

House Bill 3327

Sponsored by Representative RESCHKE

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 proprietor of electronic communications network from selling, sharing, transmitting, transferring or otherwise providing to any person information that reveals time and date at which or geographical location in this state from which mobile electronic communication device that resident individual owns, controls or possesses connected to or communicated with proprietor's electronic communications network. Specifies exceptions.

Punishes violation of Act as unlawful practice under Unlawful Trade Practices Act.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to data generated by uses of mobile electronic communication devices; creating new pro-
3 visions; amending ORS 646.608; and prescribing an effective date.

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

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

6 (a) **"Electronic communications network" means a series of nodes and relays, such as**
7 **an interconnected series of cellular telephone towers and antennae, orbital satellites or de-**
8 **vices of similar character and capability, that accepts transmissions of voice communications**
9 **and data from a mobile electronic communication device and forwards the transmissions to**
10 **other mobile electronic communication devices.**

11 (b)(A) **"Mobile electronic communication device" means an electronic device, such as a**
12 **cellular telephone, a WiFi hotspot, a satellite telephone or a device of similar character and**
13 **capability, that can receive and transmit audio voice communications or digital data, in-**
14 **cluding subject data, by means of an electronic communications network.**

15 (B) **"Mobile electronic communication device" does not include a device that uses radio**
16 **transmissions or connections via wires to effect voice communications without the use of**
17 **an electronic communications network.**

18 (c)(A) **"Proprietor" means a person, including a public body, as defined in ORS 174.109,**
19 **and all directors, members, officers, employees, agents and contractors of the person, that**
20 **owns, controls, maintains or operates an electronic communications network.**

21 (B) **"Proprietor" does not include a subsidiary, an affiliate or any other person.**

22 (d) **"Resident individual" means an individual resident of this state.**

23 (e) **"Subject data" means information in any medium that tracks, captures, records, lists**
24 **or otherwise reveals the date and time at which, or the geographical location within this**
25 **state from which, a mobile electronic communication device that a resident individual owns,**
26 **controls or possesses connected to or communicated with a proprietor's electronic commu-**
27 **nications network.**

28 (2)(a) **Except as provided in paragraph (b) of this subsection, a proprietor, whether for**

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 compensation or otherwise, may not sell, share, transmit, transfer or otherwise provide
2 subject data to any person, other than the resident individual to whom the subject data
3 pertains, for any purpose.

4 (b) A proprietor may provide subject data to another person solely in connection with:

5 (A) A lawful investigation by a law enforcement agency; or

6 (B) A civil or criminal proceeding in which providing the subject data is necessary to
7 satisfy requirements set forth in a lawfully issued subpoena or other process or in a lawfully
8 issued court order.

9 (3) A proprietor that violates subsection (2)(a) of this section engages in an unlawful
10 practice under ORS 646.608 for which a resident individual to whom the subject data pertains
11 may bring an action under ORS 646.638. For the purposes of ORS 646.638, subject data that
12 pertains to the resident individual is the resident individual's property and a proprietor's
13 sale, sharing, transmission, transfer or provision of the subject data to a person other than
14 the resident individual under circumstances other than the circumstances set forth in sub-
15 section (2)(b) of this section is an ascertainable loss of the resident individual's property.

16 **SECTION 2.** ORS 646.608 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

44 (L) Makes false or misleading representations relating to commissions or other compensation to
45 be paid in exchange for permitting real estate, goods or services to be used for model or demon-

1 stration purposes or in exchange for submitting names of potential customers.

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

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

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

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

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

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

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

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

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

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

25 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

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

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

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

43 (ee) Violates ORS 646.883 or 646.885.

44 (ff) Violates ORS 646.569.

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

- 1 (hh) Violates ORS 646A.360.
- 2 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 3 (jj) Violates ORS 646.563.
- 4 (kk) Violates ORS 759.680 or any rule adopted pursuant thereto.
- 5 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 6 thereto.
- 7 (mm) Violates ORS 646A.210 or 646A.214.
- 8 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 9 (oo) Violates ORS 646A.095.
- 10 (pp) Violates ORS 822.046.
- 11 (qq) Violates ORS 128.001.
- 12 (rr) Violates ORS 646A.800 (2) to (4).
- 13 (ss) Violates ORS 646A.090 (2) to (5).
- 14 (tt) Violates ORS 87.686.
- 15 (uu) Violates ORS 646A.803.
- 16 (vv) Violates ORS 646A.362.
- 17 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 18 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 19 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 20 (zz) Violates ORS 87.007 (2) or (3).
- 21 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 22 (bbb) Engages in an unlawful practice under ORS 646.648.
- 23 (ccc) Violates ORS 646A.365.
- 24 (ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858.
- 25 (eee) Sells a gift card in violation of ORS 646A.276.
- 26 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 27 (ggg) Violates ORS 646A.430 to 646A.450.
- 28 (hhh) Violates a provision of ORS 744.318 to 744.384.
- 29 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 30 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 31 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 32 subject of the violation.
- 33 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 34 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 35 U.S.C. 3901 et seq., as in effect on January 1, 2010.
- 36 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 37 (nnn) Violates ORS 646A.082.
- 38 (ooo) Violates ORS 646.647.
- 39 (ppp) Violates ORS 646A.115.
- 40 (qqq) Violates a provision of ORS 646A.405.
- 41 (rrr) Violates ORS 646A.092.
- 42 (sss) Violates a provision of ORS 646.644.
- 43 (ttt) Violates a provision of ORS 646A.295.
- 44 (uuu) Violates ORS 646A.564.
- 45 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-

1 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
2 do so or unless the person is an active member of the Oregon State Bar.

3 (www) Violates ORS 702.012, 702.029 or 702.054.

4 (xxx) Violates ORS 646A.806.

5 (yyy) Violates ORS 646A.810 (2).

6 (zzz) Violates ORS 443.376.

7 (aaaa) Violates a provision of ORS 646A.770 to 646A.787.

8 **(bbbb) Violates a provision of section 1 of this 2023 Act.**

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

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

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

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

21 **SECTION 3. Section 1 of this 2023 Act and the amendments to ORS 646.608 by section 2**
22 **of this 2023 Act apply to sales, sharing, transmissions, transfers or provisions of subject data**
23 **that occur on or after the effective date of this 2023 Act.**

24 **SECTION 4. This 2023 Act takes effect on the 91st day after the date on which the 2023**
25 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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