

House Bill 3277

Sponsored by Representative GALIZIO; Representatives BUCKLEY, D EDWARDS

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**.

Requires person using radio frequency identification technology in goods offered for retail sale to disclose use in signs on person's business premises and on label affixed to goods. Requires person to make certain disclosures to consumers upon consumer's request. Prohibits person from combining or using information obtained from radio frequency identification together with personal information obtained from other sources. Prohibits person from disclosing information obtained from radio frequency tag to third party not affiliated with person.

Permits Attorney General to adopt rules to implement and enforce Act and makes violation of Act unlawful trade practice.

A BILL FOR AN ACT

1
2 Relating to radio frequency identification; 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 1 to 7 of this 2007 Act:**

5 (1) **"Consumer" means an individual who obtains, through a retail transaction, goods that**
6 **are used primarily for personal, family or household purposes and not for resale.**

7 (2) **"Goods" has the meaning given that term in ORS 83.010.**

8 (3) **"Package" means any type of container, article or item used to contain or hold goods**
9 **offered for retail sale in the form in which the goods are ordinarily offered for sale to con-**
10 **sumers.**

11 (4) **"Personal information" means information that can be used to identify an individual**
12 **that is collected, compiled or obtained with or without the individual's consent or that is**
13 **stored in a public or private database or other information retrieval system, including but**
14 **not limited to:**

15 (a) **The individual's name;**

16 (b) **A list or description of the individual's physical characteristics;**

17 (c) **A list or description of the individual's habits, preferences, previous transactions,**
18 **buying patterns or related information; and**

19 (d) **A number, mark, symbol, photograph or other device uniquely associated with the**
20 **individual by means of which the individual or property of the individual may be identified**
21 **or classified.**

22 (5) **"Qualifying retailer" means a person that uses radio frequency identification tags or**
23 **technology with goods offered for retail sale in the course of the person's business.**

24 (6) **"Radio frequency identification" means a technology that uses radio waves or other**
25 **wireless means to transmit information, including but not limited to unique identifying in-**
26 **formation, between a radio frequency identification tag and a reader.**

27 (7) **"Radio frequency identification tag" means a device that is attached to, embedded in,**
28 **printed on or otherwise made a part of a retail product or package and that uses radio fre-**

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 quency identification to transmit a unique number or identifier or other information to a
 2 reader. “Radio frequency identification tag” does not include any device implanted in or at-
 3 tached to a domesticated animal and used for identifying or tracking the animal on behalf
 4 of, or for the benefit of, the animal’s owner or keeper.

5 (8) “Reader” means a device that uses radio waves or other wireless means to transmit
 6 information to or receive information from a radio frequency identification tag.

7 **SECTION 2.** (1) A qualifying retailer shall post signs on the retailer’s business premises
 8 to notify consumers that:

9 (a) The retailer uses radio frequency identification tags with goods the retailer offers for
 10 sale; and

11 (b) The retailer must disclose the information described in sections 4 and 5 of this 2007
 12 Act to a consumer at the consumer’s request.

13 (2) A qualifying retailer shall post the signs described in subsection (1) of this section on
 14 each cash register or point of sale at which the consumer purchases goods or in locations
 15 visible to the consumer from the cash register or point of sale.

16 (3) The signs described in subsection (1) of this section shall display the required infor-
 17 mation in a conspicuous type size and against a contrasting background.

18 **SECTION 3.** (1) A qualifying retailer shall state on a label affixed to each item of goods
 19 offered for retail sale as a unit, or on a package that contains the item, if the item or
 20 package contains or bears a radio frequency identification tag, that:

21 (a) The item contains or bears a radio frequency identification tag;

22 (b) Radio frequency identification tags can transmit information about the item to an
 23 independent reader before and after purchase; and

24 (c) The information transmitted is unique to the item and can be used to identify or
 25 track the item.

26 (2) The label described in subsection (1) of this section shall display the required infor-
 27 mation in a conspicuous type size and against a contrasting background.

28 **SECTION 4.** (1) At a consumer’s request, a qualifying retailer shall disclose to the con-
 29 sumer, in terms that do not reveal confidential or proprietary information or a trade secret,
 30 the following information:

31 (a) What information the retailer collects by means of radio frequency identification tags;

32 (b) How and for what purposes the retailer uses the information collected; and

33 (c) What safeguards or security measures the retailer uses to protect personal informa-
 34 tion collected by means of radio frequency identification tags.

35 (2) A qualifying retailer shall provide the information described in subsection (1) of this
 36 section to consumers in plain, easily understood language and, to the degree practicable and
 37 as necessary to provide the required information, on a single sheet of paper or a small bro-
 38 chure.

39 **SECTION 5.** (1) At a consumer’s written request, a qualifying retailer shall disclose to
 40 the consumer all personal information about the consumer that the retailer has obtained by
 41 means of radio frequency identification.

42 (2) The qualifying retailer shall make a form available to the consumer on which the
 43 consumer may submit a request for the information described in subsection (1) of this sec-
 44 tion.

45 (3) The qualifying retailer shall provide the information described in subsection (1) of this

1 section to the consumer in a timely manner but not later than 48 hours after the customer
 2 submits a request. A retailer provides the information in a timely manner if within 48 hours
 3 after the consumer submitted the request, the retailer deposits the information, correctly
 4 addressed and postage prepaid, with the United States Postal Service.

5 (4) In delivering personal information to the consumer under this section, the qualifying
 6 retailer shall take reasonable precautions to prevent a third party from overhearing, inter-
 7 cepting or otherwise obtaining the information without the customer's authorization. If the
 8 retailer provides the information to the consumer by mail, the retailer shall do so by certi-
 9 fied mail, return receipt requested.

10 **SECTION 6.** A qualifying retailer may not combine or use information obtained by means
 11 of a radio frequency identification tag together with personal information obtained from
 12 other sources.

13 **SECTION 7.** A qualifying retailer may not disclose personal information obtained by
 14 means of a radio frequency identification tag to a third party not affiliated with the retailer.
 15 For purposes of this section, a third party is affiliated with a qualifying retailer if the third
 16 party conducts business on the retailer's behalf or in a capacity directly related to the
 17 retailer's own business functions.

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

19 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
 20 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

44 (L) Makes false or misleading representations relating to commissions or other compensation to
 45 be paid in exchange for permitting real estate, goods or services to be used for model or demon-

1 stration purposes or in exchange for submitting names of potential customers.

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

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

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

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

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

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

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

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

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

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

24 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

39 (bb) Violates ORS 646.850 (1).

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

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

42 (ee) Violates ORS 646.883 or 646.885.

43 (ff) Violates any provision of ORS 646.195.

44 (gg) Violates ORS 646.569.

45 (hh) Violates the provisions of ORS 646.859.

- 1 (ii) Violates ORS 759.290.
- 2 (jj) Violates ORS 646.872.
- 3 (kk) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 4 (LL) Violates ORS 646.563.
- 5 (mm) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 6 (nn) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 7 thereto.
- 8 (oo) Violates ORS 646.892 or 646.894.
- 9 (pp) Violates any provision of ORS 646.249 to 646.259.
- 10 (qq) Violates ORS 646.384.
- 11 (rr) Violates ORS 646.871.
- 12 (ss) Violates ORS 822.046.
- 13 (tt) Violates ORS 128.001.
- 14 (uu) Violates ORS 646.649 (2) to (4).
- 15 (vv) Violates ORS 646.877 (2) to (4).
- 16 (ww) Violates ORS 87.686.
- 17 (xx) Violates ORS 646.651.
- 18 (yy) Violates ORS 646.879.
- 19 (zz) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.
- 20 (aaa) Violates ORS 180.440 (1).
- 21 (bbb) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 22 (ccc) Violates ORS 87.007 (2) or (3).
- 23 (ddd) Violates ORS 92.405 (1), (2) or (3).
- 24 (eee) Engages in an unlawful practice under ORS 646.648.
- 25 **(fff) Violates sections 1 to 7 of this 2007 Act.**

26 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
27 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

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

30 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
31 torney General has first established a rule in accordance with the provisions of ORS chapter 183
32 declaring the conduct to be unfair or deceptive in trade or commerce.

33 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
34 under subsection (1)(aaa) of this section by a person other than a prosecuting attorney, relief is
35 limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

36 **SECTION 9. The Attorney General may adopt rules to implement and enforce sections 1**
37 **to 7 of this 2007 Act.**

38 **SECTION 10. Sections 1 to 7 of this 2007 Act and the amendments to ORS 646.608 by**
39 **section 8 of this 2007 Act apply to qualifying retailers operating on and after the effective**
40 **date of this 2007 Act and to information obtained by means of radio frequency identification**
41 **on or after the effective date of this 2007 Act.**

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