

# House Bill 3388

Sponsored by Representative DOHERTY

## 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 talent agency from charging individual fee or requiring individual to pay any other compensation to talent agency in exchange for talent agency's offer or promise to procure, or actual services in procuring, work for individual in media-directed occupation, except that talent agency may agree in writing with individual for whom talent agency has procured work that individual will pay talent agency compensation as percentage of individual's earnings from work that talent agency procured for individual. Provides certain exceptions.

Prohibits talent agency from receiving fee or compensation from or participating in fee-sharing arrangement with person that provides ancillary services if talent agency receives fee or compensation from or participates in arrangement with person in exchange for advertising, publicizing person's services or referring individual to person. Provides certain exceptions.

Requires person that provides ancillary services to include disclaimer in advertising or promotional materials.

Provides that violation of Act is unlawful practice subject to enforcement and action under Unlawful Trade Practices Act.

## A BILL FOR AN ACT

1  
2 Relating to talent agency services; 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:**

5 (a) **"Ancillary services" means services that a talent agency or an employee or agent of**  
6 **a talent agency provides to an individual as preparation for or preliminary steps toward**  
7 **procuring work in a media-directed occupation, such as taking publicity photographs, pro-**  
8 **viding classes in performance technique, job-searching skills, job-related networking or sim-**  
9 **ilar or related classes or otherwise advising or preparing the individual to seek work in a**  
10 **media-directed occupation.**

11 (b)(A) **"Media-directed occupation" means employment as a performer for compensation**  
12 **in which the performance is recorded in an audio or visual medium that is capable of ren-**  
13 **dering, reproducing or simulating an individual's movement or reproducing the individual's**  
14 **speech or other sounds and that is intended for broadcast, distribution or other public per-**  
15 **formance, including but not limited to audio recordings, film and video and related, compo-**  
16 **nent or derivative media and technologies.**

17 (B) **"Media-directed occupation" does not include employment for compensation as a**  
18 **model for still photography, drawing, painting or other visual media that do not reproduce**  
19 **or simulate movement.**

20 (c) **"Talent agency" means a person or an employee or agent of a person that is engaged**  
21 **in the business of procuring or offering to procure for another person work in a media-**  
22 **directed occupation.**

23 (2)(a) **Except as provided in paragraphs (b) and (c) of this subsection, a talent agency**  
24 **may not charge an individual a fee or require the individual to pay any other compensation**

**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 to the talent agency in exchange for the talent agency’s offer or promise to procure, or ac-  
 2 tual services in procuring, work for the individual in a media-directed occupation.

3 (b) A talent agency may agree in writing with an individual for whom the talent agency  
 4 has procured work in a media-directed occupation that the individual will pay the talent  
 5 agency compensation in the form of a percentage of the individual’s earnings from the work  
 6 that the talent agency procured for the individual. The talent agency shall disclose the terms  
 7 of the agreement to the individual and obtain the individual’s written consent and signature  
 8 before performing any services on the individual’s behalf. In disclosing the terms of the  
 9 agreement, the talent agency must specify in writing all material terms of the agreement,  
 10 including but not limited to the percentage of the individual’s income that the individual  
 11 must pay the talent agency, the number of payments the individual must make and the  
 12 length of time during which the individual is subject to the requirement to pay the talent  
 13 agency.

14 (c) A talent agency may charge a fee to an individual for the service of maintaining a  
 15 website or other online publicity materials on the individual’s behalf as an aid in procuring  
 16 work for the individual in a media-directed occupation. The fee that the talent agency  
 17 charges may not exceed \$100 per year.

18 (3) A talent agency may charge an individual or a person that organizes an informational  
 19 workshop or seminar a fee as compensation for the talent agency’s participating in the  
 20 seminar or workshop and serving as a source of information or expertise concerning avail-  
 21 ability of and procedures for obtaining employment in a media-directed occupation or similar  
 22 or related information or expertise.

23 (4) A talent agency may not receive any fee or compensation from or participate in a  
 24 fee-sharing arrangement with a person that provides ancillary services if the talent agency  
 25 receives the fee or compensation from or participates in the arrangement with the person  
 26 in exchange for advertising, publicizing or suggesting the person’s services to the individual  
 27 or referring the individual to the person. For the purposes of this subsection, a person’s  
 28 agreement with a talent agency to offer a discount to an individual that the talent agency  
 29 refers to the person is not a fee, compensation or fee-sharing arrangement.

30 (5) A person that offers or provides ancillary services that consist of classes, workshops  
 31 or similar career development or preparation services shall include a disclaimer on any ad-  
 32 vertising or other promotional materials for the classes, workshops or career development  
 33 or preparation services. The disclaimer must be in a conspicuous location and in a typeface  
 34 or type size that sets the disclaimer apart from other text in the advertising or promotional  
 35 materials and must read substantially as follows:

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 38 This seminar, class or workshop is for educational purposes only and will not secure or  
 39 provide opportunity for employment in the field or representation by an agent.  
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 42 (6) A talent agency’s or person’s violation of a provision of this section is an unlawful  
 43 practice under ORS 646.608 that is subject to enforcement under ORS 646.632 or an action  
 44 under ORS 646.638.

45 **SECTION 2.** ORS 646.608, as amended by section 6, chapter 52, Oregon Laws 2012, is amended

1 to read:

2 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-  
3 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (q) Promises to deliver real estate, goods or services within a certain period of time with intent  
 2 not to deliver [*them*] **the real estate, goods or services** as promised.
- 3 (r) Organizes or induces or attempts to induce membership in a pyramid club.
- 4 (s) Makes false or misleading representations of fact concerning the offering price of, or the  
 5 person's cost for real estate, goods or services.
- 6 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any  
 7 known material defect or material nonconformity.
- 8 (u) Engages in any other unfair or deceptive conduct in trade or commerce.
- 9 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under  
 10 ORS 698.640, whether in a commercial or noncommercial situation.
- 11 (w) Manufactures mercury fever thermometers.
- 12 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal  
 13 law, or is:
- 14 (A) Prescribed by a person licensed under ORS chapter 677; and
- 15 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and  
 16 on the proper cleanup of mercury should breakage occur.
- 17 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to  
 18 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be  
 19 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the  
 20 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-  
 21 graph, "thermostat" means a device commonly used to sense and, through electrical communication  
 22 with heating, cooling or ventilation equipment, control room temperature.
- 23 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains  
 24 mercury light switches.
- 25 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 26 (bb) Violates ORS 646A.070 (1).
- 27 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 28 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 29 (ee) Violates ORS 646.883 or 646.885.
- 30 (ff) Violates ORS 646.569.
- 31 (gg) Violates the provisions of ORS 646A.142.
- 32 (hh) Violates ORS 646A.360.
- 33 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 34 (jj) Violates ORS 646.563.
- 35 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 36 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant  
 37 thereto.
- 38 (mm) Violates ORS 646A.210 or 646A.214.
- 39 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 40 (oo) Violates ORS 646A.095.
- 41 (pp) Violates ORS 822.046.
- 42 (qq) Violates ORS 128.001.
- 43 (rr) Violates ORS 646.649 (2) to (4).
- 44 (ss) Violates ORS 646A.090 (2) to (4).
- 45 (tt) Violates ORS 87.686.

- 1 (uu) Violates ORS 646.651.
- 2 (vv) Violates ORS 646A.362.
- 3 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 4 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 5 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 6 (zz) Violates ORS 87.007 (2) or (3).
- 7 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 8 (bbb) Engages in an unlawful practice under ORS 646.648.
- 9 (ccc) Violates ORS 646A.365.
- 10 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 11 (eee) Sells a gift card in violation of ORS 646A.276.
- 12 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 13 (ggg) Violates ORS 646A.430 to 646A.450.
- 14 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
- 15 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 16 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-  
17 scribed in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the  
18 subject of the violation.
- 19 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 20 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50  
21 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 22 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 23 (nnn) Violates ORS 646A.082.
- 24 (ooo) Violates ORS 646.647.
- 25 (ppp) Violates ORS 646A.115.
- 26 (qqq) Violates a provision of ORS 646A.405.
- 27 (rrr) Violates ORS 646A.092.
- 28 (sss) Violates a provision of ORS 646.644.
- 29 (ttt) Violates a provision of ORS 646A.295.
- 30 (uuu) Violates section 3, chapter 52, Oregon Laws 2012.
- 31 **(vvv) Violates a provision of section 1 of this 2013 Act.**
- 32 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-  
33 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- 34 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney  
35 need not prove competition between the parties or actual confusion or misunderstanding.
- 36 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-  
37 torney General has first established a rule in accordance with the provisions of ORS chapter 183  
38 declaring the conduct to be unfair or deceptive in trade or commerce.
- 39 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought  
40 under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is lim-  
41 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.
- 42 **SECTION 3. Section 1 of this 2013 Act and the amendments to ORS 646.608 by section 2**  
43 **of this 2013 Act apply to contracts related to procuring work for individuals in a media-**  
44 **directed occupation that talent agencies enter into on or after the effective date of this 2013**  
45 **Act.**

