

House Bill 2249

Introduced and printed pursuant to House Rule 12.00. Pre-session file (at the request of House Interim 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 smartphone that person sells in this state to include technological capability to render inaccessible or inoperative smartphone's essential features, to permit authorized user to restore essential features to accessibility or operability and to otherwise prevent unauthorized user from circumventing technological capability.

Becomes operative January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to technological capabilities required to secure smartphones from unauthorized use; creat-
3 ing new provisions; amending ORS 646.607; and declaring an emergency.

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

5 **SECTION 1. (1) As used in this section:**

6 (a)(A) **"Essential features" means a smartphone's capability to enable a user to:**

7 (i) **Make or receive voice calls and send or receive text messages and electronic mail;**

8 (ii) **Connect to and browse the Internet;**

9 (iii) **Use any mobile application installed on the smartphone;**

10 (iv) **Store and retrieve personal data and information such as the owner's or an author-
11 ized user's name, address, passwords, electronic mail accounts, financial information, search
12 or browsing history, call records, calendars or planners or any other information that could
13 be used to harass the user, track the user without the user's consent or enable theft of the
14 user's identity;**

15 (v) **Transfer data to another smartphone or other electronic device; or**

16 (vi) **Perform other functions that only a smartphone would enable a user to perform.**

17 (B) **"Essential features" does not include a smartphone's capability to:**

18 (i) **Render an essential feature inaccessible or inoperable on the smartphone;**

19 (ii) **Enable a user to perform a factory reset on the smartphone from a remote location;**

20 (iii) **Enable a user to make emergency voice calls or send emergency text messages to
21 an emergency services provider through a 9-1-1 emergency reporting system, as defined in
22 ORS 403.105;**

23 (iv) **Enable a user to receive emergency alert messages or warnings from an emergency
24 services provider; or**

25 (v) **Enable a user to call an emergency contact telephone number that the owner of the
26 smartphone designates for use as an emergency contact telephone number.**

27 (b) **"Factory reset" means a method by which to delete or erase from a smartphone all
28 applications, data, modifications and evidence of a user's use and to restore the smartphone**

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 settings and to the initial or original system state in which the manufacturer shipped
 2 the smartphone to a distributor or retailer.

3 (c)(A) “Sell in this state” means to conduct a retail transaction for a smartphone entirely
 4 at a retail location within this state or in which a seller from outside this state ships or
 5 delivers and transfers ownership of a smartphone to a consumer at an address within this
 6 state.

7 (B) “Sell in this state” does not include conducting a transaction for a smartphone in
 8 which the owner of the smartphone:

9 (i) Transfers ownership to another person, with or without an exchange of valuable con-
 10 sideration;

11 (ii) Transfers possession of the smartphone to a pawnbroker, as defined in ORS 726.010,
 12 as collateral for a pledge loan; or

13 (iii) Transfers possession of the smartphone to a consignee or bailee.

14 (d)(A) “Smartphone” means a cellular telephone or other mobile voice communications
 15 handset device that has all or most of these features:

16 (i) A mobile operating system;

17 (ii) The capability to use software applications, connect to and browse the Internet, send
 18 and receive text messages and electronic mail and send and receive digital voice calls; and

19 (iii) The capability to connect to and use:

20 (I) A wireless local area network based on an Institute of Electrical and Electronics
 21 Engineers’ 802.11 standard;

22 (II) A wireless network based on a Worldwide Interoperability for Microwave Access or
 23 Institute of Electrical and Electronics Engineers’ 802.16 standard;

24 (III) A wireless personal area network based on an Institute of Electrical and Electronics
 25 Engineers’ 802.15 standard;

26 (IV) A long-term evolution wireless communication network; or

27 (V) A wireless network based on standards that succeed any of the standards identified
 28 in this paragraph.

29 (B) “Smartphone” does not include:

30 (i) A cellular telephone that, in the cellular telephone industry, is commonly called a
 31 feature phone or that connects to a wireless network primarily or exclusively to enable a
 32 user to make and receive voice calls and send or receive text messages;

33 (ii) A tablet device;

34 (iii) A laptop personal computer; or

35 (iv) A device that primarily or exclusively enables a user to read electronic books.

36 (2)(a) Except as provided in subsection (3) of this section, a person may not after the
 37 operative date of this 2015 Act sell in this state a smartphone that does not have a techno-
 38 logical capability by means of which the smartphone owner or an authorized user can render
 39 the smartphone’s essential features inaccessible or inoperable when the smartphone is not
 40 in the smartphone owner’s or authorized user’s possession.

41 (b) The technological capability described in paragraph (a) of this subsection must:

42 (A) Prompt the smartphone owner or an authorized user to activate the technological
 43 capability at the time the owner or authorized user first readies the smartphone for initial
 44 use;

45 (B) Persist in rendering the smartphone’s essential features inaccessible or inoperable

1 to an unauthorized user even if the unauthorized user changes the smartphone's operating
2 system or performs a factory reset on the smartphone;

3 (C) Allow the owner or authorized user to restore the smartphone's essential features
4 to accessibility or operability after the owner or authorized user previously rendered the
5 smartphone's essential features inaccessible or inoperable; and

6 (D) Allow the smartphone owner or an authorized user to not activate or to disable the
7 technological capability at any time, but only after verifying that a person that attempts to
8 disable the technological capability is the smartphone owner or an authorized user.

9 (3) Subsection (2) of this section does not apply to a smartphone that a person sells in
10 this state on or after the operative date specified in section 4 of this 2015 Act if the
11 smartphone was manufactured before the operative date specified in section 4 of this 2015
12 Act and the design of the smartphone's hardware or operating system does not feasibly allow
13 for installing or using the technological capability described in subsection (2)(a) of this sec-
14 tion.

15 (4)(a) Except as provided in paragraph (b) of this subsection, a person that knowingly
16 sells in this state a smartphone that does not have the technological capability described in
17 subsection (2)(a) of this section commits an unlawful practice under ORS 646.607 that is
18 subject to enforcement under ORS 646.632.

19 (b) A person does not commit an unlawful practice under ORS 646.607 if the person sells
20 in this state a smartphone in which the technological capability described in subsection (2)(a)
21 of this section failed or does not function because of a malfunction in the smartphone's
22 hardware or software or because a third party has disabled or circumvented the technologi-
23 cal capability by altering the smartphone's hardware or software, unless the person knows,
24 should have known because of a notification from the smartphone manufacturer or operating
25 system provider, or reasonably suspects at the time the person sells the smartphone that the
26 technological capability has failed or is disabled and cannot be feasibly activated or enabled
27 by updating the smartphone software or otherwise repairing the smartphone.

28 (5) This section does not limit or prevent a purchaser from bringing an action against a
29 person that sells a smartphone in this state on a basis other than the basis set forth in this
30 section.

31 (6)(a) Except as provided in paragraph (b) of this subsection, this section does not limit
32 or prevent a smartphone manufacturer or operating system provider from including a tech-
33 nological capability in a smartphone, or providing a service, that does more than render the
34 smartphone's essential features inaccessible or inoperable.

35 (b) This section does not require a technological capability that disables or renders in-
36 accessible or inoperable features in a smartphone that other state or federal law requires for
37 a cellular telephone, including but not limited to the capability to:

38 (A) Enable a user to make emergency voice calls or send emergency text messages to
39 an emergency services provider through a 9-1-1 emergency reporting system, as defined in
40 ORS 403.105;

41 (B) Send information about the location of the smartphone to an emergency reporting
42 system or an emergency services provider; or

43 (C) Enable a user to receive emergency alert messages or warnings from an emergency
44 services provider or otherwise participate in a public safety or emergency alert system.

45 (7)(a) A municipality or a political subdivision of this state may not enact an ordinance

1 or other law or adopt a rule, regulation, resolution or other policy that requires a
 2 smartphone to have a technological capability that differs from the technological capability
 3 described in subsection (2)(a) of this section or that specifies different or additional require-
 4 ments for disabling or rendering inaccessible or inoperative any essential features of a
 5 smartphone.

6 (b) A municipality or political subdivision of this state may not impose a penalty or other
 7 liability for violating this section or violating an ordinance or other law or a rule, regulation,
 8 resolution or policy that the municipality or political subdivision purports to enact or adopt
 9 to specify technological capabilities for smartphones similar to the requirements set forth
 10 in this section.

11 (c) If a municipality or political subdivision of this state has enacted an ordinance or
 12 other law or adopted a rule, regulation, resolution or policy that conflicts with paragraph (a)
 13 of this subsection, the ordinance, law, rule, regulation, resolution or policy is void and
 14 without effect.

15 (8) The Attorney General may adopt rules that are necessary to implement the provisions
 16 of this section.

17 **SECTION 2.** ORS 646.607 is amended to read:

18 646.607. A person engages in an unlawful practice if in the course of the person's business, vo-
 19 cation or occupation the person:

20 (1) Employs any unconscionable tactic in connection with selling, renting or disposing of real
 21 estate, goods or services, or collecting or enforcing an obligation;

22 (2) Fails to deliver all or any portion of real estate, goods or services as promised, and at a
 23 customer's request, fails to refund money that the customer gave to the person to purchase the
 24 undelivered real estate, goods or services and that the person does not retain pursuant to any right,
 25 claim or defense the person may assert in good faith. This subsection does not create a warranty
 26 obligation and does not apply to a dispute over the quality of real estate, goods or services delivered
 27 to a customer;

28 (3) Violates ORS 401.965 (2);

29 (4) Violates a provision of ORS 646A.725 to 646A.750;

30 (5) Violates ORS 646A.530;

31 (6) Employs a collection practice that is unlawful under ORS 646.639;

32 (7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or 86.732 (1) or (2); [or]

33 (8) Violates ORS 646A.093[.]; or

34 (9) Violates section 1 of this 2015 Act.

35 **SECTION 3.** Section 1 of this 2015 Act applies to sales of smartphones that occur on and
 36 after the operative date specified in section 4 of this 2015 Act.

37 **SECTION 4.** (1) Section 1 of this 2015 Act and the amendments to ORS 646.607 by section
 38 2 of this 2015 Act become operative January 1, 2016.

39 (2) The Attorney General may adopt rules and take related actions before the operative
 40 date specified in subsection (1) of this section that are necessary to enable the Attorney
 41 General, on and after the operative date specified in subsection (1) of this section, to exercise
 42 the duties, functions and powers conferred on the Attorney General by section 1 of this 2015
 43 Act and the amendments to ORS 646.607 by section 2 of this 2015 Act.

44 **SECTION 5.** This 2015 Act being necessary for the immediate preservation of the public
 45 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect

1 **on its passage.**

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