

House Bill 4071

Sponsored by Representative KOMP; Representatives DEMBROW, HOYLE, KENY-GUYER, TOMEI (Presession filed.)

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 person engaged in floral business operations to disclose physical location of principal place of business in written communications and advertisements.

Prohibits person engaged in floral business operations from misrepresenting physical location of floral business.

Makes violation unlawful trade practice.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to floral businesses; creating new provisions; amending ORS 646A.082; and declaring an
3 emergency.

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

5 **SECTION 1.** ORS 646A.082 is amended to read:

6 646A.082. *[(1) Any person engaging in floral retail sales shall disclose the person's principal place*
7 *of business in any written communications sent to customers, listings, advertising or websites that*
8 *provide information about the person's floral retail sales activities.]*

9 **(1) As used in this section:**

10 **(a) "Advertisement" means any oral, written or graphic statement or representation**
11 **made by a person engaged in floral business operations, regardless of the medium of com-**
12 **munication, for the purpose of inducing, directly or indirectly, the purchase of floral pro-**
13 **ducts and services.**

14 **(b) "Floral business operations" means business operations directly or indirectly related**
15 **to the retail sale, offer for sale, marketing, distribution, order gathering and advertisement**
16 **of floral products and services that are purchased by residents of this state.**

17 **(c) "Floral products and services" means floral arrangements, plant arrangements and**
18 **related merchandise and services sold or offered for sale.**

19 **(d) "Local" or "locally owned" means floral business operations conducted in this state**
20 **where the delivery of floral services and products takes place within a 50-mile radius of the**
21 **physical location of the floral business.**

22 **(e) "Person" has the meaning given that term in ORS 646.605.**

23 **(f) "Physical location" or "physically located" means the physical presence of floral**
24 **business operations as designated by a post-office mailing address that is not a post office**
25 **box.**

26 **(2)(a) A person engaged in floral business operations shall disclose the physical location**
27 **of the person's principal place of business:**

28 **(A) In any written communication that provides information about the person's floral**

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 **business operations to a prospective or existing customer in this state; and**

2 **(B) In any advertisement appearing in or on a medium listed in subsection (3) of this**
3 **section.**

4 **(b) When a person engaged in floral business operations makes an advertisement on a**
5 **website, the disclosure required by paragraph (a) of this subsection must be made on the**
6 **home page of the website.**

7 **(3) A person engaged in floral business operations may not misrepresent the physical lo-**
8 **cation of the person's floral business as local, as locally owned or as being physically located**
9 **in Oregon in any advertisement appearing in or on a medium listed below:**

10 **(a) Telephone directory or other directory assistance database.**

11 **(b) Television.**

12 **(c) Radio.**

13 **(d) Newspaper, magazine, flyer, brochure or other print medium.**

14 **(e) Billboard, sign or poster.**

15 **(f) Facsimile.**

16 **(g) Electronic mail, text message or other electronic or telephonic form of communi-**
17 **cation.**

18 **(h) The Internet and services available by means of the Internet, including websites. As**
19 **used in this paragraph, "website" includes home pages, metatitles, landing pages, sponsored**
20 **link sections and any other aspect of a website used to convey information.**

21 **(4) For purposes of subsection (3) of this section, a person misrepresents the physical**
22 **location of the person's floral business if the floral business is not physically located in**
23 **Oregon and:**

24 **(a) The name of the floral business specified in the advertisement is a fictitious or as-**
25 **sumed business name that would lead a reasonable consumer to conclude that the floral**
26 **business is physically located in Oregon;**

27 **(b) The advertisement uses the name of or any form of contact information for another**
28 **floral business that is physically located in Oregon in such a manner that a reasonable con-**
29 **sumer would believe that the advertised floral business is physically located in Oregon;**

30 **(c) Telephone calls to a telephone number listed in the advertisement that a reasonable**
31 **consumer would conclude is a telephone number to contact the person at the physical lo-**
32 **cation of the person's floral business are routinely forwarded or transferred to, or terminate**
33 **in, a physical location that is outside Oregon; or**

34 **(d) The advertisement would otherwise lead a reasonable consumer to conclude that the**
35 **floral business is physically located in Oregon.**

36 **(5) For purposes of subsection (3) of this section, a person misrepresents the physical**
37 **location of the person's floral business as being "local" or "locally owned" if the floral busi-**
38 **ness is physically located in Oregon but the person delivers floral products and services**
39 **outside a 50-mile radius of the physical location of the floral business and:**

40 **(a) The name of the floral business specified in the advertisement is a fictitious or as-**
41 **sumed business name that would lead a reasonable consumer to conclude that the floral**
42 **business is local or locally owned;**

43 **(b) The advertisement uses the name of, or any form of contact information for, another**
44 **floral business that is local or locally owned in such a manner that a reasonable consumer**
45 **would believe that the advertised floral business is local or locally owned;**

1 (c) Telephone calls to a telephone number listed in the advertisement that a reasonable
2 consumer would conclude is a telephone number to contact the person at the physical lo-
3 cation of the person's floral business are routinely forwarded or transferred to, or terminate
4 in, a physical location that is outside a 50-mile radius of the physical location of the floral
5 business; or

6 (d) The advertisement would otherwise lead a reasonable consumer to conclude that the
7 floral business is local or locally owned.

8 (6) Subsection (3) of this section does not apply to a person that:

9 (a)(A) Is engaged in floral business operations at a physical location outside Oregon; and

10 (B) Discloses in a clear and conspicuous manner in the person's advertisement, in such
11 a manner that a reasonable consumer would easily become aware of the disclosure, that the
12 person is engaged in floral business operations at a physical location outside Oregon; or

13 (b)(A) Is engaged in floral business operations that are physically located in Oregon;

14 (B) Delivers floral products and services outside a 50-mile radius of the physical location
15 of the floral business; and

16 (C) Discloses in a clear and conspicuous manner in the person's advertisement, in such
17 a manner that a reasonable consumer would easily become aware of the disclosure, that the
18 person is engaged in floral business operations outside a 50-mile radius of the physical lo-
19 cation of the floral business.

20 [(2)] (7) A person who violates [subsection (1)] subsection (2) or (3) of this section commits an
21 unlawful practice under ORS 646.608. The [requirement under subsection (1) of this section is] re-
22 quirements under subsections (2) and (3) of this section are subject to enforcement and penalty
23 as provided under ORS 646.605 to 646.652.

24 **SECTION 2.** (1) The amendments to ORS 646A.082 by section 1 of this 2012 Act apply to
25 persons engaged in floral business operations on or after the effective date of this 2012 Act.

26 (2) Notwithstanding subsection (1) of this section, the amendments to ORS 646A.082 by
27 section 1 of this 2012 Act do not affect a contract made before the effective date of this 2012
28 Act. However, the amendments to ORS 646A.082 by section 1 of this 2012 Act apply to a re-
29 newal, modification or extension of an existing contract, and to a new contract, made on or
30 after the effective date of this 2012 Act.

31 **SECTION 3.** This 2012 Act being necessary for the immediate preservation of the public
32 peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect
33 on its passage.