

# House Bill 3156

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFICIENCY

## 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 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 amending ORS 646.608.

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

4 **SECTION 1. (1) As used in this section, "social media" means an electronic medium that:**

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

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

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

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

11 (b) **Collects, maintains, stores, processes, sells, leases, transfers or otherwise uses per-**  
12 **sonal information or data about the electronic medium's users, including but not limited to:**

13 (A) **Names, addresses, telephone numbers, electronic contact information and other in-**  
14 **formation that identifies a user;**

15 (B) **Credit card numbers, bank account numbers or other financial information for a**  
16 **user; and**

17 (C) **Usage statistics and other data or information about how a user behaves while using**  
18 **the electronic medium, including which of the electronic medium's functions and available**  
19 **resources the user uses, preferences for goods and services the user exhibits and other re-**  
20 **lated information about the user's habits.**

21 (2)(a) **A person that engages in a business in which the person owns or operates social**  
22 **media shall:**

23 (A) **Disclose to users of the social media, in a conspicuous manner designed to call at-**  
24 **tention to the disclosure, on the social media site's home page or other first point of contact**  
25 **a user has with the social media site, and on each page that is available to the user for**  
26 **creating, transferring, sharing and viewing content:**

27 (i) **What data and information about the user the person collects, maintains, stores,**  
28 **processes, sells, leases, transfers or otherwise uses; 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 (ii) How the person uses the data and information;

2 (B) Provide, and notify users about, means by which the users may limit access to and  
 3 the availability of the data and information described in subparagraph (A) of this paragraph  
 4 to both the person that owns or operates the social media and any other person with which  
 5 the person may share the data or information or to which the person may sell, lease,  
 6 transfer or otherwise use the data or information; and

7 (C) Notify users for at least 45 calendar days before making changes to the disclosures  
 8 required under this subsection or to the means that are available to a user for limiting ac-  
 9 cess to or availability of the data or information the person shares, sells, leases, transfers  
 10 or otherwise uses.

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

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

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

20 (C) Other means that are reasonably calculated to call attention to the disclosure and  
 21 that offer complete information necessary to comply with the requirements set forth in this  
 22 subsection.

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

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

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

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

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

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

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

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

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

44 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,  
 45 or that real estate or goods are of a particular style or model, if [*they*] **the real estate, goods or**

1 **services** are of another.

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

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

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

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

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

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

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

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

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

27 (q) Promises to deliver real estate, goods or services within a certain period of time with intent  
28 not to deliver [*them*] **the real estate, goods or services** as promised.

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

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

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

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

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

37 (w) Manufactures mercury fever thermometers.

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

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

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

43 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to  
44 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be  
45 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the

1 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-  
 2 graph, “thermostat” means a device commonly used to sense and, through electrical communication  
 3 with heating, cooling or ventilation equipment, control room temperature.

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

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

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

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

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

10 (ee) Violates ORS 646.883 or 646.885.

11 (ff) Violates ORS 646.569.

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

13 (hh) Violates ORS 646A.360.

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

15 (jj) Violates ORS 646.563.

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

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

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

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

21 (oo) Violates ORS 646A.095.

22 (pp) Violates ORS 822.046.

23 (qq) Violates ORS 128.001.

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

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

26 (tt) Violates ORS 87.686.

27 (uu) Violates ORS 646.651.

28 (vv) Violates ORS 646A.362.

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

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

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

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

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

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

35 (ccc) Violates ORS 646A.365.

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

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

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

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

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

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

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

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

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

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

4 (nnn) Violates ORS 646A.082.

5 (ooo) Violates ORS 646.647.

6 (ppp) Violates ORS 646A.115.

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

8 (rrr) Violates ORS 646A.092.

9 (sss) Violates a provision of ORS 646.644.

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

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

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

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

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

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

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

23