

House Bill 3447

Sponsored by Representative KOMP

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 conducts floral business operation to disclose physical location of person's principal place of business in advertisements for floral business operation.

Prohibits person from misrepresenting physical location of person's principal place of business in advertisements.

Makes violation unlawful trade practice.

A BILL FOR AN ACT

1
2 Relating to the physical location of floral business operations; creating new provisions; and amend-
3 ing ORS 646.608 and 646A.082.

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 *[(2) A person who violates subsection (1) of this section commits an unlawful practice under ORS*
10 *646.608. The requirement under subsection (1) of this section is subject to enforcement and penalty as*
11 *provided under ORS 646.605 to 646.652.]*

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

13 **(a) "Advertisement" means an oral, written or graphic statement or other communi-**
14 **cation that a person that conducts a floral business operation makes, regardless of the me-**
15 **di-um of communication, for the purpose of inducing, directly or indirectly, a purchase of**
16 **floral products and services in this state.**

17 **(b) "Floral business operation" means a business operation that is related to selling at**
18 **retail, offering for sale, marketing, distributing, gathering orders for or advertising floral**
19 **products and services.**

20 **(c) "Floral products and services" means floral arrangements, plant arrangements and**
21 **related merchandise and services sold or offered for sale in this state.**

22 **(d) "Local area" means within a 50-mile radius of the physical location of a person's**
23 **principal place of business.**

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

25 **(f)(A) "Physical location" means a structure or vehicle situated at a post office mailing**
26 **address from or within which a person regularly or ordinarily conducts a floral business op-**
27 **eration.**

28 **(B) "Physical location" does not include:**

29 **(i) A post office box that is not situated at the person's post office mailing address;**

30 **(ii) A registered agent's office;**

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 (iii) A computer server that is not situated at the person's post office mailing address;

2 or

3 (iv) A call center that is not situated at the person's post office mailing address or that
4 the person does not own or operate directly or through a subsidiary or affiliate.

5 (2)(a) A person that conducts a floral business operation shall disclose the physical lo-
6 cation of the person's principal place of business in any advertisement or written communi-
7 cation that provides information about the person's floral business operation to a prospective
8 or existing customer in this state.

9 (b) If a person that conducts a floral business operation places an advertisement for the
10 floral business operation on a website, the person shall make the disclosure described in
11 paragraph (a) of this subsection on the website's home page.

12 (3)(a) A person that conducts a floral business operation may not misrepresent the
13 physical location of the person's principal place of business in an advertisement or otherwise
14 state falsely that:

15 (A) The person conducts the person's floral business operation in the local area;

16 (B) The person conducts the floral business operation in this state; or

17 (C) The floral business operation's owner or operator is a resident of this state or is a
18 business entity that is headquartered or has a principal place of business at a physical lo-
19 cation in this state.

20 (b) For purposes of paragraph (a) of this subsection, a person misrepresents the physical
21 location of the person's principal place of business if the person's principal place of business
22 is not at a physical location in this state and:

23 (A) The name of or contact information for the person's floral business operation, as the
24 name or contact information appears in an advertisement, is:

25 (i) A fictitious or assumed business name that would lead a reasonable consumer to
26 conclude that the person's principal place of business is at a physical location in this state;

27 or

28 (ii) The name of or contact information for a floral business operation in this state and
29 the person's use of the name or contact information would lead a reasonable consumer to
30 conclude that the person's principal place of business is at a physical location in this state;

31 (B) Telephone calls to a telephone number that appears in an advertisement and that a
32 reasonable consumer would conclude is a telephone number to contact the person's floral
33 business operation are routinely forwarded or transferred to or terminate at a physical lo-
34 cation that is outside this state; or

35 (C) An advertisement for the person's floral business operation would otherwise lead a
36 reasonable consumer to conclude that the person's principal place of business is at a physical
37 location in this state.

38 (c) For purposes of paragraph (a) of this subsection, a person states falsely that the
39 person conducts the person's floral business operation in the local area if the person delivers
40 floral products and services outside the local area and:

41 (A) The name of or contact information for the person's floral business operation, as the
42 name or contact information appears in an advertisement, is:

43 (i) A fictitious or assumed business name that would lead a reasonable consumer to
44 conclude that the person delivers floral products and services in the local area; or

45 (ii) The name of or contact information for a floral business operation that delivers floral

1 products and services in the local area and the person's use of the name or contact infor-
 2 mation would lead a reasonable consumer to conclude that the person's principal place of
 3 business is in the local area;

4 (B) Telephone calls to a telephone number that appears in an advertisement and that a
 5 reasonable consumer would conclude is a telephone number to contact the person's floral
 6 business operation are routinely forwarded or transferred to or terminate at a physical lo-
 7 cation that is outside the local area; or

8 (C) An advertisement for the person's floral business operation would otherwise lead a
 9 reasonable consumer to conclude that the person's principal place of business is in the local
 10 area.

11 (4)(a) Subsection (3) of this section does not apply to a person that conducts a floral
 12 business operation at a physical location that is outside the local area or outside this state
 13 if the person, in an advertisement for the floral business operation, discloses clearly, con-
 14 spicuously and in a manner that a reasonable consumer can readily become aware of, that:

15 (A) The person conducts the person's floral business operation at a physical location that
 16 is outside the local area or outside this state; or

17 (B) The person delivers floral products and services to locations outside the local area
 18 or outside this state.

19 (b) Subsection (3) of this section does not apply to a person that conducts a floral busi-
 20 ness operation in the local area or in this state and also delivers floral products and services
 21 outside the local area or outside this state if the person, in an advertisement for the floral
 22 business operation, discloses clearly, conspicuously and in a manner that a reasonable con-
 23 sumer can readily become aware of, that the person delivers floral products and services to
 24 locations outside the local area or outside this state.

25 (5) A person's violation of subsection (3) of this section is an unlawful practice under
 26 ORS 646.608 that is subject to enforcement under ORS 646.632 and an action under ORS
 27 646.638.

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

30 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
 31 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (w) Manufactures mercury fever thermometers.

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

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

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

45 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to

1 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
 2 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
 3 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
 4 graph, “thermostat” means a device commonly used to sense and, through electrical communication
 5 with heating, cooling or ventilation equipment, control room temperature.

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

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

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

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

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

12 (ee) Violates ORS 646.883 or 646.885.

13 (ff) Violates ORS 646.569.

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

15 (hh) Violates ORS 646A.360.

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

17 (jj) Violates ORS 646.563.

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

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

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

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

23 (oo) Violates ORS 646A.095.

24 (pp) Violates ORS 822.046.

25 (qq) Violates ORS 128.001.

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

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

28 (tt) Violates ORS 87.686.

29 (uu) Violates ORS 646.651.

30 (vv) Violates ORS 646A.362.

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

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

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

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

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

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

37 (ccc) Violates ORS 646A.365.

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

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

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

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

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

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

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

1 subject of the violation.

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

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

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

6 (nnn) Violates ORS 646A.082 (3).

7 (ooo) Violates ORS 646.647.

8 (ppp) Violates ORS 646A.115.

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

10 (rrr) Violates ORS 646A.092.

11 (sss) Violates a provision of ORS 646.644.

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

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

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

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

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

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

24 **SECTION 3. (1) Except to the extent provided in subsection (2) of this section, the**
25 **amendments to ORS 646.608 and 646A.082 by sections 1 and 2 of this 2013 Act do not affect**
26 **the terms of a contract that existed before the effective date of this 2013 Act.**

27 **(2) The amendments to ORS 646.608 and 646A.082 by sections 1 and 2 of this 2013 Act**
28 **apply to persons that conduct a floral business operation on and after the effective date of**
29 **this 2013 Act and to contracts related to delivering floral products and services that a person**
30 **enters into, renews, modifies or extends on or after the effective date of this 2013 Act.**

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