

House Bill 2513

Sponsored by Representative TOMEI; Representatives BARKER, BERGER, BONAMICI, BRUUN, CANNON, GILLIAM, KOMP, LIM, NELSON, ROSENBAUM, WITT

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits person from issuing gift card that expires or has face value that declines over time or with lack of use. Prohibits person from charging fee related to gift card. Creates exceptions. Makes violation of prohibition unlawful trade practice.

A BILL FOR AN ACT

1
2 Relating to gift cards; creating new provisions; and amending ORS 646.608.

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

4 **SECTION 1. As used in sections 2 and 3 of this 2007 Act:**

5 (1) "Charitable organization" has the meaning given that term in ORS 646.561.

6 (2) "Gift card" means a prefunded record, issued for consideration, evidencing a promise
7 that the issuer will provide goods or services to the owner of the record in the amount shown
8 in the record. "Gift card" does not include prepaid telephone calling cards or prepaid com-
9 mercial mobile radio services as defined in 47 C.F.R. 20.3.

10 (3) "Nonprofit corporation" has the meaning given that term in ORS 65.001.

11 **SECTION 2. (1) Except as provided in section 3 of this 2007 Act, a person may not issue
12 a gift card:**

13 (a) That has an expiration date;

14 (b) That has a face value that declines as a result of the passage of time or the lack of
15 use of the card; or

16 (c) That prohibits the bearer, at no cost to the bearer, from exchanging the gift card for
17 cash, or a new gift card, in an amount equal to the cash value of the card.

18 (2) A person who issues a gift card may not charge the bearer a fee related to the card,
19 including, but not limited to, an inactivity fee, a maintenance fee or a service fee.

20 **SECTION 3. A person may issue a gift card that has an expiration date if:**

21 (1) The front of the gift card bears, in at least 10-point type, the words "EXPIRES ON"
22 or "EXPIRATION DATE" followed by the date on which the card expires;

23 (2) The person issues the gift card:

24 (a) Pursuant to an award, loyalty or promotional program in which the person who re-
25 ceives the card does not provide consideration for the card;

26 (b) To an employer; or

27 (c) To a charitable organization or nonprofit corporation for use in fund-raising;

28 (3) The person issues the gift card at a cost below the face value of the card or for no
29 consideration; and

30 (4) The gift card does not expire until at least 30 days after the date of issuance.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **SECTION 4.** ORS 646.608 is amended to read:

2 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
3 ness, vocation or occupation the person does any of the following:

4 (a) Passes off real estate, goods or services as those of another.

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

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

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

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

14 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,
15 reconditioned, reclaimed, used or secondhand.

16 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
17 or that real estate or goods are of a particular style or model, if they are of another.

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

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

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

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

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

30 (m) Performs service on or dismantles any goods or real estate when not authorized by the
31 owner or apparent owner thereof.

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

34 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
35 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
36 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
37 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
38 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
39 tomer enters into the transaction.

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

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

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

45 (s) Makes false or misleading representations of fact concerning the offering price of, or the

1 person's cost for real estate, goods or services.

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

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

5 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
6 ORS 698.640, whether in a commercial or noncommercial situation.

7 (w) Manufactures mercury fever thermometers.

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

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

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

13 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
14 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
15 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
16 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
17 graph, "thermostat" means a device commonly used to sense and, through electrical communication
18 with heating, cooling or ventilation equipment, control room temperature.

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

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

22 (bb) Violates ORS 646.850 (1).

23 (cc) Violates any requirement of ORS 646.661 to 646.686.

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

25 (ee) Violates ORS 646.883 or 646.885.

26 (ff) Violates any provision of ORS 646.195.

27 (gg) Violates ORS 646.569.

28 (hh) Violates the provisions of ORS 646.859.

29 (ii) Violates ORS 759.290.

30 (jj) Violates ORS 646.872.

31 (kk) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

32 (LL) Violates ORS 646.563.

33 (mm) Violates ORS 759.690 or any rule adopted pursuant thereto.

34 (nn) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
35 thereto.

36 (oo) Violates ORS 646.892 or 646.894.

37 (pp) Violates any provision of ORS 646.249 to 646.259.

38 (qq) Violates ORS 646.384.

39 (rr) Violates ORS 646.871.

40 (ss) Violates ORS 822.046.

41 (tt) Violates ORS 128.001.

42 (uu) Violates ORS 646.649 (2) to (4).

43 (vv) Violates ORS 646.877 (2) to (4).

44 (ww) Violates ORS 87.686.

45 (xx) Violates ORS 646.651.

- 1 (yy) Violates ORS 646.879.
- 2 (zz) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.
- 3 (aaa) Violates ORS 180.440 (1).
- 4 (bbb) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 5 (ccc) Violates ORS 87.007 (2) or (3).
- 6 (ddd) Violates ORS 92.405 (1), (2) or (3).
- 7 (eee) Engages in an unlawful practice under ORS 646.648.
- 8 **(fff) Issues a gift card in violation of section 2 of this 2007 Act.**
- 9 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
- 10 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- 11 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
- 12 need not prove competition between the parties or actual confusion or misunderstanding.
- 13 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
- 14 torney General has first established a rule in accordance with the provisions of ORS chapter 183
- 15 declaring the conduct to be unfair or deceptive in trade or commerce.
- 16 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
- 17 under subsection (1)(aaa) of this section by a person other than a prosecuting attorney, relief is
- 18 limited to an injunction and the prevailing party may be awarded reasonable attorney fees.
- 19 **SECTION 5. Section 2 of this 2007 Act applies to gift cards that are issued on or after**
- 20 **the effective date of this 2007 Act.**

21