

Senate Bill 822

Sponsored by Senator GELSER; Senator RILEY

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 that public bodies develop and implement policies for securely removing personal information from digital data storage devices and other electronic data storage devices owned by public body, leased by public body or otherwise under control of public body before selling, donating, recycling or otherwise disposing of device.

Provides that public body may use photocopier or scanner for purpose of making copies of documents that contain personal information only if photocopier or scanner is owned by public body or federal agency, leased by public body or federal agency or otherwise under control of public body or federal agency. Specifies exceptions for Judicial Department and for copying under certain contracts with businesses.

Requires that business that offers photocopiers or scanners for use by public for fee must post clearly visible notice that informs customers that information from documents photocopied or scanned on premises may be stored in digital form on devices. Provides that violation of requirement is unlawful trade practice.

A BILL FOR AN ACT

Relating to electronic devices; creating new provisions; and amending ORS 646.608.

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

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

(a) **"Personal information" means personal information as defined in ORS 646A.602 and health information as defined in ORS 192.556.**

(b) **"Public body" has the meaning given that term in ORS 174.109.**

(2) **All public bodies that have records that contain personal information shall develop and implement policies for securely removing all personal information from digital data storage devices, optical data storage devices and other electronic data storage devices in computers, scanners, facsimile communication devices, photocopiers, digital cameras and other electronic devices owned by the public body, leased by the public body or otherwise under the control of the public body before selling, donating, recycling or otherwise disposing of the devices. The public body may contract with another public body or private firm for the removal of personal information from the devices before selling, donating, recycling or otherwise disposing of the devices.**

(3)(a) **Except as provided in subsection (4) of this section, a public body may use a photocopier or scanner for the purpose of making copies of documents that contain personal information only if the photocopier or scanner is owned by a public body or federal agency, leased by a public body or federal agency or otherwise under the control of a public body or a federal agency.**

(b) **Paragraph (a) of this subsection does not apply to the Judicial Department.**

(4) **A public body may contract with a business to photocopy, scan or digitize documents of the public body that contain personal information if:**

(a) **The public body has a written contract with the business;**

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 **(b) The written contract includes provisions requiring the business to maintain the**
 2 **confidentiality of the documents being photocopied, scanned or digitized at least to the same**
 3 **extent that the public body is required to maintain the confidentiality of the documents; and**

4 **(c) The public body determines that contracting with the business is the most cost-**
 5 **efficient means of photocopying, scanning or digitizing the documents.**

6 **SECTION 2. Any business that offers photocopiers or scanners for use by the public for**
 7 **a fee must post a clearly visible notice on the premises where the photocopiers or scanners**
 8 **are located that informs customers that information from documents photocopied or scanned**
 9 **on the premises may be stored in digital form on the devices.**

10 **SECTION 3. ORS 646.608 is amended to read:**

11 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,
 12 vocation or occupation the person does any of the following:

13 (a) Passes off real estate, goods or services as the real estate, goods or services of another.

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

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

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

20 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
 21 ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have
 22 or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the
 23 person does not have.

24 (f) Represents that real estate or goods are original or new if the real estate or goods are de-
 25 teriorated, altered, reconditioned, reclaimed, used or secondhand.

26 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
 27 or that real estate or goods are of a particular style or model, if the real estate, goods or services
 28 are of another.

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

31 (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or
 32 services as advertised, or with intent not to supply reasonably expectable public demand, unless the
 33 advertisement discloses a limitation of quantity.

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

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

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

41 (m) Performs service on or dismantles any goods or real estate if the owner or apparent owner
 42 of the goods or real estate does not authorize the service or dismantling.

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

45 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give

1 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
2 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
3 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
4 discount or other value is contingent upon an event occurring after the time the customer enters
5 into the transaction.

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

8 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
9 not to deliver the real estate, goods or services as promised.

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

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

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

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

16 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,
17 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-
18 ation.

19 (w) Manufactures mercury fever thermometers.

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

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

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

25 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
26 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
27 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
28 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
29 graph, "thermostat" means a device commonly used to sense and, through electrical communication
30 with heating, cooling or ventilation equipment, control room temperature.

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

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

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

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

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

37 (ee) Violates ORS 646.883 or 646.885.

38 (ff) Violates ORS 646.569.

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

40 (hh) Violates ORS 646A.360.

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

42 (jj) Violates ORS 646.563.

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

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

- 1 (mm) Violates ORS 646A.210 or 646A.214.
2 (nn) Violates any provision of ORS 646A.124 to 646A.134.
3 (oo) Violates ORS 646A.095.
4 (pp) Violates ORS 822.046.
5 (qq) Violates ORS 128.001.
6 (rr) Violates ORS 646A.800 (2) to (4).
7 (ss) Violates ORS 646A.090 (2) to (4).
8 (tt) Violates ORS 87.686.
9 (uu) Violates ORS 646A.803.
10 (vv) Violates ORS 646A.362.
11 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
12 (xx) Violates ORS 180.440 (1) or 180.486 (1).
13 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
14 (zz) Violates ORS 87.007 (2) or (3).
15 (aaa) Violates ORS 92.405 (1), (2) or (3).
16 (bbb) Engages in an unlawful practice under ORS 646.648.
17 (ccc) Violates ORS 646A.365.
18 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
19 (eee) Sells a gift card in violation of ORS 646A.276.
20 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
21 (ggg) Violates ORS 646A.430 to 646A.450.
22 (hhh) Violates a provision of ORS 744.318 to 744.384.
23 (iii) Violates a provision of ORS 646A.702 to 646A.720.
24 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
25 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
26 subject of the violation.
27 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
28 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
29 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
30 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
31 (nnn) Violates ORS 646A.082.
32 (ooo) Violates ORS 646.647.
33 (ppp) Violates ORS 646A.115.
34 (qqq) Violates a provision of ORS 646A.405.
35 (rrr) Violates ORS 646A.092.
36 (sss) Violates a provision of ORS 646.644.
37 (ttt) Violates a provision of ORS 646A.295.
38 (uuu) Violates ORS 646A.564.
39 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
40 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
41 do so or unless the person is an active member of the Oregon State Bar.
42 (www) Violates ORS 702.012, 702.029, 702.032 or 702.054.
43 (xxx) Violates ORS 646A.806.
44 (yyy) Violates ORS 646A.810 (2).
45 (zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws 2015.

1 **(aaaa) Violates section 2 of this 2017 Act.**

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

4 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-
5 cuting attorney need not prove competition between the parties or actual confusion or misunder-
6 standing.

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

10 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or
11 suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attor-
12 ney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney
13 fees.

14 **SECTION 4.** ORS 646.608, as amended by section 10, chapter 523, Oregon Laws 2015, is
15 amended to read:

16 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,
17 vocation or occupation the person does any of the following:

18 (a) Passes off real estate, goods or services as the real estate, goods or services of another.

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

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

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

25 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
26 ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have
27 or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the
28 person does not have.

29 (f) Represents that real estate or goods are original or new if the real estate or goods are de-
30 teriorated, altered, reconditioned, reclaimed, used or secondhand.

31 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
32 or that real estate or goods are of a particular style or model, if the real estate, goods or services
33 are of another.

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

36 (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or
37 services as advertised, or with intent not to supply reasonably expectable public demand, unless the
38 advertisement discloses a limitation of quantity.

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

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

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

1 (m) Performs service on or dismantles any goods or real estate if the owner or apparent owner
2 of the goods or real estate does not authorize the service or dismantling.

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

5 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
6 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
7 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
8 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
9 discount or other value is contingent upon an event occurring after the time the customer enters
10 into the transaction.

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

13 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
14 not to deliver the real estate, goods or services as promised.

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17 person's cost for real estate, goods or services.

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

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

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- 20 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 21 (bbb) Engages in an unlawful practice under ORS 646.648.
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- 23 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 24 (eee) Sells a gift card in violation of ORS 646A.276.
- 25 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 26 (ggg) Violates ORS 646A.430 to 646A.450.
- 27 (hhh) Violates a provision of ORS 744.318 to 744.384.
- 28 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 29 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 30 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 31 subject of the violation.
- 32 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
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1 do so or unless the person is an active member of the Oregon State Bar.

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5 **(zzz) Violates section 2 of this 2017 Act.**

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8 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-
9 cuting attorney need not prove competition between the parties or actual confusion or misunder-
10 standing.

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

14 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or
15 suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attor-
16 ney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney
17 fees.

18
