

House Bill 3358

Sponsored by 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 financial institution from selling, sharing, transferring or otherwise disclosing consumer's personal financial information to nonaffiliated party without consumer's explicit prior consent.

Permits enforcement of violations as unlawful trade practice.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to privacy of consumer financial information; 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. As used in this section and section 2 of this 2009 Act:**

6 (1) **"Account verification service" means a person that for a fee or other consideration,**
7 **including a subscription or membership dues, or on a cooperative basis with another person**
8 **without exchanging consideration, regularly engages in a practice of:**

9 (a) **Assembling information about how frequently and where a consumer opens or at-**
10 **tempts to open a depository account and instances when a depository institution closes a**
11 **consumer's account; or**

12 (b) **Authenticating or validating Social Security numbers and addresses and reporting the**
13 **results of the person's attempt at authentication or validation to other persons for the pur-**
14 **pose of fraud prevention.**

15 (2) **"Consumer" means an individual who is a resident of this state and who deposits or**
16 **invests the individual's funds with or borrows from a financial institution or who serves as**
17 **a surety or guarantor on a loan.**

18 (3) **"Credit reporting agency" means a person that for a fee or other consideration, in-**
19 **cluding a subscription or membership dues, or on a cooperative basis with another person**
20 **without exchanging consideration, regularly engages in a practice of:**

21 (a) **Assembling or evaluating consumer credit information or other information con-**
22 **cerning a consumer; and**

23 (b) **Reporting the results of the person's assembly or evaluation to other persons for the**
24 **purpose of rating or assessing the creditworthiness of the consumer.**

25 (4) **"Financial institution" has the meaning given that term in ORS 706.008.**

26 (5) **"Mercantile agency" means a person that for a fee or other consideration, including**
27 **a subscription or membership dues, or on a cooperative basis with another person without**
28 **exchanging consideration, regularly engages in a practice of:**

29 (a) **Assembling or evaluating business credit information or other information concerning**
30 **a business; and**

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 (b) Reporting the results of the person’s assembly or evaluation to other persons for the
 2 purpose of rating or assessing the creditworthiness of the business.

3 (6) “Nonaffiliated party” means a person that, directly or indirectly, does not control, is
 4 not under the control of or is not under common control with a person that receives, pos-
 5 sesses, uses or processes, distributes or transfers a consumer’s personal financial informa-
 6 tion.

7 (7) “Person” means an individual, trust, corporation, partnership, joint venture, associ-
 8 ation, limited liability company or other business entity.

9 (8) “Personal financial information” means information concerning a consumer’s finances
 10 that is not widely available to the public and that is, is a copy of or is derived from:

11 (a) A document that by means of the consumer’s signature grants access to or authority
 12 over a demand, time, savings, passbook, share or share draft account or similar account the
 13 consumer maintains with a financial institution;

14 (b) A statement, ledger card or other record that shows transactions in or with reference
 15 to a demand, time, savings, passbook, share or share draft account or similar account the
 16 consumer maintains with a financial institution;

17 (c) A check, draft or money order drawn on or issued or payable by or through a financial
 18 institution;

19 (d) A withdrawal from, deposit to or transfer or exchange between a consumer’s account
 20 and another person’s account, other than a periodic charge that a financial institution im-
 21 poses on the consumer’s account, that occurs as the result of an agreement between a fi-
 22 nancial institution and the other person;

23 (e) Information related to a consumer’s loan account or application for a loan; or

24 (f) Evidence of a transaction conducted by electronic or telephonic means.

25 **SECTION 2.** (1) Except as provided in subsection (3) of this section, a financial institution
 26 may not sell, share, transfer or otherwise disclose personal financial information with or to
 27 a nonaffiliated party unless the financial institution receives explicit prior consent from the
 28 consumer to whom the personal financial information relates. The Director of the Depart-
 29 ment of Consumer and Business Services by rule shall specify the form, means and contents
 30 of the consent a financial institution must receive under the provisions of this subsection.

31 (2) A person that receives personal financial information from a financial institution may
 32 not sell, share, transfer or otherwise disclose the personal financial information with or to
 33 another person unless the financial institution may lawfully sell, share, transfer or otherwise
 34 disclose the personal financial information with or to the other person directly.

35 (3) Subsections (1) and (2) of this section do not apply to disclosures:

36 (a) To the consumer to whom personal financial information relates, after verification
 37 of the consumer’s identity;

38 (b) That a consumer explicitly authorizes and that are limited to the scope and purpose
 39 of the consumer’s authorization;

40 (c) To a state agency or an agency of a political subdivision of the state that by law is
 41 authorized to receive the disclosures;

42 (d) In response to a subpoena, court order or other lawful demand;

43 (e) That occur in the course of a financial institution’s preparation, examination, handl-
 44 ing or maintenance of records related to a consumer’s account;

45 (f) To a certified public accountant who is examining the financial institution’s records

1 **in the course of an independent audit;**

2 **(g) To a collection agency or employees or agents of the collection agency or to another**
 3 **person the financial institution engages to assist in recovering an amount owed to the fi-**
 4 **nanical institution, if the disclosure is made to further the recovery;**

5 **(h) To an officer, employee or agent of a regulatory agency who examines the financial**
 6 **institution's records in the course of performing the officer's, employee's or agent's official**
 7 **duties;**

8 **(i) In publications that contain information that is derived from financial records and**
 9 **that does not identify a particular consumer, deposit, account or transaction;**

10 **(j) In reports, returns or other documents required under state or federal law;**

11 **(k) Required or permitted under laws that govern a person's dishonoring a negotiable**
 12 **instrument;**

13 **(L) In exchanges of credit information done in the regular course of business between a**
 14 **financial institution and a credit reporting agency, if the exchange otherwise complies with**
 15 **the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.;**

16 **(m) In exchanges of information done in the regular course of business between a fi-**
 17 **nanical institution and a mercantile agency or account verification service, if the exchange**
 18 **otherwise complies with the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.;**

19 **(n) In exchanges of loan information that specifically affects a sale, foreclosure or loan**
 20 **closing if the purpose of the exchange is to accomplish the sale, foreclosure or loan closing;**
 21 **and**

22 **(o) To civil or criminal law enforcement agencies or within an industry network if the**
 23 **disclosure concerns suspected criminal activities and the agencies use the information in the**
 24 **course of performing the agencies' official duties.**

25 **SECTION 3.** ORS 646.608, as amended by section 8, chapter 19, Oregon Laws 2008, and section
 26 5, chapter 31, Oregon Laws 2008, is amended to read:

27 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
 28 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

45 (i) Advertises real estate, goods or services with intent not to provide them as advertised, or

1 with intent not to supply reasonably expectable public demand, unless the advertisement discloses
2 a limitation of quantity.

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

- 1 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 2 (bb) Violates ORS 646A.070 (1).
- 3 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 4 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 5 (ee) Violates ORS 646.883 or 646.885.
- 6 (ff) Violates any provision of ORS 646A.020.
- 7 (gg) Violates ORS 646.569.
- 8 (hh) Violates the provisions of ORS 646A.142.
- 9 (ii) Violates ORS 646A.360.
- 10 (jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 11 (kk) Violates ORS 646.563.
- 12 (LL) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 13 (mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 14 thereto.
- 15 (nn) Violates ORS 646A.210 or 646A.214.
- 16 (oo) Violates any provision of ORS 646A.124 to 646A.134.
- 17 (pp) Violates ORS 646A.254.
- 18 (qq) Violates ORS 646A.095.
- 19 (rr) Violates ORS 822.046.
- 20 (ss) Violates ORS 128.001.
- 21 (tt) Violates ORS 646.649 (2) to (4).
- 22 (uu) Violates ORS 646A.090 (2) to (4).
- 23 (vv) Violates ORS 87.686.
- 24 (ww) Violates ORS 646.651.
- 25 (xx) Violates ORS 646A.362.
- 26 (yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 27 (zz) Violates ORS 180.440 (1).
- 28 (aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 29 (bbb) Violates ORS 87.007 (2) or (3).
- 30 (ccc) Violates ORS 92.405 (1), (2) or (3).
- 31 (ddd) Engages in an unlawful practice under ORS 646.648.
- 32 (eee) Violates ORS 646A.365.
- 33 (fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 34 (ggg) Sells a gift card in violation of ORS 646A.276.
- 35 (hhh) Violates ORS 646A.102, 646A.106 or 646A.108.
- 36 (iii) Violates ORS 646A.430 to 646A.450.
- 37 (jjj) Violates a provision of sections 2 to 6, chapter 19, Oregon Laws 2008.
- 38 (kkk) Violates section 2, chapter 31, Oregon Laws 2008, 30 or more days after a recall notice,
- 39 warning or declaration described in section 2, chapter 31, Oregon Laws 2008, is issued for the chil-
- 40 dren's product, as defined in section 1, chapter 31, Oregon Laws 2008, that is the subject of the vi-
- 41 olation.
- 42 **(LLL) Violates a provision of section 2 of this 2009 Act.**
- 43 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
- 44 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- 45 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney

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

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

5 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
6 under subsection (1)(zz) of this section by a person other than a prosecuting attorney, relief is lim-
7 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.

8 **SECTION 4. Sections 1 and 2 of this 2009 Act and the amendments to ORS 646.608 by**
9 **section 3 of this 2009 Act apply to disclosures of personal financial information that occur**
10 **on or after the operative date of this 2009 Act.**

11 **SECTION 5. (1) Sections 1 and 2 of this 2009 Act and the amendments to ORS 646.608 by**
12 **section 3 of this 2009 Act become operative January 1, 2010.**

13 (2) The Director of the Department of Consumer and Business Services may take any
14 action before January 1, 2010, that is necessary to enable the director to exercise, on and
15 after January 1, 2010, all of the duties, functions and powers conferred on the director by
16 sections 1 and 2 of this 2009 Act and the amendments to ORS 646.608 by section 3 of this 2009
17 Act.

18 **SECTION 6. This 2009 Act being necessary for the immediate preservation of the public**
19 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
20 **on its passage.**

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