

DRAFT

SUMMARY

Requires person that owns or operates social media to disclose to users what data and information about users person collects, maintains, stores, processes, sells, leases, transfers or otherwise uses and how person uses data and information about users. Requires person also to provide and notify users about means by which users may limit access to and availability of data and information about users. Provides that person may make changes to disclosures or means only after notifying users for minimum of 45 calendar days before doing so.

Provides that failure to comply with requirements of Act is unlawful practice subject to enforcement and action under Unlawful Trade Practices Act.

A BILL FOR AN ACT

1
2 Relating to personal information privacy; creating new provisions; and
3 amending ORS 646.608.

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

5 **SECTION 1. (1) As used in this section, “social media” means an**
6 **electronic medium that:**

7 (a) **Allows or enables the electronic medium’s users to create,**
8 **transfer, share and view content that includes, but is not limited to:**

9 (A) **Electronic files, including videos, still photographs, audio files**
10 **and podcasts;**

11 (B) **Text of any type, including electronic mail, blogs and instant**
12 **messages; and**

13 (C) **Other data and information that users create, transfer, share**
14 **and view by means of the electronic medium; and**

15 (b) **Collects, maintains, stores, processes, sells, leases, transfers or**

1 otherwise uses personal information or data about the electronic
2 medium's users, including but not limited to:

3 (A) Names, addresses, telephone numbers, electronic contact infor-
4 mation and other information that identifies a user;

5 (B) Credit card numbers, bank account numbers or other financial
6 information for a user; and

7 (C) Usage statistics and other data or information about how a user
8 behaves while using the electronic medium, including which of the
9 electronic medium's functions and available resources the user uses,
10 preferences for goods and services the user exhibits and other related
11 information about the user's habits.

12 (2)(a) A person that engages in a business in which the person owns
13 or operates social media shall:

14 (A) Disclose to users of the social media, in a conspicuous manner
15 designed to call attention to the disclosure, on the social media site's
16 home page or other first point of contact a user has with the social
17 media site, and on each page that is available to the user for creating,
18 transferring, sharing and viewing content:

19 (i) What data and information about the user the person collects,
20 maintains, stores, processes, sells, leases, transfers or otherwise uses;
21 and

22 (ii) How the person uses the data and information;

23 (B) Provide, and notify users about, means by which the users may
24 limit access to and the availability of the data and information de-
25 scribed in subparagraph (A) of this paragraph to both the person that
26 owns or operates the social media and any other person with which
27 the person may share the data or information or to which the person
28 may sell, lease, transfer or otherwise use the data or information; and

29 (C) Notify users for at least 45 calendar days before making changes
30 to the disclosures required under this subsection or to the means that
31 are available to a user for limiting access to or availability of the data

1 **or information the person shares, sells, leases, transfers or otherwise**
2 **uses.**

3 **(b) For purposes of this subsection, a person may disclose or provide**
4 **the information required under this subsection by:**

5 **(A) Linking from the social media site's home page or other first**
6 **point of contact a user has with the social media site, or from each**
7 **page that is available to the user for creating, transferring, sharing**
8 **and viewing content, to a separate display that offers complete infor-**
9 **mation necessary to comply with the requirements set forth in this**
10 **subsection;**

11 **(B) Providing users with a printed disclosure or a link to a video**
12 **or audio disclosure that offers complete information necessary to**
13 **comply with the requirements set forth in this subsection; or**

14 **(C) Other means that are reasonably calculated to call attention to**
15 **the disclosure and that offer complete information necessary to com-**
16 **ply with the requirements set forth in this subsection.**

17 **(3) A person's failure to comply with the requirements set forth in**
18 **this section is an unlawful practice under ORS 646.608 that is subject**
19 **to enforcement under ORS 646.632 and an action under ORS 646.638.**

20 **SECTION 2.** ORS 646.608, as amended by section 6, chapter 52, Oregon
21 Laws 2012, is amended to read:

22 646.608. (1) A person engages in an unlawful practice when in the course
23 of the person's business, vocation or occupation the person does any of the
24 following:

25 (a) Passes off real estate, goods or services as [*those*] **the real estate,**
26 **goods or services** of another.

27 (b) Causes likelihood of confusion or of misunderstanding as to the
28 source, sponsorship, approval, or certification of real estate, goods or ser-
29 vices.

30 (c) Causes likelihood of confusion or of misunderstanding as to affiliation,
31 connection, or association with, or certification by, another.

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

3 (e) Represents that real estate, goods or services have sponsorship, ap-
4 proval, characteristics, ingredients, uses, benefits, quantities or qualities that
5 *[they]* **the real estate, goods or services** do not have or that a person has
6 a sponsorship, approval, status, qualification, affiliation, or connection that
7 the person does not have.

8 (f) Represents that real estate or goods are original or new if *[they]* **the**
9 **real estate or goods** are deteriorated, altered, reconditioned, reclaimed,
10 used or secondhand.

11 (g) Represents that real estate, goods or services are of a particular
12 standard, quality, or grade, or that real estate or goods are of a particular
13 style or model, if *[they]* **the real estate, goods or services** are of another.

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

16 (i) Advertises real estate, goods or services with intent not to provide
17 *[them]* **the real estate, goods or services** as advertised, or with intent not
18 to supply reasonably expectable public demand, unless the advertisement
19 discloses a limitation of quantity.

20 (j) Makes false or misleading representations of fact concerning the rea-
21 sons for, existence of, or amounts of price reductions.

22 (k) Makes false or misleading representations concerning credit avail-
23 ability or the nature of the transaction or obligation incurred.

24 (L) Makes false or misleading representations relating to commissions or
25 other compensation to be paid in exchange for permitting real estate, goods
26 or services to be used for model or demonstration purposes or in exchange
27 for submitting names of potential customers.

28 (m) Performs service on or dismantles any goods or real estate when *[not*
29 *authorized by]* the owner or apparent owner *[thereof]* **of the goods or real**
30 **estate does not authorize the service or dismantling.**

31 (n) Solicits potential customers by telephone or door to door as a seller

1 unless the person provides the information required under ORS 646.611.

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

10 (p) Makes any false or misleading statement about a prize, contest or
11 promotion used to publicize a product, business or service.

12 (q) Promises to deliver real estate, goods or services within a certain pe-
13 riod of time with intent not to deliver [*them*] **the real estate, goods or**
14 **services** as promised.

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

17 (s) Makes false or misleading representations of fact concerning the of-
18 fering price of, or the person's cost for real estate, goods or services.

19 (t) Concurrent with tender or delivery of any real estate, goods or ser-
20 vices fails to disclose any known material defect or material nonconformity.

21 (u) Engages in any other unfair or deceptive conduct in trade or com-
22 merce.

23 (v) Violates any of the provisions relating to auction sales, auctioneers
24 or auction marts under ORS 698.640, whether in a commercial or noncom-
25 mercial situation.

26 (w) Manufactures mercury fever thermometers.

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

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

30 (B) Supplied with instructions on the careful handling of the thermometer
31 to avoid breakage and on the proper cleanup of mercury should breakage

1 occur.

2 (y) Sells a thermostat that contains mercury unless the thermostat is la-
3 beled in a manner to inform the purchaser that mercury is present in the
4 thermostat and that the thermostat may not be disposed of until the mercury
5 is removed, reused, recycled or otherwise managed to ensure that the mer-
6 cury does not become part of the solid waste stream or wastewater. For
7 purposes of this paragraph, “thermostat” means a device commonly used to
8 sense and, through electrical communication with heating, cooling or venti-
9 lation equipment, control room temperature.

10 (z) Sells or offers for sale a motor vehicle manufactured after January 1,
11 2006, that contains mercury light switches.

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

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

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

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

16 (ee) Violates ORS 646.883 or 646.885.

17 (ff) Violates ORS 646.569.

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

19 (hh) Violates ORS 646A.360.

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

21 (jj) Violates ORS 646.563.

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

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

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

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

27 (oo) Violates ORS 646A.095.

28 (pp) Violates ORS 822.046.

29 (qq) Violates ORS 128.001.

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

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

- 1 (tt) Violates ORS 87.686.
2 (uu) Violates ORS 646.651.
3 (vv) Violates ORS 646A.362.
4 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or
5 646A.054.
6 (xx) Violates ORS 180.440 (1) or 180.486 (1).
7 (yy) Commits the offense of acting as a vehicle dealer without a certif-
8 icate under ORS 822.005.
9 (zz) Violates ORS 87.007 (2) or (3).
10 (aaa) Violates ORS 92.405 (1), (2) or (3).
11 (bbb) Engages in an unlawful practice under ORS 646.648.
12 (ccc) Violates ORS 646A.365.
13 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
14 (eee) Sells a gift card in violation of ORS 646A.276.
15 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
16 (ggg) Violates ORS 646A.430 to 646A.450.
17 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
18 (iii) Violates a provision of ORS 646A.702 to 646A.720.
19 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning
20 or declaration described in ORS 646A.530 is issued for the children's product,
21 as defined in ORS 646A.525, that is the subject of the violation.
22 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,
23 697.682, 697.692 or 697.707.
24 (LLL) Violates the consumer protection provisions of the Servicemembers
25 Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
26 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
27 (nnn) Violates ORS 646A.082.
28 (ooo) Violates ORS 646.647.
29 (ppp) Violates ORS 646A.115.
30 (qqq) Violates a provision of ORS 646A.405.
31 (rrr) Violates ORS 646A.092.

1 (sss) Violates a provision of ORS 646.644.

2 (ttt) Violates a provision of ORS 646A.295.

3 (uuu) Violates section 3, chapter 52, Oregon Laws 2012.

4 **(vvv) Violates a provision of section 1 of this 2013 Act.**

5 (2) A representation under subsection (1) of this section or ORS 646.607
6 may be any manifestation of any assertion by words or conduct, including,
7 but not limited to, a failure to disclose a fact.

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

11 (4) An action or suit may not be brought under subsection (1)(u) of this
12 section unless the Attorney General has first established a rule in accord-
13 ance with the provisions of ORS chapter 183 declaring the conduct to be
14 unfair or deceptive in trade or commerce.

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

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