

House Bill 2367

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Consumer Protection)

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 retailer from selling or offering for sale, leasing, subletting or otherwise distributing children's product that contains certain chemical substances at identified concentrations.

Authorizes enforcement of violation as unlawful trade practice.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to substances contained in children's products; creating new provisions; amending ORS
3 646.608; and declaring an emergency.

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

5 **SECTION 1. (1)(a) As used in this section, "children's product" means a consumer prod-**
6 **uct, including a crib as defined in ORS 646A.504, that is designed or intended:**

7 **(A) For the care of or use by a child under 12 years of age; or**

8 **(B) To come in contact with a child under 12 years of age at the time the product is used.**

9 **(b) "Children's product" does not include a medication, drug, food or other product that**
10 **is intended to be ingested.**

11 **(2) A retailer, as defined in section 1, chapter 31, Oregon Laws 2008, may not willfully or**
12 **knowingly sell or offer for sale, lease, sublet or otherwise distribute a children's product to**
13 **consumers in this state if the children's product contains:**

14 **(a) Di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP) or benzyl butyl phthalate**
15 **(BBP), in concentrations any one of which exceeds 0.1 percent;**

16 **(b) Diisononyl phthalate (DINP), diisodecyl phthalate (DIDP) or di-n-octyl phthalate**
17 **(DnOP), in concentrations any one of which exceeds 0.1 percent if the children's product can**
18 **be placed in the mouth of a child under the age of four years; or**

19 **(c) Bisphenol A in a concentration that exceeds 0.1 parts per billion.**

20 **SECTION 2. ORS 646.608, as amended by section 8, chapter 19, Oregon Laws 2008, and section**
21 **5, chapter 31, Oregon Laws 2008, is amended to read:**

22 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
23 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

12 (bb) Violates ORS 646A.070 (1).

13 (cc) Violates any requirement of ORS 646A.030 to 646A.040.

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

15 (ee) Violates ORS 646.883 or 646.885.

16 (ff) Violates any provision of ORS 646A.020.

17 (gg) Violates ORS 646.569.

18 (hh) Violates the provisions of ORS 646A.142.

19 (ii) Violates ORS 646A.360.

20 (jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

21 (kk) Violates ORS 646.563.

22 (LL) Violates ORS 759.690 or any rule adopted pursuant thereto.

23 (mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
 24 thereto.

25 (nn) Violates ORS 646A.210 or 646A.214.

26 (oo) Violates any provision of ORS 646A.124 to 646A.134.

27 (pp) Violates ORS 646A.254.

28 (qq) Violates ORS 646A.095.

29 (rr) Violates ORS 822.046.

30 (ss) Violates ORS 128.001.

31 (tt) Violates ORS 646.649 (2) to (4).

32 (uu) Violates ORS 646A.090 (2) to (4).

33 (vv) Violates ORS 87.686.

34 (ww) Violates ORS 646.651.

35 (xx) Violates ORS 646A.362.

36 (yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

37 (zz) Violates ORS 180.440 (1).

38 (aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

39 (bbb) Violates ORS 87.007 (2) or (3).

40 (ccc) Violates ORS 92.405 (1), (2) or (3).

41 (ddd) Engages in an unlawful practice under ORS 646.648.

42 (eee) Violates ORS 646A.365.

43 (fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

44 (ggg) Sells a gift card in violation of ORS 646A.276.

45 (hhh) Violates ORS 646A.102, 646A.106 or 646A.108.

1 (iii) Violates ORS 646A.430 to 646A.450.

2 (jjj) Violates a provision of sections 2 to 6, chapter 19, Oregon Laws 2008.

3 (kkk) Violates:

4 (A) Section 2, chapter 31, Oregon Laws 2008, 30 or more days after a recall notice, warning or
5 declaration described in section 2, chapter 31, Oregon Laws 2008, is issued for the children's prod-
6 uct, as defined in section 1, chapter 31, Oregon Laws 2008, that is the subject of the violation[.];

7 **or**

8 **(B) Section 1 of this 2009 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)(zz) of this section by a person other than a prosecuting attorney, relief is lim-
18 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.

19 **SECTION 3. (1) Section 1 of this 2009 Act and the amendments to ORS 646.608 by section**
20 **2 of this 2009 Act apply to a person that operates as a retailer on or after the operative date**
21 **of section 1 of this 2009 Act and the amendments to ORS 646.608 by section 2 of this 2009**
22 **Act.**

23 **(2) Section 1 of this 2009 Act and the amendments to ORS 646.608 by section 2 of this 2009**
24 **Act become operative 90 days following the effective date of this 2009 Act.**

25 **SECTION 4. This 2009 Act being necessary for the immediate preservation of the public**
26 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
27 **on its passage.**

28