

House Bill 3154

Sponsored by Representative HOLVEY

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 collecting and disclosing, selling, sharing, giving, distributing or otherwise transferring consumer's nonpublic personal information unless person obtains informed and affirmative consent from consumer. Prohibits person from requiring collection, disclosure, sale, sharing, giving, distribution or other transfer of nonpublic personal information as condition of providing goods or services to consumer. Specifies duration of effectiveness of consumer's informed and affirmative consent.

Punishes violation as unlawful practice under Unlawful Trade Practices Act.

A BILL FOR AN ACT

1
2 Relating to the consent required from a consumer with respect to the consumer's nonpublic personal
3 information; creating new provisions; and amending ORS 646.608.

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

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

6 (a) **"Clearly and conspicuously" means in larger type than surrounding text, in type that**
7 **contrasts in font or color with surrounding text of the same size or set off from surrounding**
8 **text of the same size with symbols or other marks in a manner that clearly calls attention**
9 **to the language.**

10 (b) **"Consumer" means an individual resident of this state, or the individual's legal rep-**
11 **resentative, who obtains in a transaction goods or services the individual intends to use for**
12 **personal, family or household purposes.**

13 (c) **"Informed and affirmative consent" means permission that a consumer grants to a**
14 **person in writing on a separate form, or separate page, that provides a space for the**
15 **consumer's written or electronic signature and that clearly and conspicuously discloses, at**
16 **a minimum:**

17 (A) **Which specific nonpublic personal information the person will collect from the con-**
18 **sumer and which specific nonpublic personal information the person may or will disclose,**
19 **sell, share, give, distribute or otherwise transfer to another person;**

20 (B) **The person's purposes for collecting and disclosing, selling, sharing, giving, distrib-**
21 **uting or otherwise transferring the nonpublic personal information;**

22 (C) **The names and addresses of the other persons to which the person may or will dis-**
23 **close, sell, share, give, distribute or otherwise transfer the nonpublic personal information;**

24 (D) **Whether the person intends to aggregate the nonpublic personal information with**
25 **other information that personally identifies the consumer and the person's purpose for the**
26 **aggregation;**

27 (E) **A summary of the nature and extent of measures the person takes to ensure the**
28 **security, confidentiality and integrity of the consumer's nonpublic personal information;**

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 (F) The foreseeable consequences to the consumer of the person's collecting and dis-
 2 closing, selling, sharing, giving, distributing or otherwise transferring the nonpublic personal
 3 information to another person, including the consequences that may result from a breach
 4 of any measures the person takes to ensure the security, confidentiality and integrity of the
 5 nonpublic personal information; and

6 (G) The prohibition under this section of any requirement to permit the person to collect
 7 and disclose, sell, share, give, distribute or otherwise transfer the nonpublic personal infor-
 8 mation as a condition of receiving goods or services from the person.

9 (d)(A) "Nonpublic personal information" means information that personally identifies a
 10 consumer and that a person obtains in a manner or from a source other than a manner or
 11 source that the person reasonably believes is widely available to the public.

12 (B) "Nonpublic personal information" does not include information that personally iden-
 13 tifies a consumer and that a person obtains:

14 (i) From federal, state or local government records;

15 (ii) From media that is widely available to the public, such as a telephone listing, a tele-
 16 vision or radio program, a newspaper or other generally distributed publication or a website
 17 that is widely available to the public on an unrestricted basis; or

18 (iii) From disclosures required under federal, state or local law.

19 (e) "Person" means:

20 (A) An individual, professional corporation, corporation, nonprofit corporation, cooper-
 21 ative, limited liability company, limited liability partnership, partnership, business trust or
 22 other business entity that is engaged in a regular business of providing goods and services
 23 to consumers and that regularly engages in collecting and disclosing, selling, sharing, giving,
 24 distributing or otherwise transferring nonpublic personal information from consumers to
 25 another person; and

26 (B) A governmental body or governmental agency engaged in ordinary governmental
 27 business.

28 (f) "Transaction" means an exchange between a person and a consumer, whether or not
 29 for money or other value.

30 (2)(a) Except as provided in subsection (5) of this section, a person may not collect, dis-
 31 close, sell, share, give, distribute or otherwise transfer nonpublic personal information about
 32 a consumer to another person unless the person first obtains the consumer's informed and
 33 affirmative consent.

34 (b) A person may not require a consumer to consent to the person's collecting, disclos-
 35 ing, selling, sharing, giving, distributing or otherwise transferring the consumer's nonpublic
 36 personal information as a condition of providing goods or services to the consumer.

37 (3)(a) A consumer's informed and affirmative consent is effective only for the duration
 38 of the transaction in which the person seeks or intends to collect nonpublic personal infor-
 39 mation from the consumer, but the consumer's informed and affirmative consent grants the
 40 person permission to disclose, sell, share, give, distribute or otherwise transfer the nonpublic
 41 personal information to another person indefinitely thereafter. A person shall obtain a
 42 consumer's informed and affirmative consent for each transaction in which the person seeks
 43 or intends to collect nonpublic personal information from the consumer. If a transaction
 44 between the person and the consumer is a paid subscription or the person continues to pro-
 45 vide goods or services to the consumer without further payment after an initial transaction,

1 **the consumer's informed and affirmative consent is effective for the term of the subscription**
2 **or the period in which the person continues to provide goods or services to the consumer**
3 **without further payment.**

4 **(b) Notwithstanding paragraph (a) of this subsection, a person shall obtain a consumer's**
5 **informed and affirmative consent to disclose, sell, share, give, distribute or otherwise**
6 **transfer the consumer's nonpublic personal information if the person changes or intends to**
7 **change:**

8 **(A) The contents of the nonpublic personal information that the person discloses, sells,**
9 **shares, gives, distributes or otherwise transfers to another person;**

10 **(B) The purpose for which the person discloses, sells, shares, gives, distributes or oth-**
11 **erwise transfers the nonpublic personal information;**

12 **(C) The other persons to which the person may or will disclose, sell, share, give, distrib-**
13 **ute or otherwise transfer the nonpublic personal information; or**

14 **(D) Measures the person takes to ensure the security, confidentiality and integrity of the**
15 **nonpublic personal information.**

16 **(4) A person's violation of the provisions of this section is an unlawful practice under**
17 **ORS 646.608 that is subject to enforcement under ORS 646.632 and an action under ORS**
18 **646.638.**

19 **(5) This section does not apply to a governmental body or governmental agency that**
20 **collects, discloses, sells, shares, gives, distributes or otherwise transfers nonpublic personal**
21 **information in accordance with applicable federal, state or local law.**

22 **SECTION 2.** ORS 646.608, as amended by section 3, chapter 19, Oregon Laws 2014, is amended
23 to read:

24 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,
25 vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

44 (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or
45 services as advertised, or with intent not to supply reasonably expectable public demand, unless the

1 advertisement discloses a limitation of quantity.

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

- 1 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 2 (bb) Violates ORS 646A.070 (1).
- 3 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 4 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 5 (ee) Violates ORS 646.883 or 646.885.
- 6 (ff) Violates ORS 646.569.
- 7 (gg) Violates the provisions of ORS 646A.142.
- 8 (hh) Violates ORS 646A.360.
- 9 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 10 (jj) Violates ORS 646.563.
- 11 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 12 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 13 thereto.
- 14 (mm) Violates ORS 646A.210 or 646A.214.
- 15 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 16 (oo) Violates ORS 646A.095.
- 17 (pp) Violates ORS 822.046.
- 18 (qq) Violates ORS 128.001.
- 19 (rr) Violates ORS 646A.800 (2) to (4).
- 20 (ss) Violates ORS 646A.090 (2) to (4).
- 21 (tt) Violates ORS 87.686.
- 22 (uu) Violates ORS 646A.803.
- 23 (vv) Violates ORS 646A.362.
- 24 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 25 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 26 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 27 (zz) Violates ORS 87.007 (2) or (3).
- 28 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 29 (bbb) Engages in an unlawful practice under ORS 646.648.
- 30 (ccc) Violates ORS 646A.365.
- 31 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 32 (eee) Sells a gift card in violation of ORS 646A.276.
- 33 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 34 (ggg) Violates ORS 646A.430 to 646A.450.
- 35 (hhh) Violates a provision of ORS 744.318 to 744.384.
- 36 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 37 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 38 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 39 subject of the violation.
- 40 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 41 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 42 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 43 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 44 (nnn) Violates ORS 646A.082.
- 45 (ooo) Violates ORS 646.647.

- 1 (ppp) Violates ORS 646A.115.
 - 2 (qqq) Violates a provision of ORS 646A.405.
 - 3 (rrr) Violates ORS 646A.092.
 - 4 (sss) Violates a provision of ORS 646.644.
 - 5 (ttt) Violates a provision of ORS 646A.295.
 - 6 (uuu) Violates ORS 646A.564.
 - 7 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
 - 8 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
 - 9 do so or unless the person is an active member of the Oregon State Bar.
 - 10 (www) Violates ORS 702.012, 702.029, 702.032 or 702.054.
 - 11 (xxx) Violates ORS 646A.806.
 - 12 (yyy) Violates section 2 (2), chapter 19, Oregon Laws 2014.
 - 13 **(zzz) Violates section 1 of this 2015 Act.**
 - 14 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
 - 15 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
 - 16 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
 - 17 need not prove competition between the parties or actual confusion or misunderstanding.
 - 18 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
 - 19 torney General has first established a rule in accordance with the provisions of ORS chapter 183
 - 20 declaring the conduct to be unfair or deceptive in trade or commerce.
 - 21 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
 - 22 under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is lim-
 - 23 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.
 - 24 **SECTION 3. Section 1 of this 2015 Act and the amendments to ORS 646.608 by section 2**
 - 25 **of this 2015 Act apply to transactions that occur on or after the effective date of this 2015**
 - 26 **Act.**
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