

House Bill 2680

Sponsored by Representatives HOLVEY, GREENLICK; Representatives BARNHART, BARTON, BUCKLEY, CLEM, C EDWARDS, GELSER, KAHL, KOMP, KOTEK, MATTHEWS, NATHANSON, RILEY, STIEGLER, TOMEI, VANORMAN

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 use, sale, transfer or exchange for value, for commercial purposes, of prescription drug information that identifies prescriber or subject of prescription drug order.

Makes violation of prohibition unlawful trade practice.

A BILL FOR AN ACT

1
2 Relating to prescription drug information; creating new provisions; and amending ORS 646.608.

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

4 **SECTION 1. (1) As used in this section:**

5 (a)(A) **“Commercial purpose” means advertising, marketing, promotion or any activity**
6 **that could be used to influence sales or market share of a pharmaceutical product, influence**
7 **or evaluate the prescribing behavior of a health practitioner or evaluate the effectiveness**
8 **of a professional pharmaceutical detailing sales force.**

9 (B) **“Commercial purpose” does not include pharmacy reimbursement, formulary com-**
10 **pliance, a pharmacy file transfer in response to a patient request or as a result of the sale**
11 **or purchase of a pharmacy, patient care management, utilization review by a health care**
12 **provider, an agent of a health care provider, the patient’s health plan or an agent of the**
13 **patient’s health plan or health care research.**

14 (b) **“Detailing” means one-to-one contact with a prescriber or employees or agents of a**
15 **prescriber for the purpose of increasing or reinforcing the prescribing of a certain drug by**
16 **the prescriber.**

17 (c) **“Electronic transmission intermediary” means an entity that provides the**
18 **infrastructure that connects the computer systems or other electronic devices used, by and**
19 **between health practitioners, prescribers, pharmacies, health care facilities, pharmacy ben-**
20 **efits managers, carriers and third party administrators and agents and contractors of those**
21 **persons and entities, to facilitate the secure transmission of an individual’s prescription drug**
22 **order, refill, authorization request, claim, payment or other prescription drug information.**

23 (d) **“Health plan” means an entity that provides prescription drug coverage as authorized**
24 **under the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003**
25 **(P.L. 108-173).**

26 (e) **“Health practitioner” means a practitioner described in ORS 31.740.**

27 (f) **“Individual” means an individual who is the subject of a prescription drug order.**

28 (g) **“Pharmacy” means drug outlets, pharmacies and retail drug outlets as those terms**
29 **are defined in ORS 689.005.**

30 (h) **“Pharmacy benefits manager” means an entity that contracts with a managed care**

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 **organization, a self-insured employer, an insurer, a labor union or the Federal Employees**
2 **Health Benefits Program or another federal, state or local government entity to administer**
3 **a prescription drug benefit.**

4 (i) **“Prescriber” means a health practitioner who is licensed, registered or otherwise au-**
5 **thorized by law to prescribe and administer drugs in this state.**

6 (j) **“Prescription drug information” means information included in a prescription drug**
7 **order as defined in ORS 689.005.**

8 (k) **“Prescription drug information intermediary” means a pharmacy benefits manager,**
9 **insurance company, third party administrator or electronic transmission intermediary or**
10 **any person employed by or contracted to provide services to that entity.**

11 **(2) A pharmacy or prescription drug information intermediary may not use, sell, transfer**
12 **or exchange for value, for any commercial purpose, prescription drug information that**
13 **identifies a prescriber or an individual.**

14 **SECTION 2.** ORS 646.608, as amended by section 8, chapter 19, Oregon Laws 2008, and section
15 5, chapter 31, Oregon Laws 2008, is amended to read:

16 646.608. (1) A person engages in an unlawful practice when in the course of the person’s busi-
17 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

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

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

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

39 (ee) Violates ORS 646.883 or 646.885.

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

41 (gg) Violates ORS 646.569.

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

43 (ii) Violates ORS 646A.360.

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

45 (kk) Violates ORS 646.563.

- 1 (LL) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 2 (mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 3 thereto.
- 4 (nn) Violates ORS 646A.210 or 646A.214.
- 5 (oo) Violates any provision of ORS 646A.124 to 646A.134.
- 6 (pp) Violates ORS 646A.254.
- 7 (qq) Violates ORS 646A.095.
- 8 (rr) Violates ORS 822.046.
- 9 (ss) Violates ORS 128.001.
- 10 (tt) Violates ORS 646.649 (2) to (4).
- 11 (uu) Violates ORS 646A.090 (2) to (4).
- 12 (vv) Violates ORS 87.686.
- 13 (ww) Violates ORS 646.651.
- 14 (xx) Violates ORS 646A.362.
- 15 (yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 16 (zz) Violates ORS 180.440 (1).
- 17 (aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 18 (bbb) Violates ORS 87.007 (2) or (3).
- 19 (ccc) Violates ORS 92.405 (1), (2) or (3).
- 20 (ddd) Engages in an unlawful practice under ORS 646.648.
- 21 (eee) Violates ORS 646A.365.
- 22 (fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 23 (ggg) Sells a gift card in violation of ORS 646A.276.
- 24 (hhh) Violates ORS 646A.102, 646A.106 or 646A.108.
- 25 (iii) Violates ORS 646A.430 to 646A.450.
- 26 (jjj) Violates a provision of sections 2 to 6, chapter 19, Oregon Laws 2008.
- 27 (kkk) Violates section 2, chapter 31, Oregon Laws 2008, 30 or more days after a recall notice,
- 28 warning or declaration described in section 2, chapter 31, Oregon Laws 2008, is issued for the chil-
- 29 dren's product, as defined in section 1, chapter 31, Oregon Laws 2008, that is the subject of the vi-
- 30 olation.

31 **(LLL) Violates section 1 of this 2009 Act.**

32 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-

33 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

34 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney

35 need not prove competition between the parties or actual confusion or misunderstanding.

36 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-

37 torney General has first established a rule in accordance with the provisions of ORS chapter 183

38 declaring the conduct to be unfair or deceptive in trade or commerce.

39 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought

40 under subsection (1)(zz) of this section by a person other than a prosecuting attorney, relief is lim-

41 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.

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