

House Bill 3315

Sponsored by COMMITTEE ON BUSINESS AND LABOR

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 sale of product produced using stolen or misappropriated information technology. Provides cause of action for damages and injunctive relief. Allows award of attorney fees and costs to prevailing party.

A BILL FOR AN ACT

1
2 Relating to the use of misappropriated information technology.

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

SECTION 1. (1) As used in sections 1 to 3 of this 2011 Act:

4
5 (a) **"Information technology"** means hardware and software for data processing, office
6 automation and telecommunications.

7 (b) **"Person"** means a natural person, corporation, business trust, estate, trust, part-
8 nership, association, joint venture, government, governmental or political subdivision or
9 agency or any other legal or commercial entity.

10 (c) **"Produced"** means manufactured, assembled, developed, designed, distributed, sup-
11 plied or marketed.

12 (d) **"Producer"** means any person that produces a product using information technology.

13 (e) **"Product"** means any goods, articles, merchandise, ware or other property that has
14 been produced using information technology and that is sold or offered for sale in this state.

15 (f) **"Retail price"** means the average price that would have been charged in this state for
16 a product had the product been produced using information technology that was not stolen
17 or misappropriated.

18 (g) **"Retail value"** means the cost of information technology had it not been stolen or
19 misappropriated multiplied by the number of products sold, offered for sale, leased, bartered,
20 traded or exchanged in this state that were produced using comparable stolen or misappro-
21 priated information technology.

22 (h) **"Stolen or misappropriated"** means acquired, appropriated or used in violation of
23 state or federal law.

24 **SECTION 2.** (1) A person may not sell, offer for sale, lease, barter, trade or exchange a
25 product that has been produced by the person using stolen or misappropriated information
26 technology if another person is selling, offering for sale, leasing, bartering, trading or ex-
27 changing a similar product in this state that was produced without using stolen or misap-
28 propriated information technology. The prohibition in this subsection applies regardless of
29 whether the product is sold, offered for sale, leased, bartered, traded or exchanged individ-
30 ually or as a component of another product.

31 (2) The prohibition in subsection (1) of this section does not apply to:

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) Products that have been copyrighted under the Copyright Act of 1976, 17 U.S.C. 101
2 et seq.;

3 (b) Claims that are based upon an infringement of a patent or trade secret under ORS
4 646.461 to 646.475 or the United States Patent Act, 35 U.S.C. 1 et seq.;

5 (c) Claims based on violation of the terms of a license that allows licensed users to
6 modify and redistribute source code associated with information technology free of charge;

7 (d) Products produced using stolen or misappropriated information technology if the re-
8 tail value is less than \$10,000; and

9 (e) Products produced using stolen or misappropriated information technology if the
10 stolen or misappropriated information technology is a de minimis part of the product and the
11 stolen or misappropriated information technology was not available for purchase, lease,
12 barter, trade or exchange on an individual basis at the time the information technology was
13 used.

14 **SECTION 3.** (1) Subject to subsection (3) of this section, a person injured by a violation
15 of section 2 of this 2011 Act may do all of the following:

16 (a) Sue for the injury and may recover the greater of:

17 (A) Actual damages; or

18 (B) For each product sold, offered for sale, leased, bartered, traded or exchanged in vio-
19 lation of section 2 of this 2011 Act, an amount not exceeding 20 percent of the retail price
20 of the product.

21 (b) Recover three times the damages claimed under paragraph (a) of this subsection if
22 the defendant's sale, offer, lease, barter, trade or exchange of a product in violation of sec-
23 tion 2 of this 2011 Act was willful.

24 (c) File an action for injunctive relief to restrain a person from producing or using a
25 product that is sold, offered for sale, leased, bartered, traded or exchanged in violation of
26 section 2 of this 2011 Act. For purposes of this paragraph, irreparable harm is presumed if
27 the person claiming to have been harmed establishes by a preponderance of the evidence that
28 products sold, offered for sale, leased, bartered, traded or exchanged in violation of section
29 2 of this 2011 Act have been produced or used in this state.

30 (2) A person is deemed to have been injured under this section if the person establishes
31 by a preponderance of the evidence that:

32 (a) The person produced products comparable to products sold, offered for sale, leased,
33 bartered, traded or exchanged in violation of section 2 of this 2011 Act; and

34 (b) The products produced by the person were not produced using stolen or misappro-
35 priated information technology.

36 (3)(a) An action or suit may not be commenced under this section unless the defendant
37 has received, not later than 90 days before commencement of the action or suit, a written
38 notice stating:

39 (A) That the defendant has sold, offered for sale, leased, bartered, traded or exchanged
40 a product in violation of section 2 of this 2011 Act and requesting that the defendant cease
41 selling, offering, leasing, bartering, trading or exchanging the product; or

42 (B) That the defendant has produced or used a product that was sold, offered for sale,
43 leased, bartered, traded or exchanged in violation of section 2 of this 2011 Act and requesting
44 that the defendant cease producing or using the product.

45 (b) The notice shall identify the product, the stolen or misappropriated information

1 technology and the owner of the stolen or misappropriated information technology.

2 (4) An action or suit may not be commenced under this section against the following:

3 (a) A consumer who is a natural person who purchased, acquired or used the product for
4 personal, family or household purposes.

5 (b) A person conducting a business with annual revenues not exceeding \$50 million.

6 (c) A person that purchased, acquired or used the product in good faith reliance on
7 written assurances that the product was produced without using stolen or misappropriated
8 information technology.

9 (d) A person that has implemented commercially reasonable practices and procedures to
10 prevent the purchase, acquisition or use of products sold, offered for sale, leased, bartered,
11 traded or exchanged in violation of section 2 of this 2011 Act and that has acted in good faith
12 to ensure compliance with the practices and procedures. A person satisfies the requirements
13 of this paragraph by demonstrating that a contract the person has entered into with a pro-
14 ducer of a product sold, offered for sale, leased, bartered, traded or exchanged in violation
15 of section 2 of this 2011 Act contains provisions that prohibit the use of stolen or misappro-
16 priated information technology and are subject to the right of audit, and that the person has
17 established a practice of ensuring compliance with the contractual provisions by conducting
18 audits and other appropriate means.

19 (5) The court may award reasonable attorney fees, expert witness fees and costs, in-
20 cluding investigative costs, to the prevailing party in an action or suit under this section.

21 (6) In a proceeding under this section, the court shall allow a request for inspection made
22 under the Oregon Rules of Civil Procedure to enter upon the defendant's premises for the
23 purpose of inspecting and copying any products, information technology, records, files or
24 other evidence within the scope of ORCP 36 B.

25 **SECTION 4.** Sections 1 to 3 of this 2011 Act apply to products sold, offered for sale,
26 leased, bartered, traded or exchanged on or after the effective date of this 2011 Act.

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