

Senate Bill 460

Sponsored by Senator WESTLUND (at the request of Oregon PTA, Oregon School Boards Association, Confederated Oregon School Administrators, Oregon School Employees Association, Oregon Education Association)

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**.

Provides that unused gift cards become abandoned property.

Prohibits expiration dates for gift cards and certain fees related to gift cards. Provides that violation of prohibitions is unlawful trade practice.

A BILL FOR AN ACT

1
2 Relating to gift cards; creating new provisions; and amending ORS 98.302 and 646.608.

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

4 **SECTION 1.** ORS 98.302 is amended to read:

5 98.302. As used in ORS 98.302 to 98.436 and 98.992, unless the context otherwise requires:

6 (1) "Administrator" means the Director of the Department of State Lands.

7 (2) "Apparent owner" means the person whose name appears on the records of the holder as the
8 person entitled to property held, issued or owing by the holder.

9 (3) "Business association" means a nonpublic corporation, joint stock company, business trust,
10 partnership, investment company or an association for business purposes of two or more individuals,
11 whether or not for profit, including a financial institution, insurance company or utility.

12 (4) "Domicile" means the state of incorporation of a corporation and the state of the principal
13 place of business of an unincorporated person.

14 (5) "Financial institution" means a financial institution or a trust company, as those terms are
15 defined in ORS 706.008, a safe deposit company, a private banker, a savings and loan association,
16 a building and loan association or an investment company.

17 (6) **"Gift card" means a prefunded, electronic record evidencing a contract between the**
18 **issuer of the record and the owner of the record for goods or services to be provided to the**
19 **value shown in the record and containing a microprocessor chip, magnetic stripe or other**
20 **means for storage of information relating to the value of the record. "Gift card" does not**
21 **include prepaid telephone calling cards or prepaid commercial mobile radio services as de-**
22 **fin ed in 47 C.F.R. 20.3.**

23 [(6)] (7) "Holder" means a person, wherever organized or domiciled, who is in possession of
24 property belonging to another, a trustee or indebted to another on an obligation.

25 [(7)] (8) "Insurance company" means an association, corporation, fraternal or mutual benefit
26 organization, whether or not for profit, which is engaged in providing insurance coverage, including
27 accident, burial, casualty, workers' compensation, credit life, contract performance, dental, fidelity,
28 fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine,
29 mortgage, surety and wage protection insurance.

30 [(8)] (9) "Intangible property" includes:

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 (a) Credit balances, customer overpayments, security deposits, refunds, credit memos, unpaid
2 wages, unused airline tickets and unidentified remittances;

3 (b) Stocks and other intangible ownership interests in business associations;

4 (c) Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make dis-
5 tributions;

6 (d) Amounts due and payable under the terms of insurance policies;

7 (e) Amounts distributed from a trust or custodial fund established under a plan to provide
8 health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, em-
9 ployee savings, supplemental unemployment insurance or similar benefits; and

10 (f) Moneys, checks, drafts, deposits, interest, dividends and income.

11 [(9)] (10) "Last-known address" means a description of the location of the apparent owner suffi-
12 cient for the purpose of delivery of mail.

13 [(10)] (11) "Lawful deduction" means a deduction related to the purpose of an account or de-
14 posit, for example, to satisfy unpaid utility bills.

15 [(11)] (12) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust other
16 than a deposit in trust, a creditor, claimant, or payee in case of other intangible property, or a
17 person, or the person's legal representative, having a legal or equitable interest in property.

18 [(12)] (13) "Person" means an individual, business association, state or other government or
19 political subdivision or agency, public corporation, public authority, estate, trust, two or more per-
20 sons having a joint or common interest, or any other legal or commercial entity.

21 [(13)] (14) "Service charge" means fees or charges that are limited to a specific situation and
22 that meet basic contractual and notice requirements.

23 [(14)] (15) "State" means any state, district, commonwealth, territory, insular possession or any
24 other area subject to the legislative authority of the United States.

25 [(15)] (16) "Utility" means a person who owns or operates for public use, any plant, equipment,
26 property, franchise or license for the transmission of communications or the production, storage,
27 transmission, sale, delivery or furnishing of electricity, water, steam or gas.

28 **SECTION 2. Section 3 of this 2007 Act is added to and made a part of ORS 98.302 to 98.436.**

29 **SECTION 3. (1) The value of a gift card is presumed abandoned if the value of the gift
30 card has not been redeemed within three years after the later of:**

31 **(a) The date of purchase or issuance of the gift card; or**

32 **(b) The date of the last transaction by the owner of the gift card that increased or de-
33 creased the value of the gift card.**

34 **(2) Notwithstanding ORS 98.302 (7), for purposes of ORS 98.302 to 98.436, the holder of a
35 gift card is the issuer of the gift card.**

36 **SECTION 4. (1) As used in this section, "gift card" has the meaning given that term in
37 ORS 98.302.**

38 **(2) A person may not issue a gift card that has an expiration date.**

39 **(3) A person who issues a gift card may not charge the owner a fee related to the gift
40 card, including but not limited to a dormancy fee, an inactivity fee, a maintenance fee or a
41 service fee.**

42 **SECTION 5. ORS 646.608 is amended to read:**

43 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
44 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
 2 ORS 698.640, whether in a commercial or noncommercial situation.
- 3 (w) Manufactures mercury fever thermometers.
- 4 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
 5 law, or is:
- 6 (A) Prescribed by a person licensed under ORS chapter 677; and
- 7 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
 8 on the proper cleanup of mercury should breakage occur.
- 9 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
 10 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
 11 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
 12 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
 13 graph, “thermostat” means a device commonly used to sense and, through electrical communication
 14 with heating, cooling or ventilation equipment, control room temperature.
- 15 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
 16 mercury light switches.
- 17 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 18 (bb) Violates ORS 646.850 (1).
- 19 (cc) Violates any requirement of ORS 646.661 to 646.686.
- 20 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 21 (ee) Violates ORS 646.883 or 646.885.
- 22 (ff) Violates any provision of ORS 646.195.
- 23 (gg) Violates ORS 646.569.
- 24 (hh) Violates the provisions of ORS 646.859.
- 25 (ii) Violates ORS 759.290.
- 26 (jj) Violates ORS 646.872.
- 27 (kk) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 28 (LL) Violates ORS 646.563.
- 29 (mm) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 30 (nn) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
 31 thereto.
- 32 (oo) Violates ORS 646.892 or 646.894.
- 33 (pp) Violates any provision of ORS 646.249 to 646.259.
- 34 (qq) Violates ORS 646.384.
- 35 (rr) Violates ORS 646.871.
- 36 (ss) Violates ORS 822.046.
- 37 (tt) Violates ORS 128.001.
- 38 (uu) Violates ORS 646.649 (2) to (4).
- 39 (vv) Violates ORS 646.877 (2) to (4).
- 40 (ww) Violates ORS 87.686.
- 41 (xx) Violates ORS 646.651.
- 42 (yy) Violates ORS 646.879.
- 43 (zz) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.
- 44 (aaa) Violates ORS 180.440 (1).
- 45 (bbb) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

1 (ccc) Violates ORS 87.007 (2) or (3).

2 (ddd) Violates ORS 92.405 (1), (2) or (3).

3 (eee) Engages in an unlawful practice under ORS 646.648.

4 **(fff) Issues a gift card in violation of section 4 of this 2007 Act.**

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

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

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

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

15 **SECTION 6. Sections 3 and 4 of this 2007 Act apply to gift cards that are issued on or**
16 **after the effective date of this 2007 Act.**

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