

House Bill 2302

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Judiciary)

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 installing or causing installation of spyware on computer. Creates exceptions. Makes violation of prohibition unlawful trade practice.

A BILL FOR AN ACT

1
2 Relating to spyware; creating new provisions; and amending ORS 646.608.

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

4 **SECTION 1. As used in this section and section 2 of this 2005 Act:**

5 (1) "Real estate, goods or services" has the meaning given that term in ORS 646.605.

6 (2) "Spyware" means a software program on a computer that:

7 (a) Monitors the use of the computer and:

8 (A) Transmits information about the use of the computer to another computer or elec-
9 tronic device; or

10 (B) Displays an offer of real estate, goods or services in response to the use of the
11 computer;

12 (b) Records and transmits keystrokes entered by the computer's operator to another
13 computer or electronic device; or

14 (c) Allows a person or software to control the computer from another computer or
15 electronic device.

16 **SECTION 2. (1) A person may not install spyware on a computer or cause spyware to be
17 installed on a computer.**

18 (2) Subsection (1) of this section does not apply:

19 (a) When the monitoring, transmitting or controlling is performed by the person who
20 owns the computer;

21 (b) When the owner of the computer provides informed consent to the installation of the
22 spyware;

23 (c) When the information transmitted about the use of the computer is collected by a
24 website and limited to interactions by the computer with the website; or

25 (d) When a vendor or supplier of software or a software component monitors or trans-
26 mits information about the software or component in order to improve the stability or se-
27 curity of the software or component.

28 (3) For purposes of subsection (2)(b) of this section, the owner of a computer provides
29 informed consent to the installation of spyware when the owner agrees to the installation
30 after the person who will install spyware or cause the spyware to be installed informs the
31 owner in a conspicuous and intuitive statement in at least 10-point boldfaced type, in imme-

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 **diate proximity to the space reserved for the owner to agree to the installation, of:**

2 (a) **The information that the spyware will collect and transmit;**

3 (b) **Representative samples of the offers that the spyware will display;**

4 (c) **The frequency that the spyware will display an offer; and**

5 (d) **The tasks that the spyware will enable a person to perform with the owner's com-**
6 **puter from another computer or electronic device.**

7 (4) **A person who installs spyware on a computer owned by another person or causes**
8 **spyware to be installed on a computer owned by another person shall include in the spyware**
9 **an uninstall program that allows the owner of the computer to permanently remove the**
10 **spyware.**

11 **SECTION 3. The Attorney General may adopt rules to implement sections 1 and 2 of this**
12 **2005 Act.**

13 **SECTION 4.** ORS 646.608 is amended to read:

14 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
15 ness, vocation or occupation the person does any of the following:

16 (a) Passes off real estate, goods or services as those of another.

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

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

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

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

26 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,
27 reconditioned, reclaimed, used or secondhand.

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

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

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

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

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

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

42 (m) Performs service on or dismantles any goods or real estate when not authorized by the
43 owner or apparent owner thereof.

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

1 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
 2 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
 3 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
 4 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
 5 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
 6 tomer enters into the transaction.

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

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

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

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

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

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

17 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
 18 ORS 698.640, whether in a commercial or noncommercial situation.

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

32 (aa) Violates ORS 646.850 (1).

33 (bb) Violates any requirement of ORS 646.661 to 646.686.

34 (cc) Violates the provisions of ORS 128.801 to 128.898.

35 (dd) Violates ORS 646.883 or 646.885.

36 (ee) Violates any provision of ORS 646.195.

37 (ff) Violates ORS 646.569.

38 (gg) Violates the provisions of ORS 646.859.

39 (hh) Violates ORS 759.290.

40 (ii) Violates ORS 646.872.

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

42 (kk) Violates ORS 646.563.

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

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

- 1 (nn) Violates ORS 646.892 or 646.894.
- 2 (oo) Violates any provision of ORS 646.249 to 646.259.
- 3 (pp) Violates ORS 646.384.
- 4 (qq) Violates ORS 646.871.
- 5 (rr) Violates ORS 822.046.
- 6 (ss) Violates ORS 128.001.
- 7 (tt) Violates ORS 646.649 (2) to (4).
- 8 (uu) Violates ORS 646.877 (2) to (4).
- 9 (vv) Violates ORS 87.686.
- 10 (ww) Violates ORS 646.651.
- 11 (xx) Violates ORS 646.879.
- 12 (yy) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.
- 13 (zz) Violates ORS 180.440 (1).
- 14 (aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 15 (bbb) Violates ORS 87.007 (2) or (3).
- 16 **(ccc) Violates section 2 of this 2005 Act.**

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

19 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
20 need not prove competition between the parties or actual confusion or misunderstanding.

21 (4) No action or suit shall be brought under subsection (1)(u) of this section unless the Attorney
22 General has first established a rule in accordance with the provisions of ORS chapter 183 declaring
23 the conduct to be unfair or deceptive in trade or commerce.

24 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
25 under subsection (1)(zz) of this section by a person other than a prosecuting attorney, relief shall
26 be limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

27 **SECTION 5.** ORS 646.608, as amended by section 13, chapter 924, Oregon Laws 2001, section
28 2, chapter 133, Oregon Laws 2003, section 3, chapter 486, Oregon Laws 2003, section 5, chapter 778,
29 Oregon Laws 2003, and section 19, chapter 801, Oregon Laws 2003, is amended to read:

30 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
31 ness, vocation or occupation the person does any of the following:

- 32 (a) Passes off real estate, goods or services as those of another.
- 33 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
34 proval, or certification of real estate, goods or services.
- 35 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
36 ciation with, or certification by, another.
- 37 (d) Uses deceptive representations or designations of geographic origin in connection with real
38 estate, goods or services.
- 39 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
40 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
41 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.
- 42 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,
43 reconditioned, reclaimed, used or secondhand.
- 44 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
45 or that real estate or goods are of a particular style or model, if they are of another.

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

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

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

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

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

13 (m) Performs service on or dismantles any goods or real estate when not authorized by the
14 owner or apparent owner thereof.

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

17 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
18 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
19 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
20 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
21 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
22 tomer enters into the transaction.

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

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

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

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

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

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

33 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
34 ORS 698.640, whether in a commercial or noncommercial situation.

35 (w) Manufactures mercury fever thermometers.

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

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

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

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

1 with heating, cooling or ventilation equipment, control room temperature.

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

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

5 (bb) Violates ORS 646.850 (1).

6 (cc) Violates any requirement of ORS 646.661 to 646.686.

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

8 (ee) Violates ORS 646.883 or 646.885.

9 (ff) Violates any provision of ORS 646.195.

10 (gg) Violates ORS 646.569.

11 (hh) Violates the provisions of ORS 646.859.

12 (ii) Violates ORS 759.290.

13 (jj) Violates ORS 646.872.

14 (kk) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

15 (LL) Violates ORS 646.563.

16 (mm) Violates ORS 759.690 or any rule adopted pursuant thereto.

17 (nn) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
18 thereto.

19 (oo) Violates ORS 646.892 or 646.894.

20 (pp) Violates any provision of ORS 646.249 to 646.259.

21 (qq) Violates ORS 646.384.

22 (rr) Violates ORS 646.871.

23 (ss) Violates ORS 822.046.

24 (tt) Violates ORS 128.001.

25 (uu) Violates ORS 646.649 (2) to (4).

26 (vv) Violates ORS 646.877 (2) to (4).

27 (ww) Violates ORS 87.686.

28 (xx) Violates ORS 646.651.

29 (yy) Violates ORS 646.879.

30 (zz) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.

31 (aaa) Violates ORS 180.440 (1).

32 (bbb) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

33 (ccc) Violates ORS 87.007 (2) or (3).

34 **(ddd) Violates section 2 of this 2005 Act.**

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

37 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
38 need not prove competition between the parties or actual confusion or misunderstanding.

39 (4) No action or suit shall be brought under subsection (1)(u) of this section unless the Attorney
40 General has first established a rule in accordance with the provisions of ORS chapter 183 declaring
41 the conduct to be unfair or deceptive in trade or commerce.

42 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
43 under subsection (1)(aaa) of this section by a person other than a prosecuting attorney, relief shall
44 be limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

45 **SECTION 6. Section 2 of this 2005 Act applies to spyware installed on or after the effec-**

1 **tive date of this 2005 Act.**

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