

House Bill 3223

Sponsored by Representative KOTEK

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 warning labels on containers of high-calorie beverages sold or offered for sale in state.
Becomes operative July 1, 2012.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to high-calorie beverages; creating new provisions; amending ORS 646.608; and declaring
3 an emergency.

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

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

6 (a) **"High-calorie beverage" means a beverage that contains 10 or more calories per eight**
7 **ounces. High-calorie beverage does not include:**

8 (A) **Fruit or vegetable juice, if the beverage item is 100 percent juice with no added**
9 **sweeteners and contains no more than 120 calories per eight ounces; or**

10 (B) **Milk or a nutritionally equivalent milk alternative, if the beverage item is fat free**
11 **or low fat and, if flavored, contains no more than 150 calories per eight ounces.**

12 (b) **"Person" has the meaning given that term in ORS 646.605.**

13 (2) **A person may not sell or offer for sale a container of high-calorie beverage in this**
14 **state unless the container bears the warning label, "overconsumption of sugary beverages**
15 **is linked to obesity, diabetes and heart disease."**

16 **SECTION 2. A person that violates section 1 of this 2011 Act commits an unlawful prac-**
17 **tice under ORS 646.608 and is subject to enforcement and penalty as provided under ORS**
18 **646.605 to 646.652.**

19 **SECTION 3. ORS 646.608 is amended to read:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (w) Manufactures mercury fever thermometers.

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

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

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

45 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to

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

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

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

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

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

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

12 (ee) Violates ORS 646.883 or 646.885.

13 (ff) Violates ORS 646.569.

14 (gg) Violates the provisions of ORS 646A.142.

15 (hh) Violates ORS 646A.360.

16 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

17 (jj) Violates ORS 646.563.

18 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

19 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
 20 thereto.

21 (mm) Violates ORS 646A.210 or 646A.214.

22 (nn) Violates any provision of ORS 646A.124 to 646A.134.

23 (oo) Violates ORS 646A.095.

24 (pp) Violates ORS 822.046.

25 (qq) Violates ORS 128.001.

26 (rr) Violates ORS 646.649 (2) to (4).

27 (ss) Violates ORS 646A.090 (2) to (4).

28 (tt) Violates ORS 87.686.

29 (uu) Violates ORS 646.651.

30 (vv) Violates ORS 646A.362.

31 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

32 (xx) Violates ORS 180.440 (1) or 180.486 (1).

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

34 (zz) Violates ORS 87.007 (2) or (3).

35 (aaa) Violates ORS 92.405 (1), (2) or (3).

36 (bbb) Engages in an unlawful practice under ORS 646.648.

37 (ccc) Violates ORS 646A.365.

38 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

39 (eee) Sells a gift card in violation of ORS 646A.276.

40 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.

41 (ggg) Violates ORS 646A.430 to 646A.450.

42 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.

43 (iii) Violates a provision of ORS 646A.702 to 646A.720.

44 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
 45 scribed in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the

1 subject of the violation.

2 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.

3 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
4 U.S.C. App. 501 et seq., as in effect on January 1, 2010.

5 (mmm) Violates a provision of ORS 646A.480 to 646A.495.

6 (nnn) Violates ORS 646A.082.

7 (ooo) Violates ORS 646.647.

8 (ppp) Violates ORS 646A.115.

9 (qqq) Violates a provision of ORS 646A.405.

10 **(rrr) Violates a provision of section 1 of this 2011 Act.**

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

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

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

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

21 **SECTION 4. Sections 1 and 2 of this 2011 Act and the amendments to ORS 646.608 by**
22 **section 3 of this 2011 Act apply to high-calorie beverages sold or offered for sale on or after**
23 **the operative date specified in section 5 of this 2011 Act.**

24 **SECTION 5. Sections 1 and 2 of this 2011 Act and the amendments to ORS 646.608 by**
25 **section 3 of this 2011 Act become operative on July 1, 2012.**

26 **SECTION 6. This 2011 Act being necessary for the immediate preservation of the public**
27 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
28 **on its passage.**

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