpaid obligation and the amount realized by the seller
17 on resale or other disposition of the goods or motor vehicles. However,
18 the buyer is liable in damages to the seller for any repossessed or sur-
19 rendered goods or motor vehicles that have been wrongfully damaged.

20 (b) If the unpaid time balance or time sale price at the time of default is
21 ~~\$500~~ ^{\$1,000} or more, the seller may recover from the buyer any deficiency that
22 results from deducting the fair market value of the goods or m
23 from the unpaid time balance or time sale price. ^① "However,

24 the action by the seller against the buyer for the recovery of the deficiency
25 must be commenced not later than 90 days after the date on which the
26 seller repossessed or voluntarily accepted surrender of the goods or motor
27 vehicles." ^②

28 paragraph (a) of this subsection
29 the seller would not be entitled to a deficiency judgment, the seller may
30 not repossess the goods or motor vehicles after obtaining judgment for
31 the unpaid time balance or time sale price.

32 (2) As used in this section:

33 (a) "Unpaid time balance or time sale price" means that amount the
34 buyer would have been required to pay if the buyer's obligation had been
paid in full at the time of default.

Insert 1

1 (b) "Seller" includes the assignee of the seller.

2 **SECTION 4.** (1) Notwithstanding any other provision of law:

3 (a) If the borrower defaults in the repayment of a loan that was made
4 for the purchase of goods or motor vehicles, and if the lender repossesses
5 or voluntarily accepts surrender of the goods or motor vehicles, and if the
6 unpaid balance of the loan obligation at the time of default is less than
7 ~~the unpaid balance~~ ⁵⁰⁰ \$500, the borrower shall not be personally liable to the lender for any
8 deficiency between the amount of his unpaid loan obligation and the
9 amount realized by the lender on resale or other disposition of the goods
10 or motor vehicles. However, the borrower is liable in damages to the
11 lender for any repossessed or surrendered goods or motor vehicles that
12 have been wrongfully damaged.

13 (b) If the amount of the borrower's unpaid loan obligation at the time
14 of default in the repayment of a loan made for the purchase of goods or
15 motor vehicles is ~~the unpaid balance~~ ⁵⁰⁰ \$500 or more, the lender may recover from the borrower
16 any deficiency that results from deducting the fair market value of the
17 goods or motor vehicles from the amount of the unpaid loan obligation. ①

18 (c) If the lender brings an action and obtains judgment against the
19 borrower for the amount of the unpaid loan obligation without having
20 first repossessed or voluntarily accepted surrender of the goods or motor
21 vehicles, and if under the provisions of paragraph (a) of this subsection
22 the lender would not be entitled to a deficiency judgment, the lender may
23 not repossess the goods or motor vehicles after obtaining judgment for
24 the unpaid loan obligation.

25 (2) As used in this section:

26 (a) "Goods" has the meaning for that term provided in ORS 83.010.

27 (b) "Motor vehicles" has the meaning for that term provided in ORS
28 83.510.

29 (c) "Lender" includes the assignee of the lender.

30 Section 5. ORS 646.605 is amended to read:

31 646.605. As used in [ORS 646.605 to 646.645] sections 5 to 19 of this 1971

32 **Act:**

33 (1) ["Seller" means any person or his agent who sells or offers for
34 sale any product, property or service.] "Trade" and "commerce" mean the

1 (b) "Seller" includes the assignee of the seller.

2 **SECTION 4.** (1) Notwithstanding any other provision of law:

3 (a) If the borrower defaults in the repayment of a loan that was made
4 for the purchase of goods or motor vehicles, and if the lender repossesses
5 or voluntarily accepts surrender of the goods or motor vehicles, and if the
6 unpaid balance of the loan obligation at the time of default is less than
7 ~~\$500~~ ^{\$4000}, the borrower shall not be personally liable to the lender for any
8 deficiency between the amount of his unpaid loan obligation and the
9 amount realized by the lender on resale or other disposition of the goods
10 or motor vehicles. However, the borrower is liable in damages to the
11 lender for any repossessed or surrendered goods or motor vehicles that
12 have been wrongfully damaged.

13 (b) If the amount of the borrower's unpaid loan obligation at the time
14 of default in the repayment of a loan made for the purchase of goods or
15 motor vehicles is ~~\$500~~ ^{\$4000} or more, the lender may recover from the borrower
16 any deficiency that results from deducting the fair market value of the
17 goods or motor vehicles from the amount of the ^①

18 (c) If the lender brings an action and obtains judgment, ^② However, the action by the
19 lender against the borrower for the recovery of the deficiency must be
20 commenced not later than 90 days after the date on which the lender re-
21 possessed or voluntarily accepted surrender of the goods or motor vehicles
22 for the purchase of which the loan was made." ^③

23 not repossess the goods or motor vehicles after obtaining judgment for
24 the unpaid loan obligation.

25 (2) As used in this section:

26 (a) "Goods" has the meaning for that term provided in ORS 83.010.

27 (b) "Motor vehicles" has the meaning for that term provided in ORS

28 83.510 ^④ "purchased primarily for per-
29 sonal, family or household purposes and not primarily for business or com-
30 mercial purposes". 05 is amended to read:

31 646.605. As used in [ORS 646.605 to 646.645] sections 5 to 19 of this 1971

32 Act :

33 (1) ["Seller" means any person or his agent who sells or offers for
34 sale any product, property or service.] "Trade" and "commerce" mean the

1 advertising, offering for sale, sale or distribution of any services or any
2 property, tangible or intangible, real, personal or mixed, and any other
3 article, commodity, or thing of value wherever situate, and shall include
4 any trade or commerce directly or indirectly affecting the people of this
5 state.

6 (2) [*"Purchaser" means any person who purchases or is solicited to*
7 *purchase any product, property or service.*] **"Documentary material"** means
8 the original or a copy of any book, record, report, memorandum, paper, com-
9 munication, tabulation, map, chart, photograph, mechanical transcription,
10 or other tangible document or recording, wherever situate.

11 (3) [*"Product" means any goods or merchandise.*] **"Examination"** of
12 documentary material shall include the inspection, study, or copying of
13 any such material, and the taking of testimony under oath or acknowledg-
14 ment in respect of any such documentary material or copy thereof.

15 [(4) *"Equipment" means any household furnishings, appliance or fix-*
16 *ture and any machinery, mechanical device or vehicle.*]

17 [(5)] (4) **"Person"** means natural persons, corporations, trusts, part-
18 nerships, incorporated or unincorporated associations, and any other legal
19 entity except bodies or officers acting under statutory authority of this
20 state or of the United States. E.C.

21 [(6)] (5) **"Prosecuting [officer] attorney"** means the **Attorney Gen-**
22 **eral or the district attorney** of any county in which a violation of [ORS
23 646.605 to 646.645] sections 5 to 19 of this 1971 Act is alleged to have oc-
24 curred.

25 [(7)] (6) **"Appropriate court"** means the **district or circuit court of**
26 a county:

27 (a) Where one or more of the defendants reside; or

28 (b) Where one or more of the defendants maintain a principal place
29 of business; or

30 (c) Where one or more of the defendants are alleged to have com-
31 mitted an act prohibited by [ORS 646.605 to 646.645] sections 5 to 19 of
32 this 1971 Act; or

33 (d) With the defendant's consent, where the prosecuting officer main-
34 tains his office.

1 (7) "Goods or services" means those which are used or bought pri-
2 marily for personal, family or household purposes, but does not include
3 insurance.

4 (8) A wilful violation occurs when the person committing the violation
5 knew or should have known that his conduct was a violation.

6 SECTION 6. ORS 646.615 is repealed and section 7 of this Act is en-
7 acted in lieu thereof.

8 SECTION 7. (1) A person engages in a practice hereby declared to
9 be unlawful when in the course of his business, vocation or occupation he:

10 (a) Passes off goods or services as those of another;

11 (b) Causes likelihood of confusion or of misunderstanding as to the
12 source, sponsorship, approval, or certification of goods or services;

13 (c) Causes likelihood of confusion or of misunderstanding as to affilia-
14 tion, connection, or association with, or certification by, another;

15 (d) Uses deceptive representations or designations of geographic origin
16 in connection with goods or services;

17 (e) Represents that goods or services have sponsorship, approval, char-
18 acteristics, ingredients, uses, benefits, or qualities that they do not have
19 or that a person has a sponsorship, approval, status, qualification, affilia-
20 tion, or connection that he does not have;

21 (f) Represents that goods are original or new if they are deteriorated,
22 altered, reconditioned, reclaimed, used or second-hand;

23 (g) Represents that goods or services are of a particular standard,
24 quality, or grade, or that goods are of a particular style or model, if they
25 are of another;

26 (h) Disparages the goods, services, property or business of the buyer
27 or another by false or misleading representations of fact;

28 (i) Advertises goods and services with intent not to sell them as ad-
29 vertised or with intent not to supply reasonably expectable public de-
30 mand, unless the advertisement discloses a limitation of quantity;

31 (j) Makes false or misleading representations of fact concerning the
32 reasons for, existence of, or amounts of price reductions;

33 (k) Makes false or misleading representations concerning the avail-
34 ability of credit or the nature of the transaction or obligation incurred;

1 (L) Makes false or misleading representations relating to commis-
2 sions or other compensation to be paid in exchange for permitting property
3 to be used for model or demonstration purposes or in exchange for sub-
4 mitting names of other purchasers to the seller;

5 (m) Performs service on or dismantles any household furnishings,
6 appliance or fixture or any machinery, mechanical device or vehicle at a
7 residence when not authorized by the owner or apparent owner;

8 (n) Solicits by telephone or door to door as a seller unless the seller,
9 within 30 seconds after beginning the conversation, identifies himself,
10 whom he represents and the purpose of his call;

11 (o) In a sale of goods or services, gives or offers to give a rebate or
12 discount or otherwise pays or offers to pay value to the buyer in consider-
13 ation of the buyer giving to the seller the names of prospective purchasers,
14 lessees, or borrowers, or otherwise aiding the seller in making a sale, lease,
15 or loan to another person, if the earning of the rebate, discount or other
16 value is contingent upon the occurrence of an event subsequent to the
17 time the buyer enters into the transaction;

18 (p) Makes any false or misleading statement about a prize, contest or
19 promotion used to publicize a product, business or service;

20 (q) Promises to deliver goods or services within a certain period of
21 time with intent not to deliver them as promised;

22 (r) Engages in any other conduct which similarly creates a likelihood
23 of confusion.

24 (2) A representation under subsection (1) of this section may be any
25 manifestation of any assertion by words or conduct, including, but not
26 limited to, a failure to disclose a fact.

27 (3) In order to prevail in an action or suit under sections 5 to 19 of
28 this 1971 Act, a prosecuting attorney need not prove competition between
29 the parties or actual confusion or misunderstanding.

30 (4) No action or suit shall be brought under paragraph (r) of subsection
31 (1) of this section unless the Attorney General has first established a rule
32 in accordance with the provisions of ORS chapter 183 declaring the con-
33 duct to be confusing to the consumer.

1 SECTION 8. Sections 9 to 19 of this Act are added to and made a part
2 of ORS 646.605 to 646.645.

3 ~~SECTION 9. Violation of paragraph (m), (n), (o) or (p) of subsection~~
4 ~~(1) of section 7 of this 1971 Act is a misdemeanor.~~

5 *Note: Section 9 was deleted by amendment.*

6 SECTION 10. The provisions of section 7 of this 1971 Act do not apply
7 to:

8 (1) Conduct in compliance with the orders or rules of, or a statute ad-
9 ministered by a federal, state or local governmental agency.

10 (2) Acts done by the publisher, owner, agent or employe of a news-
11 paper, periodical or radio or television station in the publication or dis-
12 semination of an advertisement, when the publisher, owner, agent or
13 employe did not have knowledge of the false, misleading or deceptive
14 character of the advertisement.

15 SECTION 11. (1) Whenever the prosecuting attorney has probable
16 cause to believe that a person is engaging in, has engaged in, or is about
17 to engage in an unlawful trade practice, he may bring suit in the name of
18 the State of Oregon in the appropriate court to restrain such person from
19 engaging in the alleged unlawful trade practice.

20 (2) Before filing a suit under subsection (1) of this section, the prosecut-
21 ing attorney shall in writing notify the person charged of the alleged unlaw-
22 ful trade practice and the relief to be sought. Such notice shall be served
23 in the manner set forth in section 15 of this 1971 Act for the service of
24 investigative demands. The person charged thereupon shall have 10 days
25 within which to execute and deliver to the prosecuting attorney an assur-
26 ance of voluntary compliance. Such assurance shall set forth what actions,
27 if any, the person charged intends to take with respect to the alleged un-
28 lawful trade practice. The assurance of voluntary compliance shall not
29 be considered an admission of a violation for any purpose. If the prose-
30 cuting attorney is satisfied with the assurance of voluntary compliance, it
31 may be submitted to an appropriate court for approval and if approved
32 shall thereafter be filed with the clerk of the court. Violation of an as-
33 surance of voluntary compliance which has been approved by and filed
with the court shall constitute a contempt of court. The notice of the

1 prosecuting attorney under this subsection shall not be deemed a public
2 record until the expiration of 10 days from the service of the notice.

3 (3) Notwithstanding subsection (2) of this section, where the prosecut-
4 ing attorney alleges that he has reason to believe that the delay caused
5 by complying with the provisions of subsection (2) of this section would
6 cause immediate harm to the public health, safety or welfare, the prose-
7 cuting attorney may immediately institute a suit under subsection (1) of
8 this section.

9 (4) A temporary restraining order may be granted without prior
10 notice to the person if the court finds there is a threat of immediate harm
11 to the public health, safety or welfare. Such a temporary restraining
12 order shall expire by its terms within such time after entry, not to ex-
13 ceed 10 days, as the court fixes, unless within the time so fixed the order,
14 for good cause shown, is extended for a like period or unless the person re-
15 strained consents that it may be extended for a longer period.

16 (5) The court may award reasonable attorney fees to the prevailing
17 party in a suit brought under this section. If the defendant prevails in
18 such suit and the court finds that the defendant had in good faith sub-
19 mitted to the prosecuting attorney a satisfactory assurance of voluntary
20 compliance prior to the institution of the suit or that the prosecuting at-
21 torney, in a suit brought under subsection (3) of this section, did not have
22 reasonable grounds to proceed under that subsection, the court shall award
23 reasonable attorney fees to the defendant. If the state prevails, the reason-
24 able expenses of investigation, preparation and prosecution shall be taxed
25 against the defendant, upon application of the prosecuting attorney, in the
26 same manner as costs are taxed and shall be in addition thereto.

27 **SECTION 12.** The court may make such additional orders or judg-
28 ments as may be necessary to restore to any person in interest any moneys
29 or property, real or personal, of which he was deprived by means of any
30 practice declared to be unlawful in section 7 of this 1971 Act, or as may
31 be necessary to insure cessation of unlawful trade practices.

32 **SECTION 13.** (1) Any person who purchases or leases goods or services
33 and thereby suffers any ascertainable loss of money or property, real or
34 personal, as a result of the wilful use or employment by another person

1 of a method, act or practice declared unlawful by section 7 of this 1971
2 Act, may bring an individual action in an appropriate court to recover
3 actual damages or \$200, whichever is greater. The court or the jury, as the
4 case may be, may award punitive damages and the court may provide such
5 equitable relief as it deems necessary or proper.

6 (2) Upon commencement of any action brought under subsection (1)
7 of this section the clerk of the court shall mail a copy of the complaint or
8 other initial pleading to the Attorney General and, upon entry of any
9 judgment or decree in the action, shall mail a copy of such judgment or
10 decree to the Attorney General.

11 (3) In any action brought by a person under this section, the court
12 may award, in addition to the relief provided in this section, reasonable
13 attorney fees and costs.

14 (4) Any permanent injunction or final judgment or order of the court
15 made under section 11 or 12 of this 1971 Act shall be prima facie evidence
16 in an action brought under this section that the respondent used or em-
17 ployed a method, act or practice declared unlawful by section 7 of this
18 1971 Act, but an assurance of voluntary compliance, whether or not ap-
19 proved by the court, shall not be evidence of such violation.

20 (5) Actions brought under this section shall be commenced within
21 one year from the discovery of the unlawful method, act or practice. How-
22 ever, whenever any complaint is filed by a prosecuting attorney to pre-
23 vent, restrain or punish violations of section 7 of this 1971 Act, the run-
24 ning of the statute of limitations with respect to every private right of
25 action under this section and based in whole or in part on any matter
26 complained of in said proceeding shall be suspended during the pendency
27 thereof.

28 (6) Notwithstanding subsection (5) of this section, in any action brought
29 by a seller or lessor against a purchaser or lessee of goods or services, such
30 purchaser or lessee may assert any counterclaim he has arising out of a
31 violation of sections 5 to 19 of this 1971 Act.

32 **SECTION 14.** (1) When it appears to the prosecuting attorney that a
33 person has engaged in, is engaging in, or is about to engage in any act

1 or practice declared to be unlawful by section 7 of this 1971 Act, he may
 2 execute in writing and cause to be served an investigative demand upon
 3 any person who is believed to have information, documentary material
 4 or physical evidence relevant to the alleged or suspected violation. The in-
 5 vestigative demand shall require such person, under oath or otherwise, to
 6 appear and testify or to produce relevant documentary material or physical
 7 evidence for examination, at such reasonable time and place as may be
 8 stated in the investigative demand, or to do any of the foregoing, concern-
 9 ing the advertisement, sale or offering for sale of any goods or services
 10 or the conduct of any trade or commerce which is the subject matter of
 11 the investigation.

12 (2) At any time before the return date specified in an investigative
 13 demand, or within 20 days after the demand has been served, whichever
 14 period is shorter, a petition to extend the return date, or to modify or set
 15 aside the demand, *including privileged material* may be filed in the appropriate court.

16 ~~(3) No person, otherwise competent as a witness under the laws of~~
 17 ~~this state, shall be disqualified from testifying in response to an investi-~~
 18 ~~gative demand on the ground that his testimony may incriminate him.~~
 19 ~~If a witness claims that testimony he is called upon to give may incriminate~~
 20 ~~him, such testimony shall be reduced to writing, and no indictment or~~
 21 ~~criminal prosecution shall afterwards be brought against him for or on~~
 22 ~~account of any transaction, matter or thing concerning which he may~~
 23 ~~testify or produce evidence, documentary or otherwise, in obedience to~~
 24 ~~an investigative demand under this section.~~

Delete

25 **SECTION 15.** Service of any investigative demand under section 14
 26 of this 1971 Act shall be made personally within this state. If personal
 27 service cannot be made, substituted service therefor may be made in the
 28 following manner:

- 29 (1) Personal service thereof without this state;
- 30 (2) The mailing thereof by registered or certified mail to the last-
 31 known place of business, residence or abode within or without this state of
 32 such person for whom the same is intended;
- 33 (3) As to any person other than a natural person, in the manner pro-
 34 vided for service of summons in an action or suit; or

1 (4) Such service as the court may direct in lieu of personal service
2 within this state.

3 **SECTION 16.** (1) If any person after being served with an investiga-
4 tive demand under section 15 of this 1971 Act, fails or refuses to obey an
5 investigative demand issued by the prosecuting attorney, the prosecut-
6 ing attorney may, after notice, apply to an appropriate court and, after
7 hearing thereon, request an order:

8 (a) Granting injunctive relief to restrain the person from engaging in
9 the advertising or sale of any merchandise or the conduct of any trade
10 or commerce that is involved in the alleged or suspected violation;

11 (b) Granting such other relief as may be required, until the person
12 obeys the investigative demand.

13 (2) Any disobedience of any final order of a court under this section
14 shall be punished as a contempt of court.

15 **SECTION 17.** (1) Any person who wilfully violates the terms of an
16 injunction issued under section 11 of this 1971 Act shall forfeit and pay
17 to the state a civil penalty of not more than \$25,000 per violation. For the
18 purposes of this section, the court issuing the injunction shall retain
19 jurisdiction and the cause shall be continued, and in such cases the prose-
20 cuting attorney acting in the name of the state may petition for recovery
21 of civil penalties.

22 (2) Any person who by an assurance of voluntary compliance submitted
23 under section 11 of this 1971 Act agrees not to engage in a particular act,
24 method or practice made unlawful by section 7 of this 1971 Act and there-
25 after wilfully violates such assurance, shall forfeit and pay to the state a
26 civil penalty of not more than \$25,000 per violation. The prosecuting at-
27 torney may apply to an appropriate court for recovery of such civil penalty.

28 (3) In any suit brought under section 11 of this 1971 Act, if the court
29 finds that a person is wilfully using or has wilfully used a method, act or
30 practice declared unlawful by section 7 of this 1971 Act, the prosecuting
31 attorney, upon petition to the court, may recover, on behalf of the state,
32 a civil penalty of not exceeding \$2,000 per violation.

33 **SECTION 18.** Upon petition by the prosecuting attorney, the court
34 may, in its discretion, order the dissolution or suspension or forfeiture

1 of the license or franchise of any person who violates the terms of any
2 injunction issued under section 11 of this 1971 Act.

3 **SECTION 19.** A district attorney shall make a full report to the At-
4 torney General of any action, suit, or proceeding prosecuted by such district
5 attorney under sections 5 to 19 of this 1971 Act, including the final dispo-
6 sition of the matter, and shall file with the Attorney General copies of all
7 assurances of voluntary compliance accepted under section 11 of this
8 1971 Act.

9 **SECTION 20.** Section 21 of this Act is added to and made a part of ORS
10 chapter 83.

11 **SECTION 21.** (1) "Home solicitation sale" means a sale of goods or
12 services as defined in ORS 83.010 other than insurance, farm equipment,
13 or motor vehicles in which the seller or a person acting for him engages in
14 a personal solicitation of the sale at a residence other than that of the
15 seller and the buyer's agreement or offer to purchase is there given to the
16 seller or a person acting for him. It does not include a sale made pursuant
17 to a preexisting revolving charge account, a contract in writing for the
18 sale or lease of a house or business property or the construction of a new
19 house or business property, a sale made pursuant to prior business negotia-
20 tions relevant to such sale between the parties at a business establishment
21 at a fixed location where goods or services are offered or exhibited for
22 sale, or a sale for cash or check in the amount of \$50 or less.

23 (2) (a) Except as provided in paragraph (e) of this subsection, in
24 addition to any other right to revoke an offer or rescind a transaction which
25 the buyer may have, the buyer has the right to cancel a home solicitation
26 sale until 12 midnight of the third business day after the day on which
27 the buyer signs an agreement or offer to purchase which complies with this
28 section or pays by cash or check.

29 (b) Cancellation occurs when the buyer gives written notice of can-
30 cellation to the seller at the address stated in the agreement or offer to
31 purchase.

32 (c) Notice of cancellation, if given by mail, is given when it is de-
33 posited in a mailbox properly addressed and postage prepaid.

1 (d) Notice of cancellation given by the buyer need not take a par-
2 ticular form and is sufficient if it indicates by a form of written ex-
3 pression the intention of the buyer not to be bound by the home solicita-
4 tion sale.

5 (e) The buyer may not cancel a home solicitation sale if the buyer in
6 a separate signed writing not furnished by the seller requests the seller
7 to provide goods or services without delay because of an emergency, and

8 (A) The seller in good faith makes a substantial beginning of perform-
9 ance of the contract before the buyer gives notice of cancellation, and

10 (B) In case of goods, the goods cannot be returned to the seller in sub-
11 stantially as good condition as when received by the buyer.

12 (3) (a) In a home solicitation sale the seller must present to the
13 buyer and obtain his signature to a written agreement or offer to purchase
14 which designates as the date of the transaction the date on which the
15 buyer actually signs and contains a statement of the buyer's right which
16 complies with paragraph (b) of this subsection.

17 (b) The statement must be in conspicuous type, 8-point or larger, and
18 must read as follows:

19 _____

20 BUYER'S RIGHT TO CANCEL

21 If this agreement was solicited at ^{or other than that of the seller} your residence and you do not want
22 the goods or services, you may cancel this agreement by mailing a notice
23 to the seller. The notice must say that you do not want the goods or
24 services and must be mailed before 12 midnight of the third business day
25 after you sign this agreement. The notice must be mailed to: _____

26 _____

27 (insert name and mailing address of seller)

28 IF YOU CANCEL, THE SELLER MAY RETAIN AS A CANCELLATION
29 FEE 5 PERCENT OF THE CASH PRICE, BUT NOT EXCEEDING YOUR
30 CASH DOWN PAYMENT, OR ¹¹⁰ \$25, WHICHEVER IS THE LESSER.

31 However: You may not cancel if you have requested the seller to pro-
32 vide goods or services without delay because of an emergency, and

33 (1) The seller in good faith makes a substantial beginning of perform-
34 ance of the contract before you give notice of cancellation, and

1 (2) In the case of goods, the goods cannot be returned to the seller in
2 substantially as good condition as when received by the buyer.

3 _____
4 (c) If disclosure is made in accordance with the provisions of ORS
5 83.810, then in addition thereto the seller must give the portion of the
6 statement required by paragraph (b) of this subsection which advises that
7 if the buyer cancels the seller may retain as a cancellation fee five percent
8 of the cash price, but not exceeding the cash down payment, or ^{\$10}~~\$25~~ which-
9 ever is the lesser.

10 (d) Until the seller has complied with this subsection the buyer may
11 cancel the home solicitation sale by notifying the seller in any manner and
12 by any means of his intention to cancel.

13 (4) (a) Except as provided in this subsection, the seller must tender
14 to the buyer any payments made by the buyer and any note or other
15 evidence of indebtedness within 10 days after a home solicitation sale
16 has been canceled or an offer to purchase has been revoked.

17 (b) If the down payment includes goods traded in, the goods must be
18 tendered in substantially as good condition as when received by the
19 seller. If the seller fails to tender the goods as provided by this subsection,
20 the buyer may elect to recover an amount equal to the trade-in allowance
21 stated in the agreement.

22 (c) The seller may retain as a cancellation fee five percent of the cash
23 price but not exceeding the amount of the cash down payment, or ^{\$10}~~\$25~~
24 whichever is the lesser. If the seller fails to comply with an obligation
25 imposed by this subsection, or if the buyer avoids the sale on any ground
26 independent of his right to cancel pursuant to paragraph (a) of subsection
27 (2) of this section, or revokes his offer to purchase prior to acceptance
28 thereof by the seller, the seller is not entitled to retain a cancellation fee.

29 (d) The buyer may retain possession of goods delivered to him by the
30 seller, and has a lien on the goods in his possession or control for any re-
31 covery to which he is entitled, until the seller has complied with the obli-
32 gations imposed by this subsection.

33 (5) (a) Except as provided by paragraph (d) of subsection (4) of
34 this section, within a reasonable time after a home solicitation sale has been

1 canceled or an offer to purchase revoked, the buyer must tender to the
 2 seller upon demand any goods delivered by the seller pursuant to the sale,
 3 but he is not obliged to tender at any place other than his residence. If
 4 the seller fails to demand possession of goods within a reasonable time
 5 after cancellation or revocation, the goods become the property of the
 6 buyer without obligation to pay for them. For the purpose of this sub-
 7 section, 20 days is presumed to be a reasonable time.

8 (b) The buyer has a duty to take reasonable care of the goods in his
 9 possession before cancellation or revocation and for a reasonable time
 10 thereafter, during which time the goods are otherwise at the seller's risk.

11 (c) If the seller has performed any services pursuant to a home solici-
 12 tation sale prior to its cancellation, the seller is entitled to no compensa-
 13 tion except the cancellation fee provided in this section.

14 **SECTION 21** ^{21a} The remedies provided in sections ^{5 to 19} ~~8 to 20~~ of this 1971
 15 Act are in addition to all other remedies, civil or criminal, existing at
 16 common law or under the laws of this state.

17 **SECTION 22.** Section 23 of this Act is added to and made a part of ORS
 18 20.010 to 20.180.

19 **SECTION 23.** (1) In any action for damages for breach of an express
 20 or implied warranty in a sale of consumer goods or services where the
 21 amount pleaded is \$1,000 or less and the plaintiff prevails in the action,
 22 there shall be taxed and allowed to the plaintiff, as part of the costs of
 23 the action, a reasonable amount to be fixed by the court as attorney fees
 24 for the prosecution of the action, if the court finds that written demand
 25 for the payment of such claim was made on the defendant not less than
 26 30 days before commencement of the action and that the defendant was
 27 allowed within said 30 days reasonable opportunity to inspect any property
 28 pertaining to the claim; provided, that no attorney fees shall be allowed
 29 to the plaintiff if the court finds that the defendant tendered to the
 30 plaintiff, prior to the commencement of the action, an amount not less than
 31 the damages awarded to the plaintiff.

32 ~~(2) If the defendant pleads a counterclaim, not to exceed \$1,000 and~~
 33 ~~the defendant prevails in the action, there shall be taxed and allowed to~~
 34 ~~the defendant, as part of the costs of the action, a reasonable amount to be~~

1 ~~fixed by the court as attorney fees for the prosecution of the counter-~~
2 ~~claims~~

3 (2) If the defendant prevails in an action in which the plaintiff re-
4 quests attorney fees under subsection (1) of this ~~sub~~section, the court
5 may in its discretion allow reasonable attorney fees to the defendant if it
6 finds the action to have been frivolous.

7 Section 24. ORS 646.990 is amended to read:

8 646.990. (1) Each violation of any of the provisions of ORS 646.010
9 to 646.180 by any person, firm or corporation, whether as principal, agent,
10 officer or director, for himself or itself, or for another person, or for any
11 firm or corporation, is punishable, upon conviction, by a fine of not less
12 than \$100 nor more than \$500, or by imprisonment in the county jail not ex-
13 ceeding six months, or by both.

14 [(2) Violation of ORS 646.220 and each separate offense under ORS
15 646.230 is punishable, upon conviction, by a fine not exceeding \$500 or by
16 imprisonment in the county jail not exceeding six months, or by both.]

17 [(3)] (2) Violation of ORS 646.260 is punishable, upon conviction, by
18 a fine of not less than \$500 nor more than \$5,000, or by imprisonment in
19 the county jail not exceeding one year, or by both.

20 [(4)] (3) Violation of ORS 646.460 is punishable, upon conviction, by
21 a fine of not more than \$5,000 or by imprisonment in the penitentiary for
22 not more than five years or in the county jail for not more than one year,
23 or by both such fine and imprisonment.

24 [(5) Violation of ORS 646.810 is punishable, upon conviction, by a
25 fine of not more than \$100 or by imprisonment in the county jail not
26 exceeding 30 days.]

27 [(6) Violation of ORS 646.820 or 646.830 is punishable, upon conviction,
28 by a fine of not more than \$5,000 or by imprisonment in the county jail
29 for not more than one year, or by both.]

30 [(7) Violation of ORS 646.840 is punishable, upon conviction, by a fine
31 of not less than \$50 nor more than \$250, or by imprisonment in the county
32 jail for not less than 20 nor more than 90 days, or by both.]

33 [(8)] (4) Violation of ORS 646.860 is a misdemeanor.

~~fixed by the court as attorney fees for the prosecution of the counter-
claim~~

(2)
(3) If the defendant prevails in an action in which the plaintiff re-
quests attorney fees under subsection (1) of this ~~sub~~section, the court
may in its discretion allow reasonable attorney fees to the defendant if it
finds the action to have been frivolous.

Section 24. ORS 646.990 is amended to read:

646.990. (1) Each violation of any of the provisions of ORS 646.010
to 646.180 by any person, firm or corporation, whether as principal, agent,
officer or director, for himself or itself, or for another person, or for any
firm or corporation, is punishable, upon conviction, by a fine of not less
than \$100 nor more than \$500, or by imprisonment in the county jail not ex-
ceeding six months, or by both.

[(2) Violation of ORS 646.220 and each separate offense under ORS
646.230 is punishable, upon conviction, by a fine not exceeding \$500 or by
imprisonment in the county jail not exceeding six months, or by both.]

[(3)] (2) Violation of ORS 646.260 is punishable, upon conviction, by
a fine of not less than \$500 nor more than \$5,000, or by imprisonment in
the county jail not exceeding one year, or by both.

[(4)] (3) Violation of ORS 646.460 is punishable, upon conviction, by
a fine of not more than \$5,000 or by imprisonment in the penitentiary for
not more than five years or in the county jail for not more than one year,

SECTION 25. There is established within the Department of Justice
the Consumer Protection Division to carry out the functions of the Attor-
ney General under this 1971 Act. The Consumer Protection Division shall
be maintained, operated and controlled by the Attorney General, who may
employ personnel necessary to carry out the duties and functions of the
division and fix their compensation, subject to any applicable provisions
of the State Merit System Law.

SECTION 26. In addition to and not in lieu of appropriations made
by section 1, chapter 93, Oregon Laws 1971 (Enrolled House Bill 2073),
there hereby is appropriated to the Department of Justice for the biennium
beginning July 1, 1971, out of the General Fund, the sum of \$200,000 for
expenses of the Consumer Protection Division.

1 **SECTION** ²⁷ **25.** ORS 646.210, 646.220, 646.230, 646.625, 646.635, 646.645,
2 646.655, 646.810, 646.820, 646.830 and 646.840 are repealed.

3 **SECTION** ²⁸ **26.** This Act being necessary for the immediate preservation
4 of the public peace, health and safety, an emergency is declared to exist,
5 and this Act shall take effect on July 1, 1971.



PREVIOUS AMENDMENTS

By House May 4

SENATE AMENDMENTS TO HOUSE BILL 3037

By COMMITTEE ON CONSUMER AFFAIRS

May 15

- 1 On page 3 of the printed bill, line 14, delete "\$500" and insert "\$1,000".
- 2 In line 21, delete "\$500" and insert "\$1,000".
- 3 On page 4, line 7, delete "\$500" and insert "\$1,000".
- 4 In line 15, delete "\$500" and insert "\$1,000".
- 5 On page 8, delete lines 3 and 4 and insert:
- 6 "Note: Section 9 was deleted by amendment."
- 7 On page 11, line 15, after "cause" insert "including privileged material".
- 8 Delete lines 16 through 24.
- 9 On page 14, line 21, delete "your" and insert "a" and after "residence"
- 10 insert "other than that of the seller".
- 11 In line 30, delete "\$25" and insert "\$10".
- 12 On page 15, line 8, delete "\$25" and insert "\$10".
- 13 In line 23, delete "\$25" and insert "\$10".
- 14 On page 16, delete lines 32 through 34.
- 15 On page 17, delete lines 1 and 2.
- 16 In line 3, delete "(3)" and insert "(2)".



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PREVIOUS AMENDMENTS

By House May 4

By Senate May 15

SECOND SENATE AMENDMENTS TO
HOUSE BILL 3037

By JOINT COMMITTEE ON WAYS AND MEANS

May 26

- 1 In line 1 of the printed Senate amendments dated May 15, delete "\$1,000"
2 and insert "\$400". ^{\$700}
- 3 In line 2, delete "\$1,000" and insert "\$400". ^{\$700}
- 4 In line 3, delete "\$1,000" and insert "\$400". ^{\$700}
- 5 In line 4, delete "\$1,000" and insert "\$400". ^{\$700}
- 6 On page 2 of the printed bill, line 4, after the semicolon insert "appro-
7 priating money;".
- 8 On page 3, line 12, after "83.680" insert "which is for the sale or lease
9 of consumer goods or services".
- 10 On page 4, line 17, after the period insert "However, the action by the
11 lender against the borrower for the recovery of the deficiency must be
12 commenced not later than 90 days after the date on which the lender re-
13 possessed or voluntarily accepted surrender of the goods or motor vehicles
14 for the purchase of which the loan was made.".
- 15 On page 4, line 28, after "83.510" insert "purchased primarily for per-
16 sonal, family or household purposes and not primarily for business or com-
17 mercial purposes".
- 18 On page 17, after line 33 insert:
- 19 "SECTION 25. There is established within the Department of Justice
20 the Consumer Protection Division to carry out the functions of the Attor-
21 ney General under this 1971 Act. The Consumer Protection Division shall
22 be maintained, operated and controlled by the Attorney General, who may
23 employ personnel necessary to carry out the duties and functions of the
24 division and fix their compensation, subject to any applicable provisions
25 of the State Merit System Law.

eng. filed
by CCR
5/26/71

1 **"SECTION 26.** In addition to and not in lieu of appropriations made
2 by section 1, chapter —, Oregon Laws 1971 (Enrolled House Bill 2073),
3 there hereby is appropriated to the Department of Justice for the biennium
4 beginning July 1, 1971, out of the General Fund, the sum of \$200,000 for
5 expenses of the Consumer Protection Division."

6 On page 18, line 1, delete "25" and insert "27".

7 On page 18, line 3, delete "26" and insert "28".



PREVIOUS AMENDMENTS

By House May 4

By Senate May 15

By Senate May 26

CONFERENCE COMMITTEE AMENDMENTS TO HOUSE BILL 3037

June 8

1 Mr. Speaker:

2 Your Conference Committee to whom was referred House Bill 3037,
3 having had the same under consideration, respectfully report it back with
4 the recommendation that the House concur in the printed first Senate
5 amendments dated May 15 and second Senate amendments dated May 26,
6 and that the bill be further amended as follows and repassed:

7 On page 1 of the printed second Senate amendments dated May 26,
8 line 2, delete "\$400" and insert "\$700".

9 In line 3, delete "\$400" and insert "\$700".

10 In line 4, delete "\$400" and insert "\$700".

11 In line 5, delete "\$400" and insert "\$700".

12 On page 3 of the printed bill, line 23, after the period insert "However,
13 the action by the seller against the buyer for the recovery of the deficiency
14 must be commenced not later than 90 days after the date on which the
15 seller repossessed or voluntarily accepted surrender of the goods or motor
16 vehicles."

/s/ Tom Young
Representative

/s/ Robert Stults
Representative

/s/ Betty Roberts
Senator

/s/ Don S. Willner
Senator

Re-Engraved

PREVIOUS AMENDMENTS

By House May 4

**SENATE AMENDMENTS TO
HOUSE BILL 3037**

By COMMITTEE ON CONSUMER AFFAIRS

May 15

*Re Engr
CCR
by 6/6
d*

- 1 On page 3 of the printed bill, line 14, delete "\$500" and insert "\$1,000".
- 2 In line 21, delete "\$500" and insert "\$1,000".
- 3 On page 4, line 7, delete "\$500" and insert "\$1,000".
- 4 In line 15, delete "\$500" and insert "\$1,000".
- 5 On page 8, delete lines 3 and 4 and insert:
- 6 "Note: Section 9 was deleted by amendment."
- 7 On page 11, line 15, after "cause" insert "including privileged material".
- 8 Delete lines 16 through 24.
- 9 On page 14, line 21, delete "your" and insert "a" and after "residence"
- 10 insert "other than that of the seller".
- 11 In line 30, delete "\$25" and insert "\$10".
- 12 On page 15, line 8, delete "\$25" and insert "\$10".
- 13 In line 23, delete "\$25" and insert "\$10".
- 14 On page 16, delete lines 32 through 34.
- 15 On page 17, delete lines 1 and 2.
- 16 In line 3, delete "(3)" and insert "(2)".

*\$700
\$700*

*By SW
5/26*



**HOUSE AMENDMENTS TO
HOUSE BILL 3037**

By UNANIMOUS CONSENT

May 4

- 1 On page 16 of the printed bill, line 14, delete "21" and insert "21a" and
- 2 in the same line delete "6 to 20" and insert "5 to 19".



PREVIOUS AMENDMENTS

By House May 4

By Senate May 15

SECOND SENATE AMENDMENTS TO HOUSE BILL 3037

By JOINT COMMITTEE ON WAYS AND MEANS

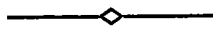
May 26

- 1 In line 1 of the printed Senate amendments dated May 15, delete "\$1,000"
- 2 and insert "\$400".
- 3 In line 2, delete "\$1,000" and insert "\$400".
- 4 In line 3, delete "\$1,000" and insert "\$400".
- 5 In line 4, delete "\$1,000" and insert "\$400".
- 6 On page 2 of the printed bill, line 4, after the semicolon insert "appro-
- 7 priating money;"
- 8 On page 3, line 12, after "83.680" insert "which is for the sale or lease
- 9 of consumer goods or services".
- 10 On page 4, line 17, after the period insert "However, the action by the
- 11 lender against the borrower for the recovery of the deficiency must be
- 12 commenced not later than 90 days after the date on which the lender re-
- 13 possessed or voluntarily accepted surrender of the goods or motor vehicles
- 14 for the purchase of which the loan was made."
- 15 On page 4, line 28, after "83.510" insert "purchased primarily for per-
- 16 sonal, family or household purposes and not primarily for business or com-
- 17 mercial purposes".
- 18 On page 17, after line 33 insert:
- 19 "**SECTION 25.** There is established within the Department of Justice
- 20 the Consumer Protection Division to carry out the functions of the Attor-
- 21 ney General under this 1971 Act. The Consumer Protection Division shall
- 22 be maintained, operated and controlled by the Attorney General, who may
- 23 employ personnel necessary to carry out the duties and functions of the
- 24 division and fix their compensation, subject to any applicable provisions
- 25 of the State Merit System Law.

1 **"SECTION 26.** In addition to and not in lieu of appropriations made
2 by section 1, chapter —, Oregon Laws 1971 (Enrolled House Bill 2073),
3 there hereby is appropriated to the Department of Justice for the biennium
4 beginning July 1, 1971, out of the General Fund, the sum of \$200,000 for
5 expenses of the Consumer Protection Division."

6 On page 18, line 1, delete "25" and insert "27".

7 On page 18, line 3, delete "26" and insert "28".



House Bill 3037

Sponsored by COMMITTEE ON JUDICIARY

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**.

Revises laws relating to deceptive trade practices. Permits buyer to assert defenses against holders in due course of evidence of indebtedness on consumer goods purchases. Allows attorney fees in certain breach of warranty actions and allows private suits for damages for deceptive trade practices. Declares consumer paper to be nonnegotiable except regarding governmental units. Authorizes assessment of punitive damages for unlawful trade practices except against security interest assignee. Denies deficiency judgments after repossession if time balance is less than \$500. Denies repossession where deficiency judgment for less than \$500 is obtained. Authorizes Attorney General (in addition to district attorneys) to sue to enforce laws against or to restrain deceptive trade practices. Establishes procedure for court-supervised assurance of voluntary compliance by seller and declares violation of assurance provisions to be contempt of court. Grants right to cancel to home solicitation buyers and requires notice of right in home solicitation sales. Provides civil and criminal penalties.

Declares an emergency.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION**.

1

A BILL FOR AN ACT

2 Relating to consumer protection; creating new provisions; amending ORS
3 646.605 and 646.990; repealing ORS 646.210, 646.220, 646.230, 646.615,
4 646.625, 646.635, 646.645, 646.655, 646.810, 646.820, 646.830 and 646.840;
5 providing penalties; and declaring an emergency.

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

7 **SECTION 1.** Sections 2 to 4 of this Act are added to and made a part
8 of ORS chapter 83.

9 **SECTION 2.** (1) In any contract for the sale or lease of consumer
10 goods or services on credit entered into between a retail seller and a
11 retail buyer, such contract, note or any instrument or evidence of indebt-
12 edness of the buyer shall have printed on the face thereof the words
13 "consumer paper", and such contract, note, instrument or evidence of in-
14 debtedness with the words "consumer paper" printed thereon shall not
15 be a negotiable instrument within the meaning of the Uniform Commercial
16 Code-Commercial Paper. However, this section shall have no force or
17 effect on the negotiability of any contract, promissory note, instrument
18 or other evidence of indebtedness owned or guaranteed or insured by
19 any state or federal governmental agency even though said contract, note,
20 instrument or other evidence of indebtedness shall contain the wording
21 required by this subsection.

22 (2) Notwithstanding the absence of such notice on a contract, note, in-
23 strument or evidence of indebtedness arising out of a consumer credit
24 sale or consumer lease as described in this section, an assignee of the
25 rights of the seller or lessor is subject to all claims and defenses of the
26 buyer or lessee against the seller or lessor arising out of the sale or lease.
27 Any agreement to the contrary shall be of no force or effect in limiting
28 the rights of a consumer under this section. The assignee's liability under
29 this section may not exceed the amount owing to the assignee at the time
30 the claim or defense is asserted against the assignee. The restrictions im-
31 posed hereby shall not apply with respect to any promissory note, con-
32 tract, instrument or other evidence of indebtedness owned or guaranteed
33 or insured by any state or federal governmental agency even though said

1 note, contract, instrument or other evidence of indebtedness shall contain
2 the words required by subsection (1) of this section.

3 (3) An assignee of "consumer paper" who in good faith enforces a
4 security interest in property held by the buyer or lessee shall not be
5 liable to such buyer or lessee for punitive damages in an action for wrong-
6 ful repossession. The fact that a seller or lessor has broken his warranties
7 with regard to the property sold or leased shall not, of itself, make an as-
8 signee's repossession wrongful.

9 **SECTION 3.** (1) Notwithstanding any other provision of law:

10 (a) If the buyer defaults in the performance of a retail instalment
11 contract or retail charge agreement subject to ORS 83.010 to 83.190 or
12 83.510 to 83.680, and if the seller repossesses or voluntarily accepts sur-
13 render of the goods or motor vehicles, and if at the time of default the
14 unpaid time balance or time sale price is less than \$500, the buyer shall
15 not be personally liable to the seller for any deficiency between the
16 amount of his unpaid obligation and the amount realized by the seller
17 on resale or other disposition of the goods or motor vehicles. However,
18 the buyer is liable in damages to the seller for any repossessed or sur-
19 rendered goods or motor vehicles that have been wrongfully damaged.

20 (b) If the unpaid time balance or time sale price at the time of default is
21 \$500 or more, the seller may recover from the buyer any deficiency that
22 results from deducting the fair market value of the goods or motor vehicles
23 from the unpaid time balance or time sale price.

24 (c) If the seller brings an action and obtains judgment against the
25 buyer for the unpaid time balance or time sale price without having
26 first repossessed or voluntarily accepted surrender of the goods or motor
27 vehicles, and if under the provisions of paragraph (a) of this subsection
28 the seller would not be entitled to a deficiency judgment, the seller may
29 not repossess the goods or motor vehicles after obtaining judgment for
30 the unpaid time balance or time sale price.

31 (2) As used in this section:

32 (a) "Unpaid time balance or time sale price" means that amount the
33 buyer would have been required to pay if the buyer's obligation had been
34 paid in full at the time of default.

1 (b) "Seller" includes the assignee of the seller.

2 **SECTION 4. (1)** Notwithstanding any other provision of law:

3 (a) If the borrower defaults in the repayment of a loan that was made
4 for the purchase of goods or motor vehicles, and if the lender repossesses
5 or voluntarily accepts surrender of the goods or motor vehicles, and if the
6 unpaid balance of the loan obligation at the time of default is less than
7 \$500, the borrower shall not be personally liable to the lender for any
8 deficiency between the amount of his unpaid loan obligation and the
9 amount realized by the lender on resale or other disposition of the goods
10 or motor vehicles. However, the borrower is liable in damages to the
11 lender for any repossessed or surrendered goods or motor vehicles that
12 have been wrongfully damaged.

13 (b) If the amount of the borrower's unpaid loan obligation at the time
14 of default in the repayment of a loan made for the purchase of goods or
15 motor vehicles is \$500 or more, the lender may recover from the borrower
16 any deficiency that results from deducting the fair market value of the
17 goods or motor vehicles from the amount of the unpaid loan obligation.

18 (c) If the lender brings an action and obtains judgment against the
19 borrower for the amount of the unpaid loan obligation without having
20 first repossessed or voluntarily accepted surrender of the goods or motor
21 vehicles, and if under the provisions of paragraph (a) of this subsection
22 the lender would not be entitled to a deficiency judgment, the lender may
23 not repossess the goods or motor vehicles after obtaining judgment for
24 the unpaid loan obligation.

25 (2) As used in this section:

26 (a) "Goods" has the meaning for that term provided in ORS 83.010.

27 (b) "Motor vehicles" has the meaning for that term provided in ORS
28 83.510.

29 (c) "Lender" includes the assignee of the lender.

30 Section 5. ORS 646.605 is amended to read:

31 646.605. As used in [ORS 646.605 to 646.645] sections 5 to 19 of this 1971
32 Act :

33 (1) [*"Seller" means any person or his agent who sells or offers for*
34 *sale any product, property or service.*] "Trade" and "commerce" mean the

1 advertising, offering for sale, sale or distribution of any services or any
2 property, tangible or intangible, real, personal or mixed, and any other
3 article, commodity, or thing of value wherever situate, and shall include
4 any trade or commerce directly or indirectly affecting the people of this
5 state.

6 (2) [*"Purchaser" means any person who purchases or is solicited to*
7 *purchase any product, property or service.*] **"Documentary material"** means
8 the original or a copy of any book, record, report, memorandum, paper, com-
9 munication, tabulation, map, chart, photograph, mechanical transcription,
10 or other tangible document or recording, wherever situate.

11 (3) [*"Product" means any goods or merchandise.*] **"Examination"** of
12 documentary material shall include the inspection, study, or copying of
13 any such material, and the taking of testimony under oath or acknowledg-
14 ment in respect of any such documentary material or copy thereof.

15 [(4) *"Equipment" means any household furnishings, appliance or fix-*
16 *ture and any machinery, mechanical device or vehicle.*]

17 [(5)] (4) **"Person"** means natural persons, corporations, trusts, part-
18 nerships, incorporated or unincorporated associations, and any other legal
19 entity except bodies or officers acting under statutory authority of this
20 state or of the United States.

21 [(6)] (5) **"Prosecuting [officer] attorney"** means the **Attorney Gen-**
22 **eral or the** district attorney of any county in which a violation of [ORS
23 646.605 to 646.645] sections 5 to 19 of this 1971 Act is alleged to have oc-
24 curred.

25 [(7)] (6) **"Appropriate court"** means the **district or** circuit court of
26 a county:

27 (a) Where one or more of the defendants reside; or

28 (b) Where one or more of the defendants maintain a principal place
29 of business; or

30 (c) Where one or more of the defendants are alleged to have com-
31 mitted an act prohibited by [ORS 646.605 to 646.645] sections 5 to 19 of
32 this 1971 Act ; or

33 (d) With the defendant's consent, where the prosecuting officer main-
34 tains his office.

1 (7) "Goods or services" means those which are used or bought pri-
2 marily for personal, family or household purposes, but does not include
3 insurance.

4 (8) A wilful violation occurs when the person committing the violation
5 knew or should have known that his conduct was a violation.

6 SECTION 6. ORS 646.615 is repealed and section 7 of this Act is en-
7 acted in lieu thereof.

8 SECTION 7. (1) A person engages in a practice hereby declared to
9 be unlawful when in the course of his business, vocation or occupation he:

10 (a) Passes off goods or services as those of another;

11 (b) Causes likelihood of confusion or of misunderstanding as to the
12 source, sponsorship, approval, or certification of goods or services;

13 (c) Causes likelihood of confusion or of misunderstanding as to affili-
14 ation, connection, or association with, or certification by, another;

15 (d) Uses deceptive representations or designations of geographic origin
16 in connection with goods or services;

17 (e) Represents that goods or services have sponsorship, approval, char-
18 acteristics, ingredients, uses, benefits, or qualities that they do not have
19 or that a person has a sponsorship, approval, status, qualification, affilia-
20 tion, or connection that he does not have;

21 (f) Represents that goods are original or new if they are deteriorated,
22 altered, reconditioned, reclaimed, used or second-hand;

23 (g) Represents that goods or services are of a particular standard,
24 quality, or grade, or that goods are of a particular style or model, if they
25 are of another;

26 (h) Disparages the goods, services, property or business of the buyer
27 or another by false or misleading representations of fact;

28 (i) Advertises goods and services with intent not to sell them as ad-
29 vertised or with intent not to supply reasonably expectable public de-
30 mand, unless the advertisement discloses a limitation of quantity;

31 (j) Makes false or misleading representations of fact concerning the
32 reasons for, existence of, or amounts of price reductions;

33 (k) Makes false or misleading representations concerning the avail-
34 ability of credit or the nature of the transaction or obligation incurred;

1 (L) Makes false or misleading representations relating to commis-
2 sions or other compensation to be paid in exchange for permitting property
3 to be used for model or demonstration purposes or in exchange for sub-
4 mitting names of other purchasers to the seller;

5 (m) Performs service on or dismantles any household furnishings,
6 appliance or fixture or any machinery, mechanical device or vehicle at a
7 residence when not authorized by the owner or apparent owner;

8 (n) Solicits by telephone or door to door as a seller unless the seller,
9 within 30 seconds after beginning the conversation, identifies himself,
10 whom he represents and the purpose of his call;

11 (o) In a sale of goods or services, gives or offers to give a rebate or
12 discount or otherwise pays or offers to pay value to the buyer in consider-
13 ation of the buyer giving to the seller the names of prospective purchasers,
14 lessees, or borrowers, or otherwise aiding the seller in making a sale, lease,
15 or loan to another person, if the earning of the rebate, discount or other
16 value is contingent upon the occurrence of an event subsequent to the
17 time the buyer enters into the transaction;

18 (p) Makes any false or misleading statement about a prize, contest or
19 promotion used to publicize a product, business or service;

20 (q) Promises to deliver goods or services within a certain period of
21 time with intent not to deliver them as promised;

22 (r) Engages in any other conduct which similarly creates a likelihood
23 of confusion.

24 (2) A representation under subsection (1) of this section may be any
25 manifestation of any assertion by words or conduct, including, but not
26 limited to, a failure to disclose a fact.

27 (3) In order to prevail in an action or suit under sections 5 to 19 of
28 this 1971 Act, a prosecuting attorney need not prove competition between
29 the parties or actual confusion or misunderstanding.

30 (4) No action or suit shall be brought under paragraph (r) of subsection
31 (1) of this section unless the Attorney General has first established a rule
32 in accordance with the provisions of ORS chapter 183 declaring the con-
33 duct to be confusing to the consumer.

1 **SECTION 8.** Sections 9 to 19 of this Act are added to and made a part
2 of ORS 646.605 to 646.645.

3 **SECTION 9.** Violation of paragraph (m), (n), (o) or (p) of subsection
4 (1) of section 7 of this 1971 Act is a misdemeanor.

5 **SECTION 10.** The provisions of section 7 of this 1971 Act do not apply
6 to:

7 (1) Conduct in compliance with the orders or rules of, or a statute ad-
8 ministered by a federal, state or local governmental agency.

9 (2) Acts done by the publisher, owner, agent or employe of a news-
10 paper, periodical or radio or television station in the publication or dis-
11 semination of an advertisement, when the publisher, owner, agent or
12 employe did not have knowledge of the false, misleading or deceptive
13 character of the advertisement.

14 **SECTION 11.** (1) Whenever the prosecuting attorney has probable
15 cause to believe that a person is engaging in, has engaged in, or is about
16 to engage in an unlawful trade practice, he may bring suit in the name of
17 the State of Oregon in the appropriate court to restrain such person from
18 engaging in the alleged unlawful trade practice.

19 (2) Before filing a suit under subsection (1) of this section, the prosecut-
20 ing attorney shall in writing notify the person charged of the alleged unlaw-
21 ful trade practice and the relief to be sought. Such notice shall be served
22 in the manner set forth in section 15 of this 1971 Act for the service of
23 investigative demands. The person charged thereupon shall have 10 days
24 within which to execute and deliver to the prosecuting attorney an assur-
25 ance of voluntary compliance. Such assurance shall set forth what actions,
26 if any, the person charged intends to take with respect to the alleged un-
27 lawful trade practice. The assurance of voluntary compliance shall not
28 be considered an admission of a violation for any purpose. If the prose-
29 cuting attorney is satisfied with the assurance of voluntary compliance, it
30 may be submitted to an appropriate court for approval and if approved
31 shall thereafter be filed with the clerk of the court. Violation of an as-
32 surance of voluntary compliance which has been approved by and filed
33 with the court shall constitute a contempt of court. The notice of the

1 prosecuting attorney under this subsection shall not be deemed a public
2 record until the expiration of 10 days from the service of the notice.

3 (3) Notwithstanding subsection (2) of this section, where the prosecut-
4 ing attorney alleges that he has reason to believe that the delay caused
5 by complying with the provisions of subsection (2) of this section would
6 cause immediate harm to the public health, safety or welfare, the prose-
7 cuting attorney may immediately institute a suit under subsection (1) of
8 this section.

9 (4) A temporary restraining order may be granted without prior
10 notice to the person if the court finds there is a threat of immediate harm
11 to the public health, safety or welfare. Such a temporary restraining
12 order shall expire by its terms within such time after entry, not to ex-
13 ceed 10 days, as the court fixes, unless within the time so fixed the order,
14 for good cause shown, is extended for a like period or unless the person re-
15 strained consents that it may be extended for a longer period.

16 (5) The court may award reasonable attorney fees to the prevailing
17 party in a suit brought under this section. If the defendant prevails in
18 such suit and the court finds that the defendant had in good faith sub-
19 mitted to the prosecuting attorney a satisfactory assurance of voluntary
20 compliance prior to the institution of the suit or that the prosecuting at-
21 torney, in a suit brought under subsection (3) of this section, did not have
22 reasonable grounds to proceed under that subsection, the court shall award
23 reasonable attorney fees to the defendant. If the state prevails, the reason-
24 able expenses of investigation, preparation and prosecution shall be taxed
25 against the defendant, upon application of the prosecuting attorney, in the
26 same manner as costs are taxed and shall be in addition thereto.

27 **SECTION 12.** The court may make such additional orders or judg-
28 ments as may be necessary to restore to any person in interest any moneys
29 or property, real or personal, of which he was deprived by means of any
30 practice declared to be unlawful in section 7 of this 1971 Act, or as may
31 be necessary to insure cessation of unlawful trade practices.

32 **SECTION 13.** (1) Any person who purchases or leases goods or services
33 and thereby suffers any ascertainable loss of money or property, real or
34 personal, as a result of the wilful use or employment by another person

1 of a method, act or practice declared unlawful by section 7 of this 1971
2 Act, may bring an individual action in an appropriate court to recover
3 actual damages or \$200, whichever is greater. The court or the jury, as the
4 case may be, may award punitive damages and the court may provide such
5 equitable relief as it deems necessary or proper.

6 (2) Upon commencement of any action brought under subsection (1)
7 of this section the clerk of the court shall mail a copy of the complaint or
8 other initial pleading to the Attorney General and, upon entry of any
9 judgment or decree in the action, shall mail a copy of such judgment or
10 decree to the Attorney General.

11 (3) In any action brought by a person under this section, the court
12 may award, in addition to the relief provided in this section, reasonable
13 attorney fees and costs.

14 (4) Any permanent injunction or final judgment or order of the court
15 made under section 11 or 12 of this 1971 Act shall be prima facie evidence
16 in an action brought under this section that the respondent used or em-
17 ployed a method, act or practice declared unlawful by section 7 of this
18 1971 Act, but an assurance of voluntary compliance, whether or not ap-
19 proved by the court, shall not be evidence of such violation.

20 (5) Actions brought under this section shall be commenced within
21 one year from the discovery of the unlawful method, act or practice. How-
22 ever, whenever any complaint is filed by a prosecuting attorney to pre-
23 vent, restrain or punish violations of section 7 of this 1971 Act, the run-
24 ning of the statute of limitations with respect to every private right of
25 action under this section and based in whole or in part on any matter
26 complained of in said proceeding shall be suspended during the pendency
27 thereof.

28 (6) Notwithstanding subsection (5) of this section, in any action brought
29 by a seller or lessor against a purchaser or lessee of goods or services, such
30 purchaser or lessee may assert any counterclaim he has arising out of a
31 violation of sections 5 to 19 of this 1971 Act.

32 **SECTION 14.** (1) When it appears to the prosecuting attorney that a
33 person has engaged in, is engaging in, or is about to engage in any act

1 or practice declared to be unlawful by section 7 of this 1971 Act, he may
2 execute in writing and cause to be served an investigative demand upon
3 any person who is believed to have information, documentary material
4 or physical evidence relevant to the alleged or suspected violation. The in-
5 vestigative demand shall require such person, under oath or otherwise, to
6 appear and testify or to produce relevant documentary material or physical
7 evidence for examination, at such reasonable time and place as may be
8 stated in the investigative demand, or to do any of the foregoing, concern-
9 ing the advertisement, sale or offering for sale of any goods or services
10 or the conduct of any trade or commerce which is the subject matter of
11 the investigation.

12 (2) At any time before the return date specified in an investigative
13 demand, or within 20 days after the demand has been served, whichever
14 period is shorter, a petition to extend the return date, or to modify or set
15 aside the demand, stating good cause, may be filed in the appropriate court.

16 (3) No person, otherwise competent as a witness under the laws of
17 this state, shall be disqualified from testifying in response to an investi-
18 gative demand on the ground that his testimony may incriminate him.
19 If a witness claims that testimony he is called upon to give may incriminate
20 him, such testimony shall be reduced to writing, and no indictment or
21 criminal prosecution shall afterwards be brought against him for or on
22 account of any transaction, matter or thing concerning which he may
23 testify or produce evidence, documentary or otherwise, in obedience to
24 an investigative demand under this section.

25 **SECTION 15.** Service of any investigative demand under section 14
26 of this 1971 Act shall be made personally within this state. If personal
27 service cannot be made, substituted service therefor may be made in the
28 following manner:

29 (1) Personal service thereof without this state;

30 (2) The mailing thereof by registered or certified mail to the last-
31 known place of business, residence or abode within or without this state of
32 such person for whom the same is intended;

33 (3) As to any person other than a natural person, in the manner pro-
34 vided for service of summons in an action or suit; or

1 (4) Such service as the court may direct in lieu of personal service
2 within this state.

3 **SECTION 16.** (1) If any person after being served with an investiga-
4 tive demand under section 15 of this 1971 Act, fails or refuses to obey an
5 investigative demand issued by the prosecuting attorney, the prosecut-
6 ing attorney may, after notice, apply to an appropriate court and, after
7 hearing thereon, request an order:

8 (a) Granting injunctive relief to restrain the person from engaging in
9 the advertising or sale of any merchandise or the conduct of any trade
10 or commerce that is involved in the alleged or suspected violation;

11 (b) Granting such other relief as may be required, until the person
12 obeys the investigative demand.

13 (2) Any disobedience of any final order of a court under this section
14 shall be punished as a contempt of court.

15 **SECTION 17.** (1) Any person who wilfully violates the terms of an
16 injunction issued under section 11 of this 1971 Act shall forfeit and pay
17 to the state a civil penalty of not more than \$25,000 per violation. For the
18 purposes of this section, the court issuing the injunction shall retain
19 jurisdiction and the cause shall be continued, and in such cases the prose-
20 cuting attorney acting in the name of the state may petition for recovery
21 of civil penalties.

22 (2) Any person who by an assurance of voluntary compliance submitted
23 under section 11 of this 1971 Act agrees not to engage in a particular act,
24 method or practice made unlawful by section 7 of this 1971 Act and there-
25 after wilfully violates such assurance, shall forfeit and pay to the state a
26 civil penalty of not more than \$25,000 per violation. The prosecuting at-
27 torney may apply to an appropriate court for recovery of such civil penalty.

28 (3) In any suit brought under section 11 of this 1971 Act, if the court
29 finds that a person is wilfully using or has wilfully used a method, act or
30 practice declared unlawful by section 7 of this 1971 Act, the prosecuting
31 attorney, upon petition to the court, may recover, on behalf of the state,
32 a civil penalty of not exceeding \$2,000 per violation.

33 **SECTION 18.** Upon petition by the prosecuting attorney, the court
34 may, in its discretion, order the dissolution or suspension or forfeiture

1 of the license or franchise of any person who violates the terms of any
2 injunction issued under section 11 of this 1971 Act.

3 **SECTION 19.** A district attorney shall make a full report to the At-
4 torney General of any action, suit, or proceeding prosecuted by such district
5 attorney under sections 5 to 19 of this 1971 Act, including the final dispo-
6 sition of the matter, and shall file with the Attorney General copies of all
7 assurances of voluntary compliance accepted under section 11 of this
8 1971 Act.

9 **SECTION 20.** Section 21 of this Act is added to and made a part of ORS
10 chapter 83.

11 **SECTION 21.** (1) "Home solicitation sale" means a sale of goods or
12 services as defined in ORS 83.010 other than insurance, farm equipment,
13 or motor vehicles in which the seller or a person acting for him engages in
14 a personal solicitation of the sale at a residence other than that of the
15 seller and the buyer's agreement or offer to purchase is there given to the
16 seller or a person acting for him. It does not include a sale made pursuant
17 to a preexisting revolving charge account, a contract in writing for the
18 sale or lease of a house or business property or the construction of a new
19 house or business property, a sale made pursuant to prior business negotia-
20 tions relevant to such sale between the parties at a business establishment
21 at a fixed location where goods or services are offered or exhibited for
22 sale, or a sale for cash or check in the amount of \$50 or less.

23 (2) (a) Except as provided in paragraph (e) of this subsection, in
24 addition to any other right to revoke an offer or rescind a transaction which
25 the buyer may have, the buyer has the right to cancel a home solicitation
26 sale until 12 midnight of the third business day after the day on which
27 the buyer signs an agreement or offer to purchase which complies with this
28 section or pays by cash or check.

29 (b) Cancellation occurs when the buyer gives written notice of can-
30 cellation to the seller at the address stated in the agreement or offer to
31 purchase.

32 (c) Notice of cancellation, if given by mail, is given when it is de-
33 posited in a mailbox properly addressed and postage prepaid.

1 (d) .Notice of cancellation given by the buyer need not take a par-
2 ticular form and is sufficient if it indicates by a form of written ex-
3 pression the intention of the buyer not to be bound by the home solicita-
4 tion sale.

5 (e) The buyer may not cancel a home solicitation sale if the buyer in
6 a separate signed writing not furnished by the seller requests the seller
7 to provide goods or services without delay because of an emergency, and

8 (A) The seller in good faith makes a substantial beginning of perform-
9 ance of the contract before the buyer gives notice of cancellation, and

10 (B) In case of goods, the goods cannot be returned to the seller in sub-
11 stantially as good condition as when received by the buyer.

12 (3) (a) In a home solicitation sale the seller must present to the
13 buyer and obtain his signature to a written agreement or offer to purchase
14 which designates as the date of the transaction the date on which the
15 buyer actually signs and contains a statement of the buyer's right which
16 complies with paragraph (b) of this subsection.

17 (b) The statement must be in conspicuous type, 8-point or larger, and
18 must read as follows:

19 _____

20 BUYER'S RIGHT TO CANCEL

21 If this agreement was solicited at your residence and you do not want
22 the goods or services, you may cancel this agreement by mailing a notice
23 to the seller. The notice must say that you do not want the goods or
24 services and must be mailed before 12 midnight of the third business day
25 after you sign this agreement. The notice must be mailed to: _____

26 _____

27 (insert name and mailing address of seller)

28 IF YOU CANCEL, THE SELLER MAY RETAIN AS A CANCELLATION
29 FEE 5 PERCENT OF THE CASH PRICE, BUT NOT EXCEEDING YOUR
30 CASH DOWN PAYMENT, OR \$25, WHICHEVER IS THE LESSER.

31 However: You may not cancel if you have requested the seller to pro-
32 vide goods or services without delay because of an emergency, and

33 (1) The seller in good faith makes a substantial beginning of perform-
34 ance of the contract before you give notice of cancellation, and

1 (2) In the case of goods, the goods cannot be returned to the seller in
2 substantially as good condition as when received by the buyer.

3 _____
4 (c) If disclosure is made in accordance with the provisions of ORS
5 83.810, then in addition thereto the seller must give the portion of the
6 statement required by paragraph (b) of this subsection which advises that
7 if the buyer cancels the seller may retain as a cancellation fee five percent
8 of the cash price, but not exceeding the cash down payment, or \$25, which-
9 ever is the lesser.

10 (d) Until the seller has complied with this subsection the buyer may
11 cancel the home solicitation sale by notifying the seller in any manner and
12 by any means of his intention to cancel.

13 (4) (a) Except as provided in this subsection, the seller must tender
14 to the buyer any payments made by the buyer and any note or other
15 evidence of indebtedness within 10 days after a home solicitation sale
16 has been canceled or an offer to purchase has been revoked.

17 (b) If the down payment includes goods traded in, the goods must be
18 tendered in substantially as good condition as when received by the
19 seller. If the seller fails to tender the goods as provided by this subsection,
20 the buyer may elect to recover an amount equal to the trade-in allowance
21 stated in the agreement.

22 (c) The seller may retain as a cancellation fee five percent of the cash
23 price but not exceeding the amount of the cash down payment, or \$25,
24 whichever is the lesser. If the seller fails to comply with an obligation
25 imposed by this subsection, or if the buyer avoids the sale on any ground
26 independent of his right to cancel pursuant to paragraph (a) of subsection
27 (2) of this section, or revokes his offer to purchase prior to acceptance
28 thereof by the seller, the seller is not entitled to retain a cancellation fee.

29 (d) The buyer may retain possession of goods delivered to him by the
30 seller, and has a lien on the goods in his possession or control for any re-
31 covery to which he is entitled, until the seller has complied with the obli-
32 gations imposed by this subsection.

33 (5) (a) Except as provided by paragraph (d) of subsection (4) of
34 this section, within a reasonable time after a home solicitation sale has been

1 canceled or an offer to purchase revoked, the buyer must tender to the
2 seller upon demand any goods delivered by the seller pursuant to the sale,
3 but he is not obliged to tender at any place other than his residence. If
4 the seller fails to demand possession of goods within a reasonable time
5 after cancellation or revocation, the goods become the property of the
6 buyer without obligation to pay for them. For the purpose of this sub-
7 section, 20 days is presumed to be a reasonable time.

8 (b) The buyer has a duty to take reasonable care of the goods in his
9 possession before cancellation or revocation and for a reasonable time
10 thereafter, during which time the goods are otherwise at the seller's risk.

11 (c) If the seller has performed any services pursuant to a home solici-
12 tation sale prior to its cancellation, the seller is entitled to no compensa-
13 tion except the cancellation fee provided in this section.

14 **SECTION 21.** The remedies provided in sections 6 to 20 of this 1971
15 Act are in addition to all other remedies, civil or criminal, existing at
16 common law or under the laws of this state.

17 **SECTION 22.** Section 23 of this Act is added to and made a part of ORS
18 20.010 to 20.180.

19 **SECTION 23.** (1) In any action for damages for breach of an express
20 or implied warranty in a sale of consumer goods or services where the
21 amount pleaded is \$1,000 or less and the plaintiff prevails in the action,
22 there shall be taxed and allowed to the plaintiff, as part of the costs of
23 the action, a reasonable amount to be fixed by the court as attorney fees
24 for the prosecution of the action, if the court finds that written demand
25 for the payment of such claim was made on the defendant not less than
26 30 days before commencement of the action and that the defendant was
27 allowed within said 30 days reasonable opportunity to inspect any property
28 pertaining to the claim; provided, that no attorney fees shall be allowed
29 to the plaintiff if the court finds that the defendant tendered to the
30 plaintiff, prior to the commencement of the action, an amount not less than
31 the damages awarded to the plaintiff.

32 (2) If the defendant pleads a counterclaim, not to exceed \$1,000 and
33 the defendant prevails in the action, there shall be taxed and allowed to
34 the defendant, as part of the costs of the action, a reasonable amount to be

1 fixed by the court as attorney fees for the prosecution of the counter-
2 claim.

3 (3) If the defendant prevails in an action in which the plaintiff re-
4 quests attorney fees under subsection (1) of this subsection, the court
5 may in its discretion allow reasonable attorney fees to the defendant if it
6 finds the action to have been frivolous.

7 Section 24. ORS 646.990 is amended to read:

8 646.990. (1) Each violation of any of the provisions of ORS 646.010
9 to 646.180 by any person, firm or corporation, whether as principal, agent,
10 officer or director, for himself or itself, or for another person, or for any
11 firm or corporation, is punishable, upon conviction, by a fine of not less
12 than \$100 nor more than \$500, or by imprisonment in the county jail not ex-
13 ceeding six months, or by both.

14 *[(2) Violation of ORS 646.220 and each separate offense under ORS*
15 *646.230 is punishable, upon conviction, by a fine not exceeding \$500 or by*
16 *imprisonment in the county jail not exceeding six months, or by both.]*

17 *[(3)] (2) Violation of ORS 646.260 is punishable, upon conviction, by*
18 *a fine of not less than \$500 nor more than \$5,000, or by imprisonment in*
19 *the county jail not exceeding one year, or by both.*

20 *[(4)] (3) Violation of ORS 646.460 is punishable, upon conviction, by*
21 *a fine of not more than \$5,000 or by imprisonment in the penitentiary for*
22 *not more than five years or in the county jail for not more than one year,*
23 *or by both such fine and imprisonment.*

24 *[(5) Violation of ORS 646.810 is punishable, upon conviction, by a*
25 *fine of not more than \$100 or by imprisonment in the county jail not*
26 *exceeding 30 days.]*

27 *[(6) Violation of ORS 646.820 or 646.830 is punishable, upon conviction,*
28 *by a fine of not more than \$5,000 or by imprisonment in the county jail*
29 *for not more than one year, or by both.]*

30 *[(7) Violation of ORS 646.840 is punishable, upon conviction, by a fine*
31 *of not less than \$50 nor more than \$250, or by imprisonment in the county*
32 *jail for not less than 20 nor more than 90 days, or by both.]*

33 *[(8)] (4) Violation of ORS 646.860 is a misdemeanor.*

1 **SECTION 25.** ORS 646.210, 646.220, 646.230, 646.625, 646.635, 646.645,
2 646.655, 646.810, 646.820, 646.830 and 646.840 are repealed.

3 **SECTION 26.** This Act being necessary for the immediate preservation
4 of the public peace, health and safety, an emergency is declared to exist,
5 and this Act shall take effect on July 1, 1971.



HOUSE BILL BACK

RECEIVED
HOUSE DESK

▼ CROSS OUT INAPPLICABLE WORDS ▼

..... ~~RESOLUTION~~ } NUMBER **3037**
 ~~MEMORIAL~~ }

1971 APR 15 AM 9 45

Title: Relating to consumer protection; creating new provisions; amending ORS 646.605 and 646.990; repealing 646.210, 646.220, 646.230, 646.615, 646.625, 646.635, 646.645, 646.655, 646.810, 646.820, 646.830 and 646.840; providing penalties; and declaring an emergency.

Introduced by: Representatives

HOUSE COMMITTEE ON JUDICIARY

Wm

Handwritten initials/signature

Staple

ADDITIONAL SIGNERS

HOUSE

SENATE

Akeson
 Anunsen
 AuCoin
 Bazett
 Byers
 Cherry
 Chuinard
 Cole
 Collett
 Craig
 Crothers
 Densmore
 Elliott
 Eymann
 Fadeley
 Graham
 Gwinn
 Haas
 Hanneman
 Hansell
 Heard
 Henderson
 Hollingsworth
 Howard
 Howe
 Ingalls
 Johnson, Leigh
 Johnson, Sam
 Kennedy
 Kinsey

Lang
 Macpherson
 Magruder
 Maher
 Mann
 Markham
 Martin
 McGilvra
 McKenzie
 Meeker
 Nyberg
 Owens
 Patterson
 Paulus
 Peck
 Perry
 Pynn
 Rieke
 Ripper
 Roberts
 Skelton
 Smith
 Stathos
 Stevenson
 Stults
 Thornton
 Walden
 Willits
 Wolfer
 Young

Atiyeh
 Bain
 Boe
 Boivin
 Browne
 Burbidge
 Burns
 Carson
 Cook
 Dement
 Eivers
 Fadeley
 Groener
 Hallock
 Hartung
 Holmstrom
 Hoyt
 Jernstedt
 Lent
 Macpherson
 Mahoney
 McKay
 Newbry
 Ouderkirk
 Potts
 Raymond
 Roberts
 Willner
 Wingard
 Yturri

Staple

HOUSE COMMITTEE REPORT

Salem, Oregon, April 30, 1971

Mr. Speaker:

Your Committee on Judiciary to whom was referred HB 3037,
having had the same under consideration, respectfully report it back with the recommendation that it:

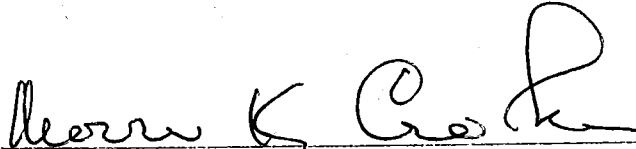
Do pass.

Do pass with the following amendments:

(Referred to Ways and Means by prior reference)

2 copies if no amendments
Submit: 4 copies if amendments
5 copies if to be printed engrossed

Obtain: 1 copy for committee files


Vice Chairman ~~Stults~~

Rep. Stults will lead
floor discussion on this measure.

Prepared by:

Budget Division
Executive Department

CONS. AFFAIRS
405

STATE OF OREGON
ANALYSIS OF PROPOSED LEGISLATION
1971 Regular Legislative Session
FORM BF 20

ANALYST: Jacobson/
Sexson/Brauner DATE COMPLETED: May 10, 1971

1. Number of Measure HB 3037	2. Status Original and House Amendments, 5/4/71	3. Class of Bill Fiscal <input checked="" type="checkbox"/> Non-Fiscal <input type="checkbox"/>
4. Subject Revises laws relating to deceptive trade practices.		
5. Government Unit or Program Affected Law Enforcement, Local Government, Courts		

6. Fiscal Impact

Effect on Revenue

Civil penalties of up to \$25,000 per violation may generate some revenue. No amounts can be estimated.

Effect on Expenditures

Moderate increases in administrative costs will be incurred by the Attorney General and District Attorneys in the processing of required reports, depending on the number of cases prosecuted.

The effect on courts cannot be accurately estimated, as it will depend on the future actions of prosecutors and sellers. Possible increased caseloads in appeals courts may result initially as provisions of the bill are challenged.

TJ:sq

Reviewed by Legislative Fiscal Office.

Analyst: Lamb
Date: May 10, 1971

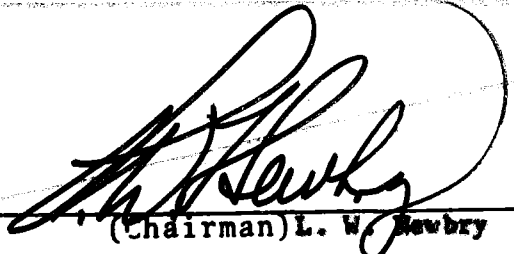
PREVIOUS AMENDMENTS

By House May 4
By Senate May 15

SECOND SENATE AMENDMENTS TO HOUSE BILL 3037

By JOINT COMMITTEE ON WAYS AND MEANS
May 26

Submit:
2 copies if no amdts.
4 copies if amdts.
5 copies if to be printed engrossed.



(Chairman) L. W. Newbry

Sen. Rivers
will lead floor discussion.

(1969)

In line 1 of the printed Senate amendments dated May 15, delete "\$1,000 and insert "\$400".

In line 2, delete "\$1,000" and insert "\$400".

In line 3, delete "\$1,000" and insert "\$400".

In line 4, delete "\$1,000" and insert "\$400".

On page 2 of the printed bill, line 4, after the semi-colon insert "appropriating money;".

On page 3, line 12, after "83.680" insert "which is for the sale or lease of consumer goods or services".

On page 4, line 17, after the period insert "However, the action by the lender against the borrower for the recovery of the deficiency must be commenced not later than 90 days after the date on which the lender repossessed or voluntarily accepted surrender of the goods or motor vehicles for the purchase of which the loan was made.".

On page 4, line 28, after "83.510" insert "purchased primarily for personal, family or household purposes and not primarily for business or commercial purposes".

On page 17, after line 33 insert:

lf "Section 25. There is established within the Department of Justice the Consumer Protection Division to carry out the functions of the Attorney General under this 1971 Act. The Consumer Protection Division shall be maintained, operated and controlled by the Attorney General, who may employ personnel necessary to carry out the duties and functions of the division and fix their compensation, subject to any applicable provisions of the State Merit System Law.

lf "Section 26. In addition to and not in lieu of appropriations made by section 1, chapter _____, Oregon Laws 1971 (Enrolled House Bill 2073), there hereby is appropriated to the Department of Justice for the biennium beginning July 1, 1971, out of the General Fund, the sum of \$200,000 for expenses of the Consumer Protection Division."

On page 18, line 1, delete "25" and insert "27".

On page 18, line 3, delete "26" and insert "28".

Revised

PREVIOUS AMENDMENTS
By House May 4

SENATE AMENDMENTS TO HOUSE BILL 3037

By COMMITTEE ON CONSUMER AFFAIRS

May 15

See attachment

Submit:
2 copies if no amdts.
4 copies if amdts.
5 copies if to be printed engrossed.

Betty Roberts

Senator Betty Roberts
(Chairman)

Sen. _____
will lead floor discussion.

Senate Amendments to House Bill 3037, May 14, 1971

On page 3 of the printed bill, line 14, delete "\$500" and insert "\$1,000".

In line 21, delete "\$500" and insert "\$1,000".

On page 4, line 7, delete "\$500" and insert "\$1,000".

In line 15, delete "\$500" and insert "\$1,000".

On page 8, delete lines 3 and 4 and insert: "NOTE: Section 9 was deleted by amendment." 4

On page 11, line 15, after "cause" insert "including privileged material".

Delete lines 16 through 24.

On page 14, line 21, after "at" delete "your" and insert "a" and after "residence" insert "other than that of the seller".

In line 30, delete "\$25" and insert "\$10".

On page 15, line 8, delete "\$25" and insert "\$10".

In line 23, delete "\$25" and insert "\$10".

On page 16, delete lines 32 through 34.

On page 17, delete lines 1 and 2.

In line 3, delete "(3)" and insert "(2)".

Original

HOUSE AMENDMENTS TO HOUSE BILL 3037

By UNANIMOUS CONSENT

May 4

as follows:

ON PAGE 16, LINE 14, DELETE "21"
 AND INSERT "~~21~~" "^(21a)21a"
 IN THE SAME LINE DELETE "6 TO 20"
 AND INSERT "5 TO 19",

By *Frederick Stull*

This space for Desk use

LA 71H

SENATE COMMITTEE REPORT

Salem, Oregon June 3, 1971

Mr. President:

Your Committee on Consumer Affairs to whom was referred
House Bill 3037, having had the same under
consideration, respectfully report it back with the recommendation that it:

- Do pass: Do pass with amendments:
- Be adopted: Be adopted with amendments:
- Do pass with amendments to the printed engrossed bill.
- (Referred to Committee on Ways & Means by prior reference)
- (Other -- specify)

The Committee took no action and this bill should be
returned to the calendar.

Submit:
2 copies if no amdts.
4 copies if amdts.
5 copies if to be printed engrossed.

Ray Roberts
(Chairman)

Sen. Roberts
will lead floor discussion.

PREVIOUS AMENDMENTS

By House May 4
By Senate May 15
By Senate May 26

CONFERENCE COMMITTEE AMENDMENTS TO HOUSE BILL 3037
June 8

Mr. ~~President~~ Speaker:

Your Conference Committee to whom was referred House Bill 3037 , having had the same under consideration, respectfully report it back with the recommendation that the House concur in the printed ^{first} ~~second~~ Senate amendments dated May 15, and and that the bill be further amended as follows, and repassed:

On page 1 of the printed ~~second~~ Senate Amendments dated May 26, ~~1971, in~~ line 2, delete "\$400" and insert "\$700".

In line 3, delete "\$400" and insert "\$700".

In line 4, delete "\$400" and insert "\$700".

In line 5, delete "\$400" and insert "\$700".

On page 3 of the printed bill, ~~in~~ line 23, after the period insert: "However, the action by the seller against the buyer for the recovery of the deficiency must be commenced not later than 90 days after the date on which the seller repossessed or voluntarily accepted surrender of the goods or motor vehicles.".

1st Tom Young
Representative
1st Galen Stults
Representative
1st Betty Roberts
Senator
1st Don Willner
Senator

Betty Roberts

Senator Betty Roberts

Don Willner

Senator Don Willner

Tom Young

Representative Tom Young

Galen Stults

Representative Galen Stults

A BILL FOR

AN ACT

Relating to consumer protection; creating new provisions; amending ORS 646.605, and 646.990; repealing^{ORS} 646.210, 646.220, 646.230, 646.615, 646.625, 646.635, 646.645, 646.655, 646.810, 646.820, 646.830 and 646.840; providing penalties; and declaring an emergency.

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

Section 1. Sections 2, ~~3~~ and 4 of this Act are added to and made a part of ORS chapter 83.

Section 2. (1) In any contract for the sale or lease of consumer goods or services on credit entered into between a retail seller and a retail buyer, such contract, note or any instrument or evidence of indebtedness of the buyer shall have printed on the face thereof the words "consumer paper", and such contract, note, instrument or evidence of indebtedness with the words "consumer paper" printed thereon shall not be a negotiable instrument within the meaning of the Uniform Commercial Code-Commercial Paper. However, this section shall have no force or effect on the negotiability of any contract, promissory note, instrument or other evidence of indebtedness owned or guaranteed or insured by any state or federal governmental agency even though said contract, note, instrument or other evidence of indebtedness shall contain the wording required by this subsection.

(2) Notwithstanding the absence of such notice on a contract, note, instrument or evidence of indebtedness arising out of a consumer credit sale or consumer lease as described in this section, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease. Any agreement to the contrary shall be of no force or effect in limiting the rights of a consumer under this section. The assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee. The restrictions imposed hereby shall not apply with respect to any promissory note, contract, instrument or other evidence of indebtedness owned or guaranteed or insured by any state or federal governmental agency even though said note, contract, instrument or other evidence of indebtedness shall contain the words required by subsection (1) of this section.

(3) An assignee of "consumer paper" who in good faith enforces a security interest in property held by the buyer or lessee shall not be liable to such buyer or lessee for punitive damages in an action for wrongful repossession. The fact that a seller or lessor has broken his warranties with regard to the property sold or leased shall not, of itself, make an assignee's repossession wrongful.

Section 3. (1) Notwithstanding any other provision of law:

(a) If the buyer defaults in the performance of a retail instalment contract or retail charge agreement subject to ORS 83.010 to 83.190 or 83.510 to 83.680, and if the seller repossesses or voluntarily accepts surrender of the goods or motor vehicles, and if at the time of default the unpaid time balance or time sale price is less than \$500, the buyer shall not be personally liable to the seller for any deficiency between the amount of his unpaid obligation and the amount realized by the seller on resale or other disposition of the goods or motor vehicles. However, the buyer is liable in damages to the seller for any repossessed or surrendered goods or motor vehicles that have been wrongfully damaged.

(b) If the unpaid time balance or time sale price at the time of default is \$500 or more, the seller may recover from the buyer any deficiency that results from deducting the fair market value of the goods or motor vehicles from the unpaid time balance or time sale price.

(c) If the seller brings an action and obtains judgment against the buyer for the unpaid time balance or time sale price without having first repossessed or voluntarily accepted surrender of the goods or motor vehicles, and if under the provisions of paragraph (a) of this subsection the seller would not be entitled to a deficiency judgment, the seller may not repossess the goods or motor vehicles after obtaining judgment for the unpaid time balance or time sale price.

(2) As used in this section:

(a) "Unpaid time balance or time sale price" means that amount the buyer would have been required to pay if the buyer's obligation had been paid in full at the time of default.

(b) "Seller" includes the assignee of the seller.

of
Section 4. (1) Notwithstanding any other provision of law:

(a) If the borrower defaults in the repayment of a loan that was made for the purchase of goods or motor vehicles, and if the lender repossesses or voluntarily accepts surrender of the goods or motor vehicles, and if the unpaid balance of the loan obligation at the time of default is less than \$500, the borrower shall not be personally liable to the lender for any deficiency between the amount of his unpaid loan obligation and the amount realized by the lender on resale or other disposition of the goods or motor vehicles. However, the borrower is liable in damages to the lender for any repossessed or surrendered goods or motor vehicles that have been wrongfully damaged.

(b) If the amount of the borrower's unpaid loan obligation at the time of default in the repayment of a loan made for the purchase of goods or motor vehicles is \$500 or more, the lender may recover from the borrower any deficiency that results from deducting the fair market value of the goods or motor vehicles from the amount of the unpaid loan obligation.

(c) If the lender brings an action and obtains judgment against the borrower for the amount of the unpaid loan obligation without having first repossessed or voluntarily accepted

surrender of the goods or motor vehicles, and if under the provisions of paragraph (a) of this subsection the lender would not be entitled to a deficiency judgment, the lender may not repossess the goods or motor vehicles after obtaining judgment for the unpaid loan obligation.

(2) As used in this section:

(a) "Goods" has the meaning for that term provided in ORS 83.010.

(b) "Motor vehicles" has the meaning for that term provided in ORS 83.510.

(c) "Lender" includes the assignee of the lender.

Section 5. ORS 646.605 is amended to read:

Am
646.605. As used in ^[ORS 646.605 to 646.645] sections 5 to 19 of this 1971 Act:

(1) ["Seller" means any person or his agent who sells or offers for sale any product, property or service.] "Trade" and "commerce" mean the advertising, offering for sale, sale or distribution of any services or any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this state.

(2) ["Purchaser" means any person who purchases or is solicited to purchase any product, property or service.]

"Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or

other tangible document or recording, wherever situate.

(3) ["Product" means any goods or merchandise.] "Examination" of documentary material shall include the inspection, study, or copying of any such material, and the taking of testimony under oath or acknowledgment in respect of any such documentary material or copy thereof.

[(4) "Equipment" means any household furnishings, appliance or fixture and any machinery, mechanical device or vehicle.]

[(5)] (4) "Person" means ~~any~~ natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity except bodies or officers acting under statutory authority of this state or of the United States.

[(6)] (5) "Prosecuting ^[officer] attorney" means the Attorney General or the district attorney of any county in which a violation of [ORS 646.605 to 646.645] sections 5 to 19 of this 1971 Act is alleged to have occurred.

[(7)] (6) "Appropriate court" means the district or circuit court of a county:

(a) Where one or more of the defendants reside; or

(b) Where one or more of the defendants maintain a principal place of business; or

(c) Where one or more of the defendants are alleged to have committed an act prohibited by [ORS 646.605 to 646.645] sections 5 to 19 of this 1971 Act; or

(d) With the defendant's consent, where the prosecuting officer maintains his office.

(7) "Goods or services" means those which are used or bought primarily for personal, family or household purposes, but does not include insurance.

(8) A wilful violation occurs when the person committing the violation knew or should have known that his conduct was a violation.

4 Section 6. ORS 646.615 is repealed and section 7 of this Act is enacted in lieu thereof.

18 Section 7. ⁽¹⁾ A person engages in a practice hereby declared to be unlawful when in the course of his business, vocation or occupation he:

(a) Passes off goods or services as those of another;

(b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of 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 goods or services;

(e) Represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that he does not have;

(f) Represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or second-hand;

(g) Represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(h) Disparages the goods, services, property or business of the buyer or another by false or misleading representations of fact;

(i) Advertises goods and services with intent not to sell 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 the availability of credit 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 property to be used for model or demonstration purposes or in exchange for submitting names of other purchasers to the seller; *mlc*

(m) Performs service on or dismantles any household furnishings, appliance or fixture or any machinery, mechanical device or vehicle at a residence when not authorized by the

owner or apparent owner;

(n) Solicits by telephone or door to door as a seller unless the seller, within 30 seconds after beginning the conversation, identifies himself, whom he represents and the purpose of his call;

(o) In a sale of goods or services, gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the buyer in consideration of the buyer giving to the seller the names of prospective purchasers, lessees, or borrowers, or otherwise aiding the seller in making a sale, lease, or loan to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer 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 goods or services within a certain period of time with intent not to deliver them as promised;

(r) Engages in any other conduct which similarly creates a likelihood of confusion.

(2) A representation under subsection (1) of this section 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 sections 5 to 19 of this 1971 Act, a prosecuting attorney need not prove competition between the parties or actual confusion or misunderstanding.

(4) No action or suit shall be brought under paragraph (r) of subsection (1) 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 confusing to the consumer.

Section 8. Sections 9 to 19 of this Act are added to and made a part of ORS 646.605 to 646.645.

Section 9. Violation of paragraphs (m), (n), (o) or (p) of subsection (1) of section 7 of this 1971 Act is a misdemeanor.

Section 10. The provisions of section 7 of this 1971 Act do not apply to:

(1) Conduct in compliance with the orders or rules of, or a statute administered by a federal, state or local governmental agency.

(2) Acts done by the publisher, owner, agent or employe of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, when the publisher, owner, agent or employe did not have knowledge of the false, misleading or deceptive character of the advertisement.

Section 11. (1) Whenever the prosecuting attorney has probable cause to believe that a person is engaging in, has engaged in, or is about to engage in an unlawful trade practice, he may bring suit in the name of the State of Oregon in the appropriate court to restrain such person from engaging in the alleged unlawful trade practice.

(2) Before filing a suit under subsection (1) of this section, the prosecuting attorney shall in writing notify the

person charged of the alleged unlawful trade practice and the relief to be sought. Such notice shall be served in the manner set forth in section[✓] 15 of this 1971 Act for the service of investigative demands. The person charged thereupon shall have 10 days within which to execute and deliver to the prosecuting attorney an assurance of voluntary compliance. Such assurance shall set forth what actions, if any, the person charged intends to take with respect to the alleged unlawful trade practice. The assurance of voluntary compliance shall not be considered an admission of a violation for any purpose. If the prosecuting attorney is satisfied with the assurance of voluntary compliance, it may be submitted to an appropriate court for approval and if approved shall thereafter be filed with the clerk of the court. Violation of an assurance of voluntary compliance which has been approved by and filed with the court shall constitute a contempt of court. The notice of the prosecuting attorney under this subsection shall not be deemed a public record until the expiration of 10 days from the service of the notice.

(3) Notwithstanding subsection (2)[✓] of this section, where the prosecuting attorney alleges that he has reason to believe that the delay caused by complying with the provisions of subsection (2)[✓] of this section would cause immediate harm to the public health, safety or welfare, the prosecuting attorney may immediately institute a suit under subsection (1)[✓] of this section.

(4) A temporary restraining order may be granted without prior notice to the person if the court finds there is a threat of immediate harm to the public health, safety or welfare. Such a temporary restraining order shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the person restrained consents that it may be extended for a longer period.

(5) The court may award reasonable attorney fees to the prevailing party in a suit brought under this section. If the defendant prevails in such suit and the court finds that the defendant had in good faith submitted to the prosecuting attorney a satisfactory assurance of voluntary compliance prior to the institution of the suit or that the prosecuting attorney, in a suit brought under subsection (3) of this section, did not have reasonable grounds to proceed under that subsection, the court shall award reasonable attorney fees to the defendant. If the state prevails, the reasonable expenses of investigation, preparation and prosecution shall be taxed against the defendant, upon application of the prosecuting attorney, in the same manner as costs are taxed and shall be in addition thereto.

Section 12. The court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, of which he was deprived by means of any practice, ^{declared} ~~declare~~ to be unlawful in section 7 of this 1971 Act, or as may be necessary to insure

cessation of unlawful trade practices.

Section 13. (1) Any person who purchases or leases goods or services and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the wilful use or employment by another person of a method, act or practice declared unlawful by section 7 of this 1971 Act, may bring an individual action in an appropriate court to recover actual damages or \$200, whichever is greater. The court or the jury, as the case may be, may award punitive damages and the court may provide such equitable relief as it deems necessary or proper.

(2) Upon commencement of any action brought under subsection (1) of this section the clerk of the court shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the Attorney General.

(3) In any action brought by a person under this section, the court may award, in addition to the relief provided in this section, reasonable attorney fees and costs.

(4) Any permanent injunction or final judgment or order of the court made under sections 11 or 12 of this 1971 Act shall be prima facie evidence in an action brought under this section that the respondent used or employed a method, act or practice declared unlawful by section 7 of this 1971 Act, but an assurance of voluntary compliance, whether or not

approved by the court, shall not be evidence of such violation.

(5) Actions brought under this section shall be commenced within one year from the discovery of the unlawful method, act or practice. However, whenever any complaint is filed by a prosecuting attorney to prevent, restrain or punish violations of section 7 of this 1971 Act, the running of the statute of limitations with respect to every private right of action under this section and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof.

(6) Notwithstanding subsection (5) of this section, in any action brought by a seller or lessor against a purchaser or lessee of goods or services, such purchaser or lessee may assert any counterclaim he has arising out of a violation of sections 5 to 19 of this 1971 Act.

Section 14. (1) When it appears to the prosecuting attorney that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by section 7 of this 1971 Act, he may execute in writing and cause to be served an investigative demand upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation. The investigative demand shall require such person, under oath or otherwise, to appear and testify or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place

as may be stated in the investigative demand, or to do any of the foregoing, concerning the advertisement, sale or offering for sale of any goods or services or the conduct of any trade or commerce which is the subject matter of the investigation.

Alan
57

(2) At any time before the return date specified in an investigative demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the appropriate court.

(3) No person, otherwise competent as a witness under the laws of this state, shall be disqualified from testifying in response to an investigative demand on the ground that his testimony may incriminate him. If a witness claims that testimony he is called upon to give may incriminate him, such testimony shall be reduced to writing, and no indictment or criminal prosecution shall afterwards be brought against him for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, in obedience to an investigative demand under this section.

AP Section 15. Service of any investigative demand under section 14 of this 1971 Act shall be made personally within this state. If personal service cannot be made, substituted service therefor may be made in the following manner:

Alan

(1) Personal service thereof without this state; *or*

(2) The mailing thereof by registered or certified mail to the last-known place of business, residence or abode within or without this state of such person for whom the same is intended; ~~or~~ *Alm*

(3) As to any person other than a natural person, in the manner provided for service of summons in an action or suit; or

(4) Such service as the court may direct in lieu of personal service within this state.

Section 16. ⁽¹⁾ If any person after being served with an investigative demand under section 15 of this 1971 Act, fails or refuses to obey an investigative demand issued by the prosecuting attorney, the prosecuting attorney may, after notice, apply to an appropriate court and, after hearing thereon, request an order:

^(a)
⁽¹⁾ Granting injunctive relief to restrain the person from engaging in the advertising or sale of any merchandise or the conduct of any trade or commerce that is involved in the alleged or suspected violation; *Alm*

^(b)
⁽²⁾ Granting such other relief as may be required, until the person obeys the investigative demand.

^(c)
⁽³⁾ Any disobedience of any final order of a court under this section shall be punished as a contempt of court.

Section 17. (1) Any person who wilfully violates the terms of an injunction issued under section 11 of this 1971 Act shall forfeit and pay to the state a civil penalty of not

more than \$25,000 per violation. For the purposes of this section, the court issuing the injunction shall retain jurisdiction and the cause shall be continued, and in such cases the prosecuting attorney acting in the name of the state may petition for recovery of civil penalties.

(2) Any person who by an assurance of voluntary compliance submitted under section 11 of this 1971 Act agrees not to engage in a particular act, method or practice made unlawful by section 7 of this 1971 Act and thereafter wilfully violates such assurance, shall forfeit and pay to the state a civil penalty of not more than \$25,000 per violation. The prosecuting attorney may apply to an appropriate court for recovery of such civil penalty.

(3) In any suit brought under section 11 of this 1971 Act, if the court finds that a person is wilfully using or has wilfully used a method, act or practice declared unlawful by section 7 of this 1971 Act, the prosecuting attorney, upon petition to the court, may recover, on behalf of the state, a civil penalty of not exceeding \$2,000 per violation.

1/ Section 18. Upon petition by the prosecuting attorney, the court may, in its discretion, order the dissolution of suspension or forfeiture of the license or franchise of any person who violates the terms of any injunction issued under section 11 of this 1971 Act.

1/ Section 19. A district attorney shall make a full report to the Attorney General of any action, suit, or proceeding

prosecuted by such district attorney under sections 5 to 19 of this 1971 Act, including the final disposition of the matter, and shall file with the Attorney General copies of all assurances of voluntary compliance accepted under section 11 of this 1971 Act.

Section 20. Section 21 of this Act is added to and made a part of ORS chapter 83.

Section 21. (1) "Home solicitation sale" means a sale of goods or services as defined in ORS 83.010 other than insurance, farm equipment, or motor vehicles in which the seller or a person acting for him engages in a personal solicitation of the sale at a residence other than that of the seller and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him. It does not include a sale made pursuant to a preexisting revolving charge account, a contract in writing for the sale or lease of a house or business property or the construction of a new house or business property, a sale made pursuant to prior business negotiations relevant to such sale between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, or a sale for cash or check in the amount of \$50 or less.

(2) (a) Except as provided in paragraph (e) of this subsection, in addition to any other right to revoke an offer or rescind a transaction which the buyer may have, the buyer has the right to cancel a home solicitation sale until 12

midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with this section or pays by cash or check.

(b) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.

(c) Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.

(d) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by a form of written expression the intention of the buyer not to be bound by the home solicitation sale.

(e) The buyer may not cancel a home solicitation sale if the buyer in a separate signed writing not furnished by the seller requests the seller to provide goods or services without delay because of an emergency, and

(A) The seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation, and

(B) In case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

(3) (a) In a home solicitation sale the seller must present to the buyer and obtain his signature to a written agreement or offer to purchase which designates as the date

of the transaction the date on which the buyer actually signs and contains a statement of the buyer's right which complies with paragraph (b) of this subsection.

(b) The statement must be in conspicuous type, 8-point or larger, and must read as follows:

BUYER'S RIGHT TO CANCEL

If this agreement was solicited at your residence and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before 12 midnight of the third business day after you sign this agreement. The notice must be mailed to: _____

(insert name and mailing address of seller)

IF YOU CANCEL, THE SELLER MAY RETAIN AS A CANCELLATION FEE 5 PERCENT OF THE CASH PRICE, BUT NOT EXCEEDING YOUR CASH DOWN PAYMENT, OR \$25, WHICHEVER IS THE LESSER.

However: you may not cancel if you have requested the seller to provide goods or services without delay because of an emergency, and

(1) The seller in good faith makes a substantial beginning of performance of the contract before you give notice of cancellation, and

(2) In the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.

(c) If disclosure is made in accordance with the provisions of ORS 83.810, then in addition thereto the seller must give the portion of the statement required by paragraph (b) of this subsection which advises that if the buyer cancels the seller may retain as a cancellation fee ^{4.00%} ~~5~~ percent of the cash price, but not exceeding the cash down payment, or \$25, whichever is ^{the} lesser.

(d) Until the seller has complied with this subsection the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

(4) (a) Except as provided in this subsection, the seller must tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness within 10 days after a home solicitation sale has been canceled or an offer to purchase has been revoked.

(b) If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this subsection, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(c) The seller may retain as a cancellation fee five percent of the cash price but not exceeding the amount of the cash down payment, or \$25, whichever is the lesser. If the seller fails to comply with an obligation imposed by this

subsection, or if the buyer avoids the sale on any ground independent of his right to cancel pursuant to paragraph (a) of subsection (2) of this section, or revokes his offer to purchase prior to acceptance thereof by the seller, the seller is not entitled to retain a cancellation fee.

(d) The buyer may retain possession of goods delivered to him by the seller, and has a lien on the goods in his possession or control for any recovery to which he is entitled, until the seller has complied with the obligations imposed by this subsection.

(5) (a) Except as ^{provided} ~~provided~~ by paragraph (d) of subsection (4) of this section, within a reasonable time after a home solicitation sale has been canceled or an offer to purchase revoked, the buyer must tender to the seller upon demand any goods delivered by the seller pursuant to the sale, but he is not obliged to tender at any place other than his residence. If the seller fails to demand possession of goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this subsection, 20 days is presumed to be a reasonable time.

(b) The buyer has a duty to take reasonable care of the goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.

(c) If the seller has performed any services pursuant to

1
a home solicitation sale prior to its cancellation, the seller is entitled to no compensation except the cancellation fee provided in this section.

4 Section 21. The remedies provided in sections 6 to 20 of this 1971 Act are in addition to all other remedies, civil or criminal, existing at common law or under the laws of this state.

4 Section 22. Section 23 of this Act is added to and made a part of ORS 20.010 to 20.180.

4 Section 23. (1) In any action for damages for breach of an express or implied warranty in a sale of consumer goods or services where the amount pleaded is \$1,000 or less and the plaintiff prevails in the action, there shall be taxed and allowed to the plaintiff, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the action, if the court finds that written demand for the payment of such claim was made on the defendant not less than 30 days before commencement of the action and that the defendant was allowed within said 30 days reasonable opportunity to inspect any property pertaining to the claim; provided, that no attorney fees shall be allowed to the plaintiff if the court finds that the defendant tendered to the plaintiff, prior to the commencement of the action, an amount not less than the damages awarded to the plaintiff.

(2) If the defendant pleads a counterclaim, not to exceed \$1,000 and the defendant prevails in the action, there shall

be taxed and allowed to the defendant, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney fees for the prosecution of the counterclaim.

(3) If the defendant prevails in an action in which the plaintiff requests attorney fees under subsection (1) ^{of this section,} ~~hereof~~ *Blm* the court may in its discretion allow reasonable attorney fees to the defendant if it finds the action to have been frivolous.

Section 24. ORS 646.990 is amended to read:

646.990. (1) Each violation of any of the provisions of ORS 646.010 to 646.180 by any person, firm or corporation, whether as principal, agent, officer or director, for himself or itself, or for another person, or for any firm or corporation, is punishable, upon conviction, by a fine of not less than \$100 nor more than \$500, or by imprisonment in the county jail not exceeding six months, or by both.

[(2) Violation of ORS 646.220 and each separate offense under ORS 646.230 is punishable, upon conviction, by a fine not exceeding \$500 or by imprisonment in the county jail not exceeding six months, or by both.]

[(3)] (2) Violation of ORS 646.260 is punishable, upon conviction, by a fine of not less than \$500 nor more than \$5,000, or by imprisonment in the county jail not exceeding one year, or by both.

[(4)] (3) Violation of ORS 646.460 is punishable, upon conviction, by a fine of not more than \$5,000 or by imprisonment

in the penitentiary for not more than five years or in the county jail for not more than one year, or by both such fine and imprisonment.

[(5)] Violation of ORS 646.810 is punishable, upon conviction, by a fine of not more than \$100 or by imprisonment in the county jail not exceeding 30 days.]

[(6)] Violation of ORS 646.820 or 646.830 is punishable, upon conviction, by a fine of not more than \$5,000 or by imprisonment in the county jail for not more than one year, or by both.]

[(7)] Violation of ORS 646.840 is punishable, upon conviction, by a fine of not less than \$50 nor more than \$250, or by imprisonment in the county jail for not less than 20 nor more than 90 days, or by both.]

[(8)] (4) Violation of ORS 646.860 is a misdemeanor.

4 Section 25. ORS 646.210, 646.220, 646.230, 646.625, 646.635, 646.645, 646.655, 646.810, 646.820, 646.830 and 646.840 are repealed.

4 Section 26. This Act being necessary for the immediate ~~protection~~ ^{preservation} of the public peace, health and safety, an emergency is declared to exist, and this Act shall take effect on July 1, 1971.