

# Senate Bill 28

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## 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 person from disseminating advertisement to business entity that falsely states, implies, represents or suggests that, or otherwise causes reasonable confusion or reasonable false belief as to whether, person is part of, affiliated with, sponsored by, associated with or acting on behalf of governmental entity or governmental entity approves, authorizes or endorses person or offer or goods or services in advertisement.

Requires person that advertises goods, documents, services or other tangible items that governmental entity provides without charge or at lesser price to include specified disclaimer in advertisement.

Authorizes Secretary of State to respond to complaints and conduct investigations of alleged violations of Act. Authorizes Attorney General to enforce provisions of Act by administrative proceeding or civil action.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to contents of certain advertisements to business entities; and prescribing an effective date.

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

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

5 (a) **“Advertisement” means any representation that has the direct or indirect purpose**  
6 **of soliciting or inducing a business entity to purchase goods or services or the reasonably**  
7 **likely effect of which is to induce a business entity to purchase goods or services.**

8 (b) **“Business entity” means an individual, association, partnership, corporation,**  
9 **nonprofit corporation, professional corporation, limited liability company, business trust or**  
10 **other entity, or an agent, affiliate or employee of an entity, that is engaged in commercial**  
11 **activity in this state other than solely as a consumer of goods or services.**

12 (c) **“Governmental entity” means a political subdivision, agency or instrumentality of this**  
13 **or another state or of the United States, the federal government, a public corporation or**  
14 **government-sponsored entity of this or another state or of the United States.**

15 (2) **A person other than a governmental entity may not, when disseminating an adver-**  
16 **tisement to a business entity by any means, other than by a label on goods:**

17 (a) **Include, employ, refer to, describe or otherwise make use of language, symbols, logos,**  
18 **representations, statements, titles, names, seals, emblems, insignia, trade or brand names,**  
19 **business or control tracking numbers, website or electronic mail addresses or other terms,**  
20 **symbols or content in which or by means of which the person falsely states, implies, re-**  
21 **presents or suggests that, or otherwise causes a reasonable confusion or reasonable false**  
22 **belief as to whether:**

23 (A) **The person is part of, affiliated with, sponsored by, associated with or acting on be-**  
24 **half of a governmental entity; or**

**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) A governmental entity approves, authorizes or endorses the person or the offer and  
2 the goods or services that are the subject of the advertisement; or

3 (b) Fail to include or provide the notice required in subsection (4) of this section.

4 (3) A person other than a governmental entity shall submit timely written responses to  
5 the Secretary of State in any inquiry or investigation related to an alleged violation of sub-  
6 section (2) of this section, including submitting, at the Secretary of State's request, copies  
7 of customer lists, invoices, receipts or other business records.

8 (4)(a) A person other than a governmental entity shall make the notice set forth in par-  
9 agraph (b) of this subsection part of any offer or advertisement to a business entity for  
10 goods, documents, services or other tangible or intangible items, including forms or tem-  
11 plates, that purport to assist the business entity with filing a document to comply with a law,  
12 court order or other legal requirement or to comply with a law that requires the business  
13 entity to retain a business record or a record of a transaction, if a governmental entity  
14 provides or makes available the same or substantially similar items without charge or for a  
15 price below the price at which the person sells or offers to sell the items.

16 (b) The notice described in paragraph (a) of this subsection must read:

17  
18 **IMPORTANT NOTICE:**

19  
20 The goods, documents, services or other items offered in this advertisement are available  
21 from (name, mailing address, website and telephone number of applicable governmental en-  
22 tity) at a lesser price or free of charge. You are NOT required to purchase anything from  
23 this company and this company is NOT a part of, affiliated or associated with or endorsed  
24 by any government or governmental office, department or agency. This offer is NOT from  
25 or endorsed or approved by any government or governmental office, department or agency.  
26

27 (c) The notice described in paragraph (a) of this subsection must, as appropriate:

28 (A) Appear in the same font size, color and style and with the same prominence or visi-  
29 bility as the display or body text or other content that appears elsewhere in an advertise-  
30 ment, if the advertisement is printed or in writing, whether electronically or otherwise; or

31 (B) Be spoken at the same rate and at the same volume, with the same audibility and  
32 intelligibility, as the other parts of an advertisement, if the advertisement is disseminated  
33 audibly.

34 (d) The location or position of the notice described in paragraph (a) of this subsection  
35 must be, as appropriate:

36 (A) On the outside front of any mailing envelope used in disseminating an advertisement;

37 (B) At the top of each printed or written page used in an advertisement;

38 (C) At the beginning of each electronic message, before any offer or substantive portion  
39 of an advertisement;

40 (D) In a prominent location on each webpage or other electronic display of an advertise-  
41 ment, such as the top of each page or immediately following the offer or other substantive  
42 content related to the advertisement; or

43 (E) At the beginning or at the end of any audible advertisement, either immediately be-  
44 fore or immediately after the substantive content of the advertisement.

45 (5)(a) The Secretary of State shall:

1 (A) Respond to complaints or allegations from business entities of violations of this sec-  
 2 tion;

3 (B) Perform any inquiries or investigations the Secretary of State deems necessary to  
 4 respond to alleged violations of this section;

5 (C) Encourage compliance with this section; and

6 (D) Consult and cooperate with the Attorney General in any action to enforce the pro-  
 7 visions of this section.

8 (b) The Secretary of State may:

9 (A) Issue a subpoena to compel a person other than a governmental entity to produce  
 10 records, documents, books, papers, memoranda or other information necessary to determine  
 11 whether the person has complied with the provisions of this section; and

12 (B) Apply to a circuit court of this state to initiate proceedings for contempt against a  
 13 person that fails to comply with the subpoena under subparagraph (A) of this paragraph.

14 (6) A business entity that suffers an ascertainable loss of money or property as a result  
 15 of a person's violation of subsection (2) or (4) of this section may bring an action against the  
 16 person in a circuit court of this state to obtain the business entity's actual damages and, if  
 17 the court determines that the person's violation was willful or part of a repeated pattern of  
 18 violations, punitive damages. The court may also award a business entity that prevails in the  
 19 action the business entity's court costs and reasonable attorney fees.

20 (7) The Attorney General, in consultation and cooperation with the Secretary of State,  
 21 may enforce the provisions of this section by taking any or all of the following actions:

22 (a) Imposing a civil penalty in accordance with ORS 183.745.

23 (b) Bringing an action in a circuit court of this state to obtain:

24 (A) A temporary or permanent injunction against a person's violation of this section;

25 (B) Restitution for a business entity that suffered an ascertainable loss of money or  
 26 property as a result of a violation of this section;

27 (C) A civil penalty in the following amounts, as appropriate:

28 (i) Up to \$1,000 for each separately addressed advertisement or message that violates the  
 29 provisions of this section and that a business entity in this state receives, if the advertise-  
 30 ment is printed or in writing;

31 (ii) Up to \$5,000 for each day in which a website with content that violates the provisions  
 32 of this section remains available and accessible to business entities located in this state; and

33 (iii) Up to \$5,000 for each day in which a person fails to comply with a request from the  
 34 Secretary of State for a response to an inquiry or investigation related to a violation of this  
 35 section; and

36 (D) Court costs and reasonable attorney fees related to the action.

37 (8) The Secretary of State may terminate an inquiry or investigation and the Attorney  
 38 General may terminate an action or administrative proceeding related to a violation of this  
 39 section if a person responsible for the violation, other than a governmental entity, enters  
 40 into an enforceable agreement to pay a stipulated monetary penalty or to pay damages or  
 41 provide other relief to business entities that suffer ascertainable losses of money or property  
 42 as a result of the violation.

43 (9) The Secretary of State and the Attorney General may adopt rules necessary and ap-  
 44 propriate to carry out the respective duties of the Secretary of State and the Attorney  
 45 General under this section.

1        **SECTION 2.** (1) This 2021 Act becomes operative on January 1, 2022.

2        (2) The Secretary of State and the Attorney General may adopt rules and take any other  
3 action before the operative date specified in subsection (1) of this section that is necessary  
4 to enable the Secretary of State and the Attorney General, on and after the operative date  
5 specified in subsection (1) of this section, to undertake and exercise all of the duties, func-  
6 tions and powers conferred on the Secretary of State and the Attorney General by section  
7 1 of this 2021 Act.

8        **SECTION 3.** This 2021 Act takes effect on the 91st day after the date on which the 2021  
9 regular session of the Eighty-first Legislative Assembly adjourns sine die.

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