

Enrolled Senate Bill 76

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CHAPTER

AN ACT

Relating to filings with the Secretary of State; creating new provisions; amending ORS 646A.100, 646A.102, 646A.104, 646A.108, 649.020, 649.030, 649.050, 649.080, 649.990, 661.230, 661.250, 661.260 and 661.990; repealing ORS 192.190, 649.040, 649.070, 649.090, 661.240 and 661.245; and declaring an emergency.

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

SECTION 1. ORS 646A.100 is amended to read:

646A.100. As used in ORS 646A.100 to 646A.110:

(1) "Affiliated business" means a business or business location that is directly or indirectly controlled by, or under common control with, the business location listed in [*the notice of a going out of business sale*] **a notice of intent** or that has a common ownership interest in the merchandise to be sold at the business location listed in the notice of [*the sale*] **intent**.

(2)(a) "Going out of business sale" means a sale or auction advertised or held out to the public as the disposal of merchandise in anticipation of cessation of business, including but not limited to a sale or auction advertised or held out to the public as a "going out of business sale," a "closing out sale," a "quitting business sale," a "loss of lease sale," a "must vacate sale," a "liquidation sale," a "bankruptcy sale," a "sale to prevent bankruptcy" or another description [*suggesting*] **that suggests a price reduction [due to] in anticipation of** the imminent closure of the business.

(b) "Going out of business sale" does not include a sale conducted by a bankruptcy trustee or a court-appointed receiver.

(3) "Merchandise" means goods, wares or other property or services [*capable of being the object of a sale regulated under ORS 646A.100 to 646A.110*].

(4) "Notice of intent" means a **public** notice [*filed with the Secretary of State that*] **with the information specified in ORS 646A.104 from** a person **that** intends to conduct a going out of business sale.

(5) "Person" has the meaning given that term in ORS 646.605.

SECTION 2. ORS 646A.102 is amended to read:

646A.102. (1) Except as provided in subsection (3) of this section, a person may not sell, offer for sale or advertise for sale merchandise at a going out of business sale unless the person [*has filed*] **displays** a notice of intent [*with the Secretary of State*] **at the business location where the person intends to conduct the going out of business sale.**

(2) A person must display [*a copy of*] the notice of intent [*filed with the Secretary of State*] in a prominent place on the premises **of the business location** where the **person is conducting the** going out of business sale [*is being conducted*].

(3) If a **person is conducting** a going out of business sale [*is conducted*] as part of a bankruptcy, receivership or other court-ordered action, [*a person:*]

[*(a) Need not file a notice of intent with the Secretary of State.*]

[*(b) the person, in lieu of displaying a notice of intent,* shall display the court order or judgment [*ordering*] **that ordered** the sale in a prominent place on the premises **of the business location** where the **person is conducting the** going out of business sale [*is being conducted*].

(4) A person may not:

(a) Conduct a going out of business sale for more than 90 days from the beginning date of the sale **that is** listed on the notice of intent.

(b) Continue to conduct a going out of business sale beyond the ending date **that is** listed on the notice of intent.

(5) A person who has conducted a going out of business sale may not conduct another going out of business sale for a period of one year after the ending date of the sale **that is** listed on the notice of intent.

SECTION 3. ORS 646A.104 is amended to read:

646A.104. [*A person filing a notice of intent with the Secretary of State shall provide all of the following information in the*] **A notice of intent must include:**

(1) The name, address, [*and*] telephone number **and signature** of the owner of the merchandise [*to be*] **that will be sold at the going out of business sale.** If the owner is a corporation, trust, unincorporated association, partnership or other legal entity, [*the person signing the notice must be*] **the notice of intent must include the signature and title of** an officer of the entity [*and must identify the person's title*].

(2) The name, address, [*and*] telephone number **and signature** of the person who will be in charge of and responsible for [*the conduct of*] **conducting** the sale.

(3) The descriptive name, **business** location and beginning and ending dates of the sale.

(4) **The certificate and official stamp of a notary public who, in accordance with ORS 194.280, acknowledges each of the signatures described in subsections (1) and (2) of this section.**

SECTION 4. ORS 646A.108 is amended to read:

646A.108. (1) A person [*intending to conduct*] **that intends to conduct** a going out of business sale may not transfer merchandise from an affiliated business or business location to the location of the sale.

(2) A person, after [*filing*] **displaying** a notice of intent **at a business location where the person intends to conduct a going out of business sale,** may not buy or order merchandise, take merchandise on consignment or receive a transfer of merchandise from an affiliated business or business location for the purpose of selling the merchandise at the sale or sell [*such*] **the** merchandise in a going out of business sale.

SECTION 5. ORS 649.020 is amended to read:

649.020. [(1) *Any organization may register, in the office of the Secretary of State, a facsimile, duplicate or description of its name and insignia, and may, by reregistration, alter or cancel the same. The registration shall be for the use, benefit and on behalf of the organization, the individual members and those who thereafter become members of the organization, throughout the state.*]

[(2) *No registration shall be granted or alteration permitted to any organization having a name or insignia similar to, imitating or so nearly resembling as to be calculated to deceive, any other name or insignia already registered pursuant to the provisions of ORS 649.010 to 649.060.*]

(1) **An organization that uses a name or insignia may file an application to register the name or insignia with the Secretary of State in accordance with the requirements, procedures and policies set forth for registering marks under ORS 647.015. The Secretary of State shall evaluate the application as provided in ORS 647.029 and 647.035, shall determine whether**

the name or insignia is in use as provided in ORS 647.017 and may issue a certificate of registration for the name or insignia as provided in ORS 647.045.

(2) A certificate of registration that the Secretary of State issues under this section is:

- (a) Effective for the term set forth in ORS 647.055;
- (b) Subject to renewal as provided in ORS 647.055; and
- (c) Subject to cancellation as provided in ORS 647.075.

(3) For registrations under this section, the Secretary of State shall collect fees as provided in ORS 647.009.

(4) For the purpose of proving in an action or proceeding in a court in this state that an organization registered a name or insignia under this section, a certificate of registration that the Secretary of State issues for a name or insignia has the same effect as a certificate of registration that the Secretary of State issues for marks under ORS 647.045.

(5) A person must bring an action to compel or to cancel a registration for a name or insignia in accordance with the procedures set forth in ORS 647.077 for actions to compel or cancel registrations for marks.

SECTION 6. ORS 649.030 is amended to read:

649.030. *[No person shall willfully]* **A person may not** wear, exhibit, display, print or use, for any purpose, *[the]* **an organization's name or insignia** *[of any]* **if the** organization registered **the name or insignia** under ORS *[649.010 to 649.060]* **649.020** unless the person is entitled to *[use and wear the]* **wear, exhibit, display, print or use the name or insignia** under the constitution, *[and]* bylaws, rules and regulations of the organization.

SECTION 7. ORS 649.050 is amended to read:

649.050. The Secretary of State shall keep a properly indexed record of *[the registration provided for by ORS 649.010 to 649.060]* **registrations that the Secretary of State issues under ORS 649.020** and of any altered or canceled registration.

SECTION 8. ORS 649.080 is amended to read:

649.080. *[No person shall display upon any motor vehicle the insignia of any motor vehicle club or similar organization unless the person is entitled, under the constitution, bylaws, rules or regulations of the club or organization, to use the insignia.]* **A person may not display the name or insignia of a motor vehicle club or similar organization on a motor vehicle if the motor vehicle club or organization has registered the name or insignia under ORS 649.020, unless the constitution, bylaws, rules or regulations of the motor vehicle club or organization permit the person to display the name or insignia.**

SECTION 9. ORS 649.990 is amended to read:

649.990. (1) **A** violation of ORS 649.030 is a Class D violation.

[(2) Intentional violation of ORS 649.070 is a Class B misdemeanor.]

[(3)] (2) **A** violation of ORS 649.080 is a Class C misdemeanor.

SECTION 10. ORS 661.230 is amended to read:

661.230. *[(1) Every person, association or union that adopts or uses a label, trademark, term, design, device or form of advertisement as provided in ORS 661.210, may file the same for record in the office of the Secretary of State, by leaving two copies, counterparts or facsimiles thereof with the Secretary of State and by filing therewith a sworn application.]*

[(2) The application shall state:]

[(a) The name of the person, association or union on whose behalf such label, trademark, terms, design, device or form of advertisement is filed.]

[(b) The class of merchandise and a description of the goods to which it has been or is intended to be appropriated.]

[(c) That the party so filing or on whose behalf such label, trademark, term, design, device or form of advertisement is filed, has the right to the use of the same.]

[(d) That no other person, association or union has the right to such use, either in the identical form, or in any such near resemblance thereto as may be calculated to deceive.]

[(e) That the facsimile or counterparts filed therewith are true and correct.]

(1) A person, association or union that uses a label, trademark, term, design, device or form of advertisement for the purpose described in ORS 661.210 may file an application to register the label, trademark, term, design, device or form of advertisement with the Secretary of State in accordance with the requirements, procedures and policies set forth for registering marks under ORS 647.015. The Secretary of State shall evaluate the application as provided in ORS 647.029 and 647.035, shall determine whether the label, trademark, term, design, device or form of advertisement is in use as provided in ORS 647.017 and may issue a certificate of registration for the label, trademark, term, design, device or form of advertisement as provided in ORS 647.045.

(2) A certificate of registration that the Secretary of State issues under this section is:

- (a) Effective for the term set forth in ORS 647.055;
- (b) Subject to renewal as provided in ORS 647.055; and
- (c) Subject to cancellation as provided in ORS 647.075.

(3) For registrations under this section, the Secretary of State shall collect fees as provided in ORS 647.009.

(4) For the purpose of proving in an action or proceeding in a court in this state that a person, association or union registered a label, trademark, term, design, device or form of advertisement under this section, a certificate of registration that the Secretary of State issues for a label, trademark, term, design, device or form of advertisement has the same effect as a certificate of registration that the Secretary of State issues for marks under ORS 647.045.

(5) A person must bring an action to compel or to cancel a registration for a label, trademark, term, design, device or form of advertisement in accordance with the procedures set forth in ORS 647.077 for actions to compel or cancel registrations for marks.

SECTION 11. ORS 661.250 is amended to read:

661.250. (1) *[Every]* A person, association or union *[adopting or using]* that adopts or uses a label, trademark, term, design, device or form of advertisement as provided in ORS 661.210~~], 661.220, 661.230 and 661.240, may proceed by suit for damages to~~ **may bring an action to:**

(a) Enjoin the manufacture, use, display or sale of any counterfeits *[thereof]* of the label, trademark, term, design, device or form of advertisement; or

(b) Enjoin another person from using or displaying a genuine label, trademark, term, design, device or form of advertisement in a manner that the person that adopted the label, trademark, term, design, device or form of advertisement does not authorize.

(2) *[All courts]* A court of competent jurisdiction *[shall]* **may grant *[injunctions]* an injunction** to restrain *[such manufacture, use, display or sale, and]* **any person from manufacturing, using, displaying or selling a counterfeit described in subsection (1) of this section or from using or displaying a genuine label, trademark, term, design, device or form of advertisement without authorization. The court may award the *[complainant in any such suit]* plaintiff in the action damages *[resulting from such manufacture, use, sale or display]* as the court deems just and reasonable~~], and~~ **for any injury that results from manufacturing, using, displaying or selling the counterfeits described in subsection (1) of this section or from using or displaying a genuine label, trademark, term, design, device or form of advertisement without authorization. The court shall require the defendants to pay to *[such person, association or union]* the plaintiff all profits derived from *[such wrongful manufacture, use, display or sale]* manufacturing, using, displaying or selling the counterfeits described in subsection (1) of this section or from using or displaying the label, trademark, term, design, device or form of advertisement without authorization.****

(3) The court shall also order that *[all such counterfeits or imitations in the possession or under the control of any defendant in such cause]* **counterfeits that a defendant possesses or controls** be delivered to an officer of the court, or to the complainant, to be destroyed.

SECTION 12. ORS 661.260 is amended to read:

661.260. *[Any person who files or causes to be filed, or who files or causes to be filed on behalf of any other person, association or union, any label, trademark, term, design, device or form of advertisement in the office of the Secretary of State under ORS 661.210 to 661.280, by making any false or fraudulent representations or declaration, verbally or in writing, or by any fraudulent means, shall be liable to pay any damages sustained in consequence of any such filing, to be recovered by or on behalf of the party injured thereby in any court having jurisdiction.]*

(1) A person that makes a false or fraudulent representation or declaration in an application to register a label, trademark, term, design, device or form of advertisement under ORS 661.230, whether the person makes the representation or declaration verbally, in writing or by any other means, is liable in damages to a party that is entitled to bring an action under ORS 661.250 or 661.270 for any injury the party suffers as a consequence of the person's false or fraudulent representation or declaration.

(2) A false or fraudulent representation or declaration of the type described in subsection (1) of this section is a Class C misdemeanor.

SECTION 13. ORS 661.990 is amended to read:

661.990. (1) Violation of ORS 661.040 is a Class A misdemeanor.

(2) Violation of ORS 661.210[,] or 661.220 [*or 661.260*] is a Class C misdemeanor.

SECTION 14. (1) **On the 91st day after the operative date specified in section 17 of this 2015 Act, the Secretary of State shall cancel:**

(a) A name or insignia that an organization registered under ORS 649.020 before the operative date specified in section 17 of this 2015 Act; and

(b) A label, trademark, term, design, device or form of advertisement that a person, association or union registered under ORS 661.230 before the operative date specified in section 17 of this 2015 Act.

(2) A cancellation under subsection (1) of this section does not prevent a person, association, union or organization from registering a name, insignia, label, trademark, term, design, device or form of advertisement under ORS 649.020 or 661.230, as appropriate, if:

(a) The person, association, union or organization registers the name, insignia, label, trademark, term, design, device or form of advertisement in accordance with ORS 649.020 or 661.230, as appropriate, as those statutes exist on and after the operative date specified in section 17 of this 2015 Act; and

(b) The person, association, union or organization had and continues to have the rights to the name, insignia, label, trademark, term, design, device or form of advertisement that were necessary for registration before the operative date specified in section 17 of this 2015 Act.

(3) At least 30 days before the operative date specified in section 17 of this 2015 Act, the Secretary of State shall notify each person, association, union or organization that registered a name, insignia, label, trademark, term, design, device or form of advertisement under ORS 649.020 or 661.230 before the operative date specified in section 17 of this 2015 Act that the Secretary of State will cancel the registration on the date specified in subsection (1) of this section. The Secretary of State shall send the notice using the contact information available for the person, association, union or organization in the Secretary of State's records and in the notice shall:

(a) Inform the person, association, union or organization that the person, association, union or organization may register the name, insignia, label, trademark, term, design, device or form of advertisement in accordance with the procedures specified in ORS 649.020 or 661.230, as appropriate, as those statutes exist on and after the operative date specified in section 17 of this 2015 Act;

(b) Describe the relevant procedure; and

(c) Provide contact information that the person, association, union or organization can use to ask questions of and receive assistance from the Secretary of State.

SECTION 15. ORS 192.190, 649.040, 649.070, 649.090, 661.240 and 661.245 are repealed.

SECTION 16. (1) The amendments to ORS 646A.100, 646A.102, 646A.104 and 646A.108 by sections 1 to 4 of this 2015 Act apply to going out of business sales that occur on or after the operative date specified in section 17 of this 2015 Act.

(2) The amendments to ORS 649.020, 649.050, 661.230 and 661.260 by sections 5, 7, 10 and 12 of this 2015 Act apply to applications for registration that the Secretary of State receives on or after the operative date specified in section 17 of this 2015 Act.

(3) The amendments to ORS 649.030, 649.080, 649.990, 661.250 and 661.990 by sections 6, 8, 9, 11 and 13 of this 2015 Act apply to uses, displays or sales of counterfeit labels, trademarks, terms, designs, devices or forms of advertisement or exhibitions, displays, printings or uses of names or insignia without authorization that occur on or after the operative date specified in section 17 of this 2015 Act.

SECTION 17. (1) The amendments to ORS 646A.100, 646A.102, 646A.104, 646A.108, 649.020, 649.030, 649.050, 649.080, 649.990, 661.230, 661.250, 661.260 and 661.990 by sections 1 to 13 of this 2015 Act and the repeal of ORS 192.190, 649.040, 649.070, 649.090, 661.240 and 661.245 by section 15 of this 2015 Act become operative on January 1, 2016.

(2) The Secretary of State may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the Secretary of State, on and after the operative date specified in subsection (1) of this section, to exercise all of the duties, functions and powers conferred on the Secretary of State by the amendments to ORS 646A.100, 646A.102, 646A.104, 646A.108, 649.020, 649.030, 649.050, 649.080, 649.990, 661.230, 661.250, 661.260 and 661.990 by sections 1 to 13 of this 2015 Act.

SECTION 18. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by Senate February 10, 2015

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 28, 2015

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Tina Kotek, Speaker of House

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Approved:

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Kate Brown, Governor

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.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State