



JOHN A. KITZHABER, MD
Governor

June 13, 2011

The Honorable Bruce Hanna
Co-Speaker of the House
900 Court Street NE, H-269
Salem, OR 97301

The Honorable Arnie Roblan
Co-Speaker of the House
900 Court Street NE, H-295
Salem, OR 97301

Dear Co-Speaker Hanna and Co-Speaker Roblan:

I am returning Enrolled House Bill 2212 unsigned and disapproved.

HB 2212 prohibits floral order facilitators from receiving or charging consideration for individual orders, with certain exceptions. In summary, the bill limits the price that a floral order facilitator can receive for consideration to a specified percentage of the overall amount paid by the consumer, depending on whether the facilitator receives the order from a direct provider or from another floral order facilitator.

The bill has a commendable goal which I fully support: protecting Oregon flower shop owners from uncertain or exorbitant pricing from floral order facilitators. Unfortunately, HB 2212 has several constitutional implications – none of which were raised by opponents to this legislation during the public hearing process.

First, this measure impacts commerce that occurs entirely outside the borders of Oregon, and thereby runs afoul of the Dormant Commerce Clause in Article I, Section 8 of the United States Constitution. Second, the bill's limitations on the consideration to be paid affects private contracts between floral order facilitators and their members, which likely violates the Contracts Clause of the Oregon and United States Constitutions.

Because a court would likely find Enrolled House Bill 2212 to be unconstitutional, I am returning it unsigned and disapproved.

I want to make it clear, however, that the issue this bill was introduced to address still remains. Therefore, I am committed to convening a work group in the interim to consider alternative approaches to important issues raised by the bill, and I look forward to including interested legislators in that process.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Kitzhaber".

John A. Kitzhaber, M.D.
Governor