

D R A F T

SUMMARY

Includes insurance in definition of real estate, goods and services that are subject to penalties for unlawful trade practices.

Permits person to obtain, and court to award, appropriate equitable relief in addition to monetary damages under Unlawful Trade Practices Act.

Requires Director of Department of Consumer and Business Services to request action before prosecuting attorney may take action under Unlawful Trade Practices Act against act or practice related to insurance.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to unlawful trade practices; creating new provisions; amending ORS
3 646.605, 646.608, 646.612, 646.636, 646.638 and 646.648; and declaring an
4 emergency.

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

6 **SECTION 1.** ORS 646.605 is amended to read:

7 646.605. As used in ORS 336.184 and 646.605 to 646.652:

8 (1) "Appropriate court" means the circuit court of a county:

9 (a) [*Where one or more of the defendants reside*] **In which a defendant**
10 **resides;**

11 (b) [*Where one or more of the defendants maintain*] **In which a defendant**
12 **maintains** a principal place of business;

13 (c) [*Where one or more of the defendants are*] **In which a defendant is**
14 alleged to have committed an act prohibited by ORS 336.184 and 646.605 to
15 646.652; or

16 (d) With [*the*] **a** defendant's consent, [*where*] **in which** the prosecuting
17 attorney maintains an office.

1 (2) “Documentary material” means the original or a copy of any book,
 2 record, report, memorandum, paper, communication, tabulation, map, chart,
 3 photograph, mechanical transcription, or other tangible document or record-
 4 ing, wherever [*situate*] **located**.

5 (3) “Examination” [*of documentary material includes inspection, study*]
 6 **means inspecting, studying** or copying [*of any such*] **documentary**
 7 material[,] and taking testimony under oath or acknowledgment [*regarding*
 8 *any documentary material or copy thereof*] **about the documentary material**
 9 **or a copy of the documentary material**.

10 (4) “Person” means **a natural** [*persons, corporations, trusts, partnerships,*]
 11 **person, a corporation, a trust, a partnership, an** incorporated or unin-
 12 corporated [*associations*] **association** and any other legal entity except
 13 [*bodies or officers*] **a body or officer that is** acting under **the** statutory au-
 14 thority of this state or the United States.

15 (5) “Prosecuting attorney” means the Attorney General or the district
 16 attorney of any county in which a violation of ORS 336.184 and 646.605 to
 17 646.652 is alleged to have occurred.

18 (6)(a) “Real estate, goods or services” means [*those*] **real estate, goods**
 19 **or services, including insurance**, that are or may be obtained primarily for
 20 personal, family or household purposes **that, with respect to insurance,**
 21 **are or may be obtained for purposes other than personal, family or**
 22 **household purposes**, or that are or may be obtained for any purposes as a
 23 result of a telephone solicitation, and includes loans and extensions of
 24 credit[,] and franchises, distributorships and other similar business
 25 opportunities[, *but does not include insurance*].

26 (b) Notwithstanding paragraph (a) of this subsection[:],

27 [(A) “Real estate” does not cover conduct covered by ORS chapter 90.]

28 [(B)] “loans and extensions of credit” does not include transactions [*in-*
 29 *volving*] **that involve** a pawnbroker, as defined in ORS 726.010, that [*is re-*
 30 *quired to*] **must** be licensed under ORS chapter 726.

31 (7) “Telephone solicitation” means a solicitation [*where*] **in which** a per-

1 son, in the course of the person's business, vocation or occupation, uses a
2 telephone or an automatic dialing-announcing device to initiate telephonic
3 contact with a potential customer and the person is not one of the following:

4 (a) *[A person who is]* A broker-dealer or salesperson licensed under ORS
5 59.175, or a mortgage banker or mortgage broker licensed under ORS 86A.106,
6 *[when]* **if** the solicitation is for a security qualified for sale *[pursuant to]*
7 **under** ORS 59.055.

8 (b) A real estate licensee or a person who is otherwise authorized to en-
9 gage in professional real estate activity *[pursuant to]* **under** ORS chapter
10 696, *[when]* **if** the solicitation involves professional real estate activity.

11 (c) A person licensed or exempt from licensure as a builder *[pursuant to]*
12 **under** ORS chapter 701, *[when]* **if** the solicitation involves *[the construction,*
13 *alteration, repair, improvement or demolition of]* **constructing, altering, re-**
14 **pairing, improving or demolishing** a structure.

15 *[(d) A person licensed or otherwise authorized to sell insurance as an in-*
16 *surance producer pursuant to ORS chapter 744, when the solicitation involves*
17 *insurance.]*

18 *[(e)]* **(d)** A person *[soliciting]* **that solicits** the sale of a newspaper of
19 general circulation, a magazine or membership in a book or record club who
20 complies with ORS 646.611, *[when]* **if** the solicitation involves newspapers,
21 magazines or membership in a book or record club.

22 *[(f)]* **(e)** A person *[soliciting]* **that solicits**, without the intent to
23 complete, and who does not complete *[the]* **a** sales presentation during the
24 telephone solicitation and *[who]* **that** only completes the sales presentation
25 at a later face-to-face meeting between the *[solicitor]* **person** and the pro-
26 spective purchaser.

27 *[(g)]* **(f)** A supervised financial institution or parent, subsidiary or affil-
28 iate *[thereof]* **of a supervised financial institution**. As used in this para-
29 graph, "supervised financial institution" means any financial institution or
30 trust company, as those terms are defined in ORS 706.008, or any personal
31 property broker, consumer finance lender, commercial finance lender or

1 insurer that is subject to regulation by an official or agency of this state or
 2 of the United States.

3 [(h)] (g) A person [who] **that** is authorized to conduct prearrangement or
 4 preconstruction funeral or cemetery sales[, pursuant to] **under** ORS chapter
 5 692, [when] **if** the solicitation involves prearrangement or preconstruction
 6 funeral or cemetery plans.

7 [(i)] (h) A person [who] **that** solicits the services [provided by] **that** a
 8 cable television system licensed or franchised [pursuant to] **under** state, local
 9 or federal law **provides**, [when] **if** the solicitation involves cable television
 10 services.

11 [(j)] (i) A person or affiliate of a person whose business is regulated by
 12 the Public Utility Commission [of Oregon].

13 [(k)] (j) A person who sells farm products, as defined [by] **in** ORS
 14 576.006, if the [solicitation neither intends to nor actually results] **person**
 15 **does not intend to complete a sale and the solicitation does not actu-**
 16 **ally result** in a sale that costs the purchaser in excess of \$100.

17 [(L)] (k) An issuer or subsidiary of an issuer that has a class of securities
 18 that is subject to section 12 of the Securities Exchange Act of 1934 and that
 19 is either registered or exempt from registration under paragraph (A), (B), (C),
 20 (E), (F), (G) or (H) or subsection (g) of that section.

21 [(m)] (L) A person [soliciting exclusively] **that solicits only** the sale of
 22 telephone answering services [to be provided by] that **the** person or [that] **the**
 23 person's employer [when] **will provide, if** the solicitation involves answering
 24 services.

25 [(n)] (m) A telecommunications utility with access lines of 15,000 or less
 26 or a cooperative telephone association, [when] **if** the solicitation involves
 27 regulated goods or services.

28 (8) "Trade" and "commerce" mean advertising, offering or distributing,
 29 whether by sale, rental or otherwise, any real estate, goods or services, and
 30 include any trade or commerce **that** directly or indirectly [affecting] **affects**
 31 the people of this state.

1 (9) “Unconscionable tactics” **means actions that** include, but are not
2 limited to, actions [by] **in** which a person:

3 (a) Knowingly takes advantage of a customer’s physical infirmity, igno-
4 rance, illiteracy or inability to understand the language of the agreement;

5 (b) Knowingly permits a customer to enter into a transaction from which
6 the customer will derive no material benefit;

7 (c) Permits a customer to enter into a transaction [*with knowledge that*
8 *there is no reasonable probability of payment of the attendant financial obli-*
9 *gation in full by the customer when due*] **knowing that the customer does**
10 **not have a reasonable probability of paying the attendant financial**
11 **obligation in full when due; or**

12 (d) Knowingly takes advantage of a customer who is a disabled veteran,
13 a disabled servicemember or a servicemember in active service, or the spouse
14 of a disabled veteran, disabled servicemember or servicemember in active
15 service. For purposes of this paragraph:

16 (A) “Disabled veteran” has the meaning given that term in ORS 408.225.

17 (B) “Disabled servicemember” means a servicemember, as defined in 50
18 U.S.C. App. 511 as in effect on [*January 1, 2010*] **the effective date of this**
19 **2019 Act**, who may be entitled to disability compensation under laws ad-
20 ministered by the United States Department of Veterans Affairs.

21 (C) “Servicemember in active service” means:

22 (i) A servicemember called into active service under Title 10 or Title 32
23 of the United States Code as in effect on [*January 1, 2010*] **the effective**
24 **date of this 2019 Act; or**

25 (ii) A servicemember on state active duty, as defined in the Oregon Code
26 of Military Justice.

27 (10) [*A willful violation occurs when the person committing the violation*
28 *knew or should have known that the conduct of the person was a violation*]
29 **“Willful” means a state of mind in which a person that commits a vi-**
30 **olation knew or should have known that the person’s conduct was a**
31 **violation.**

1 [(11) A loan is made “in close connection with the sale of a manufactured
2 dwelling” if:]

3 [(a) The lender directly or indirectly controls, is controlled by or is under
4 common control with the seller, unless the relationship is remote and is not a
5 factor in the transaction;]

6 [(b) The lender gives a commission, rebate or credit in any form to a seller
7 who refers the borrower to the lender, other than payment of the proceeds of
8 the loan jointly to the seller and the borrower;]

9 [(c) The lender is related to the seller by blood or marriage;]

10 [(d) The seller directly and materially assists the borrower in obtaining the
11 loan;]

12 [(e) The seller prepares documents that are given to the lender and used in
13 connection with the loan; or]

14 [(f) The lender supplies documents to the seller used by the borrower in
15 obtaining the loan.]

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
18 the person’s business, vocation or occupation the person does any of the
19 following:

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

22 (b) Causes likelihood of confusion or of misunderstanding as to the
23 source, sponsorship, approval, or certification of real estate, goods or ser-
24 vices.

25 (c) Causes likelihood of confusion or of misunderstanding as to affiliation,
26 connection, or association with, or certification by, another.

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

29 (e) Represents that real estate, goods or services have sponsorship, ap-
30 proval, characteristics, ingredients, uses, benefits, quantities or qualities that
31 the real estate, goods or services do not have or that a person has a spon-

1 sorship, approval, status, qualification, affiliation, or connection that the
2 person does not have.

3 (f) Represents that real estate or goods are original or new if the real
4 estate or goods are deteriorated, altered, reconditioned, reclaimed, used or
5 secondhand.

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

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

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

15 (j) Makes false or misleading representations of fact concerning the rea-
16 sons for, existence of, or amounts of price reductions.

17 (k) Makes false or misleading representations concerning credit avail-
18 ability or the nature of the transaction or obligation incurred.

19 (L) Makes false or misleading representations relating to commissions or
20 other compensation to be paid in exchange for permitting real estate, goods
21 or services to be used for model or demonstration purposes or in exchange
22 for submitting names of potential customers.

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

26 (n) Solicits potential customers by telephone or door to door as a seller
27 unless the person provides the information required under ORS 646.611.

28 (o) In a sale, rental or other disposition of real estate, goods or services,
29 gives or offers to give a rebate or discount or otherwise pays or offers to pay
30 value to the customer in consideration of the customer giving to the person
31 the names of prospective purchasers, lessees, or borrowers, or otherwise

1 aiding the person in making a sale, lease, or loan to another person, if
2 earning the rebate, discount or other value is contingent upon an event oc-
3 ccurring after the time the customer enters into the transaction.

4 (p) Makes any false or misleading statement about a prize, contest or
5 promotion used to publicize a product, business or service.

6 (q) Promises to deliver real estate, goods or services within a certain pe-
7 riod of time with intent not to deliver the real estate, goods or services as
8 promised.

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

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

13 (t) Concurrent with tender or delivery of any real estate, goods or ser-
14 vices fails to disclose any known material defect or material nonconformity.

15 (u) Engages in any other unfair or deceptive conduct in trade or com-
16 merce.

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

20 (w) Manufactures mercury fever thermometers.

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

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

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

27 (y) Sells a thermostat that contains mercury unless the thermostat is la-
28 beled in a manner to inform the purchaser that mercury is present in the
29 thermostat and that the thermostat may not be disposed of until the mercury
30 is removed, reused, recycled or otherwise managed to ensure that the mer-
31 cury does not become part of the solid waste stream or wastewater. For

1 purposes of this paragraph, “thermostat” means a device commonly used to
2 sense and, through electrical communication with heating, cooling or venti-
3 lation equipment, control room temperature.

4 (z) Sells or offers for sale a motor vehicle manufactured after January 1,
5 2006, that contains mercury light switches.

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

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

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

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

10 (ee) Violates ORS 646.883 or 646.885.

11 (ff) Violates ORS 646.569.

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

13 (hh) Violates ORS 646A.360.

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

15 (jj) Violates ORS 646.563.

16 (kk) Violates ORS 759.680 or any rule adopted pursuant thereto.

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

19 (mm) Violates ORS 646A.210 or 646A.214.

20 (nn) Violates any provision of ORS 646A.124 to 646A.134.

21 (oo) Violates ORS 646A.095.

22 (pp) Violates ORS 822.046.

23 (qq) Violates ORS 128.001.

24 (rr) Violates ORS 646A.800 (2) to (4).

25 (ss) Violates ORS 646A.090 (2) to (5).

26 (tt) Violates ORS 87.686.

27 (uu) Violates ORS 646A.803.

28 (vv) Violates ORS 646A.362.

29 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or
30 646A.054.

31 (xx) Violates ORS 180.440 (1) or 180.486 (1).

- 1 (yy) Commits the offense of acting as a vehicle dealer without a certifi-
2 cate under ORS 822.005.
- 3 (zz) Violates ORS 87.007 (2) or (3).
- 4 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 5 (bbb) Engages in an unlawful practice under ORS 646.648.
- 6 (ccc) Violates ORS 646A.365.
- 7 (ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted under
8 ORS 98.864.
- 9 (eee) Sells a gift card in violation of ORS 646A.276.
- 10 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 11 (ggg) Violates ORS 646A.430 to 646A.450.
- 12 (hhh) Violates a provision of ORS 744.318 to 744.384.
- 13 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 14 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning
15 or declaration described in ORS 646A.530 is issued for the children's product,
16 as defined in ORS 646A.525, that is the subject of the violation.
- 17 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,
18 697.682, 697.692 or 697.707.
- 19 (LLL) Violates the consumer protection provisions of the Servicemembers
20 Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 21 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 22 (nnn) Violates ORS 646A.082.
- 23 (ooo) Violates ORS 646.647.
- 24 (ppp) Violates ORS 646A.115.
- 25 (qqq) Violates a provision of ORS 646A.405.
- 26 (rrr) Violates ORS 646A.092.
- 27 (sss) Violates a provision of ORS 646.644.
- 28 (ttt) Violates a provision of ORS 646A.295.
- 29 (uuu) Violates ORS 646A.564.
- 30 (vvv) Engages in the business of, or acts in the capacity of, an immi-
31 gration consultant, as defined in ORS 9.280, in this state and for compen-

1 sation, unless federal law authorizes the person to do so or unless the person
2 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 a provision of sections 1 to 7, chapter 523, Oregon Laws
7 2015.

8 (aaaa) Violates ORS 443.376.

9 **(bbbb) Violates a provision of ORS 746.230.**

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

13 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605
14 to 646.652, a prosecuting attorney need not prove competition between the
15 parties or actual confusion or misunderstanding.

16 (4) An action or suit may not be brought under subsection (1)(u) of this
17 section unless the Attorney General has first established a rule in accord-
18 ance with the provisions of ORS chapter 183 declaring the conduct to be
19 unfair or deceptive in trade or commerce. **The Attorney General may not**
20 **adopt a rule under this subsection with respect to conduct that is**
21 **subject to the Insurance Code unless the Attorney General first sub-**
22 **mits the proposed rule to the Director of the Department of Consumer**
23 **and Business Services for review and approval.**

24 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to
25 646.652, if an action or suit is brought under subsection (1)(xx) of this section
26 by a person other than a prosecuting attorney, relief is limited to an in-
27 junction and the prevailing party may be awarded reasonable attorney fees.

28 **SECTION 3.** ORS 646.608, as amended by section 10, chapter 523, Oregon
29 Laws 2015, section 15, chapter 113, Oregon Laws 2017, section 3, chapter 241,
30 Oregon Laws 2017, section 16, chapter 480, Oregon Laws 2017, and section
31 6, chapter 656, Oregon Laws 2017, is amended to read:

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

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

6 (b) Causes likelihood of confusion or of misunderstanding as to the
7 source, sponsorship, approval, or certification of real estate, goods or ser-
8 vices.

9 (c) Causes likelihood of confusion or of misunderstanding as to affiliation,
10 connection, or association with, or certification by, another.

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

13 (e) Represents that real estate, goods or services have sponsorship, ap-
14 proval, characteristics, ingredients, uses, benefits, quantities or qualities that
15 the real estate, goods or services do not have or that a person has a spon-
16 sorship, approval, status, qualification, affiliation, or connection that the
17 person does not have.

18 (f) Represents that real estate or goods are original or new if the real
19 estate or goods are deteriorated, altered, reconditioned, reclaimed, used or
20 secondhand.

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

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

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

30 (j) Makes false or misleading representations of fact concerning the rea-
31 sons for, existence of, or amounts of price reductions.

1 (k) Makes false or misleading representations concerning credit avail-
2 ability or the nature of the transaction or obligation incurred.

3 (L) Makes false or misleading representations relating to commissions or
4 other compensation to be paid in exchange for permitting real estate, goods
5 or services to be used for model or demonstration purposes or in exchange
6 for submitting names of potential customers.

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

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

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

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

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

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

26 (s) Makes false or misleading representations of fact concerning the of-
27 fering price of, or the person's cost for real estate, goods or services.

28 (t) Concurrent with tender or delivery of any real estate, goods or ser-
29 vices fails to disclose any known material defect or material nonconformity.

30 (u) Engages in any other unfair or deceptive conduct in trade or com-
31 merce.

1 (v) Violates any of the provisions relating to auction sales, consignment
2 sales, auctioneers, consignees or auction marts under ORS 698.640, whether
3 in a commercial or noncommercial situation.

4 (w) Manufactures mercury fever thermometers.

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

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

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

11 (y) Sells a thermostat that contains mercury unless the thermostat is la-
12 beled in a manner to inform the purchaser that mercury is present in the
13 thermostat and that the thermostat may not be disposed of until the mercury
14 is removed, reused, recycled or otherwise managed to ensure that the mer-
15 cury does not become part of the solid waste stream or wastewater. For
16 purposes of this paragraph, “thermostat” means a device commonly used to
17 sense and, through electrical communication with heating, cooling or venti-
18 lation equipment, control room temperature.

19 (z) Sells or offers for sale a motor vehicle manufactured after January 1,
20 2006, that contains mercury light switches.

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

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

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

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

25 (ee) Violates ORS 646.883 or 646.885.

26 (ff) Violates ORS 646.569.

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

28 (hh) Violates ORS 646A.360.

29 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

30 (jj) Violates ORS 646.563.

31 (kk) Violates ORS 759.680 or any rule adopted pursuant thereto.

- 1 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any
2 rule adopted pursuant thereto.
- 3 (mm) Violates ORS 646A.210 or 646A.214.
- 4 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 5 (oo) Violates ORS 646A.095.
- 6 (pp) Violates ORS 822.046.
- 7 (qq) Violates ORS 128.001.
- 8 (rr) Violates ORS 646A.800 (2) to (4).
- 9 (ss) Violates ORS 646A.090 (2) to (5).
- 10 (tt) Violates ORS 87.686.
- 11 (uu) Violates ORS 646A.803.
- 12 (vv) Violates ORS 646A.362.
- 13 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or
14 646A.054.
- 15 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 16 (yy) Commits the offense of acting as a vehicle dealer without a certif-
17 icate under ORS 822.005.
- 18 (zz) Violates ORS 87.007 (2) or (3).
- 19 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 20 (bbb) Engages in an unlawful practice under ORS 646.648.
- 21 (ccc) Violates ORS 646A.365.
- 22 (ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted under
23 ORS 98.864.
- 24 (eee) Sells a gift card in violation of ORS 646A.276.
- 25 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 26 (ggg) Violates ORS 646A.430 to 646A.450.
- 27 (hhh) Violates a provision of ORS 744.318 to 744.384.
- 28 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 29 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning
30 or declaration described in ORS 646A.530 is issued for the children's product,
31 as defined in ORS 646A.525, that is the subject of the violation.

1 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,
2 697.682, 697.692 or 697.707.

3 (LLL) Violates the consumer protection provisions of the Servicemembers
4 Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on January 1, 2010.

5 (mmm) Violates a provision of ORS 646A.480 to 646A.495.

6 (nnn) Violates ORS 646A.082.

7 (ooo) Violates ORS 646.647.

8 (ppp) Violates ORS 646A.115.

9 (qqq) Violates a provision of ORS 646A.405.

10 (rrr) Violates ORS 646A.092.

11 (sss) Violates a provision of ORS 646.644.

12 (ttt) Violates a provision of ORS 646A.295.

13 (uuu) Violates ORS 646A.564.

14 (vvv) Engages in the business of, or acts in the capacity of, an immi-
15 gration consultant, as defined in ORS 9.280, in this state and for compen-
16 sation, unless federal law authorizes the person to do so or unless the person
17 is an active member of the Oregon State Bar.

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

19 (xxx) Violates ORS 646A.806.

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

21 (zzz) Violates ORS 443.376.

22 **(aaaa) Violates a provision of ORS 746.230.**

23 (2) A representation under subsection (1) of this section or ORS 646.607
24 may be any manifestation of any assertion by words or conduct, including,
25 but not limited to, a failure to disclose a fact.

26 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605
27 to 646.652, a prosecuting attorney need not prove competition between the
28 parties or actual confusion or misunderstanding.

29 (4) An action or suit may not be brought under subsection (1)(u) of this
30 section unless the Attorney General has first established a rule in accord-
31 ance with the provisions of ORS chapter 183 declaring the conduct to be

1 unfair or deceptive in trade or commerce. **The Attorney General may not**
2 **adopt a rule under this subsection with respect to conduct that is**
3 **subject to the Insurance Code unless the Attorney General first sub-**
4 **mits the proposed rule to the Director of the Department of Consumer**
5 **and Business Services for review and approval.**

6 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to
7 646.652, if an action or suit is brought under subsection (1)(xx) of this section
8 by a person other than a prosecuting attorney, relief is limited to an in-
9 junction and the prevailing party may be awarded reasonable attorney fees.

10 **SECTION 4.** ORS 646.612 is amended to read:

11 646.612. ORS 646.607 and 646.608 do not apply to:

12 (1) Conduct [*in compliance*] **that complies** with [*the*] orders, [*or*] rules
13 [*of,*] or a statute [*administered by*] **that** a federal, state or local governmental
14 agency **administers.**

15 (2) Acts [*done by the*] **that a** publisher, owner, agent or employee of a
16 newspaper, periodical, telephone directory or radio or television station [*in*
17 *the publication or dissemination of*] **does in publishing or disseminating**
18 an advertisement, [*when*] **if** the publisher, owner, agent or employee did not
19 [*have knowledge of*] **know** the false, misleading or deceptive character of the
20 advertisement.

21 **(3) Conduct for which ORS chapter 90 provides a remedy.**

22 **SECTION 5.** ORS 646.636 is amended to read:

23 646.636. [*The*] **A** court may make [*such*] additional orders or judgments
24 [*as may be*] **that the court deems** necessary to restore to any person in
25 interest any moneys or property, real or personal, of which the person was
26 deprived by means of any practice declared to be unlawful in ORS 646.607
27 or 646.608, [*or as may be necessary*] to ensure cessation of unlawful trade
28 practices **and to provide any other equitable relief to the person in in-**
29 **terest that the court deems appropriate.**

30 **SECTION 6.** ORS 646.638 is amended to read:

31 646.638. (1) Except as provided in subsections (8) and (9) of this section,

1 a person that suffers an ascertainable loss of money or property, real or
2 personal, as a result of another person's willful use or employment of a
3 method, act or practice declared unlawful under ORS 646.608, may bring an
4 individual action in an appropriate court to recover actual damages or stat-
5 utory damages of \$200, whichever is greater, **and to obtain appropriate**
6 **equitable relief.** The court or the jury may award punitive damages and the
7 court may provide any equitable relief the court considers necessary or
8 proper.

9 (2) A person that brings an action under subsection (1) of this section
10 shall mail a copy of the complaint or other initial pleading to the Attorney
11 General at the time the action commences and, upon entry of any judgment
12 in the action, shall mail a copy of the judgment to the Attorney General.
13 Failure to mail a copy of the complaint is not a jurisdictional defect, but a
14 court may not enter judgment for the plaintiff until proof of mailing is filed
15 with the court. Proof of mailing may be by affidavit or by return receipt of
16 mailing. **As soon as is practicable, the Attorney General shall provide**
17 **the Director of the Department of Consumer and Business Services**
18 **with a copy of any complaint or other initial pleading, and any judg-**
19 **ment, that the Attorney General receives under this subsection in**
20 **connection with an action that is related to insurance or involves a**
21 **method, act or practice that is also subject to the Insurance Code.**

22 (3) The court may award reasonable attorney fees and costs at trial and
23 on appeal to a prevailing plaintiff in an action under this section. The court
24 may award reasonable attorney fees and costs at trial and on appeal to a
25 prevailing defendant only if the court finds that an objectively reasonable
26 basis for bringing the action or asserting the ground for appeal did not exist.

27 (4) The court may not award attorney fees to a prevailing defendant under
28 the provisions of subsection (3) of this section if the action under this section
29 is maintained as a class action pursuant to ORCP 32.

30 (5) Any permanent injunction or final judgment or order the court makes
31 under ORS 646.632 or 646.636 is prima facie evidence in an action brought

1 under this section that the respondent used or employed a method, act or
2 practice declared unlawful under ORS 646.608, but an assurance of voluntary
3 compliance, whether or not approved by the court, is not evidence of the
4 violation.

5 (6) Actions brought under this section must be commenced within one
6 year after the discovery of the unlawful method, act or practice. Notwith-
7 standing this limitation, if a prosecuting attorney filed a complaint to pre-
8 vent, restrain or punish a violation of ORS 646.608, the complaint tolls the
9 statute of limitations with respect to every private right of action under this
10 section that is based in whole or in part on any matter set forth in the
11 prosecuting attorney's complaint for the period of time in which the pro-
12 ceeding that the prosecuting attorney initiated is pending.

13 (7) Notwithstanding subsection (6) of this section, in any action that a
14 seller or lessor brings against a purchaser or lessee of real estate, goods or
15 services, the purchaser or lessee may assert any counterclaim that the pur-
16 chaser or lessee has arising out of a violation of ORS 336.184 and 646.605 to
17 646.652.

18 (8) A class action may be maintained under this section. In any class
19 action under this section:

20 (a) Statutory damages under subsection (1) of this section may be recov-
21 ered on behalf of class members only if the plaintiffs in the action establish
22 that the members have sustained an ascertainable loss of money or property
23 as a result of a reckless or knowing use or employment by the defendant of
24 a method, act or practice declared unlawful by ORS 646.608;

25 (b) The trier of fact may award punitive damages; and

26 (c) The court may award appropriate equitable relief.

27 (9) This section does not apply to:

28 (a) Any method, act or practice described in ORS 646.608 (1)(aa). Actions
29 for violation of laws relating to odometers are provided under ORS 815.410
30 and 815.415.

31 (b) A violation of ORS 86.726 (1)(a) or (2), 86.729 (4) or 86.732 (1) or (2).

1 **SECTION 7.** ORS 646.648 is amended to read:

2 646.648. (1) As used in this section:

3 (a) “Buyer” means a person who buys or agrees to buy a manufactured
4 dwelling from a manufactured dwelling dealer.

5 (b) “Cash sale price” means the price for which a manufactured dwelling
6 dealer would sell to a buyer, and the buyer would buy from a dealer, a
7 manufactured dwelling that is covered by a purchase agreement, if the sale
8 were a sale for cash instead of a retail installment sale.

9 (c) “Manufactured dwelling” has the meaning given that term in ORS
10 446.003.

11 (d) “Manufactured dwelling dealer” means a person licensed under ORS
12 446.691 or 446.696 or a temporary manufactured structure dealer licensee
13 under ORS 446.701.

14 (e) **“Person” means a natural person, a corporation, a trust, a
15 partnership, an incorporated or unincorporated association or any
16 other legal entity.**

17 [(e)] (f) “Retail installment sale” has the meaning given that term in ORS
18 83.510.

19 (2) A manufactured dwelling dealer engages in an unlawful practice when,
20 in a sale of a manufactured dwelling, the dealer does any of the following:

21 (a) Misrepresents to a buyer that, as a condition of financing, the buyer
22 must purchase:

- 23 (A) Credit life insurance;
- 24 (B) Credit disability insurance;
- 25 (C) Credit unemployment insurance;
- 26 (D) Credit property insurance;
- 27 (E) Health insurance;
- 28 (F) Life insurance; or
- 29 (G) An extended warranty.

30 (b) In close connection with the sale, misrepresents to a lender:

- 31 (A) The cash sale price;

1 (B) The amount of the buyer's down payment; or

2 (C) The buyer's credit or employment history.

3 **(3) For purposes of subsection (2)(b) of this section, a loan is made**
4 **in close connection with the sale of a manufactured dwelling if:**

5 **(a) The lender directly or indirectly controls, is controlled by or is**
6 **under common control with the seller, unless the relationship is re-**
7 **mote and is not a factor in the transaction;**

8 **(b) The lender gives a commission, rebate or credit in any form to**
9 **a seller who refers the borrower to the lender, other than paying the**
10 **proceeds of the loan jointly to the seller and the borrower;**

11 **(c) The lender is related to the seller by blood or marriage;**

12 **(d) The seller directly and materially assists the borrower in ob-**
13 **taining the loan;**

14 **(e) The seller prepares documents that are given to the lender and**
15 **used in connection with the loan; or**

16 **(f) The lender supplies documents to the seller that the borrower**
17 **uses in obtaining the loan.**

18 **SECTION 8. Section 9 of this 2019 Act is added to and made a part**
19 **of ORS 646.605 to 646.652.**

20 **SECTION 9. A prosecuting attorney may not take action under ORS**
21 **646.618 or 646.632 with respect to an act or practice declared to be un-**
22 **lawful under ORS 646.607 or 646.608 if the act or practice is related to**
23 **insurance and otherwise subject to the Insurance Code unless the Di-**
24 **rector of the Department of Consumer and Business Services first re-**
25 **quests the prosecuting attorney to take action. The director may elect**
26 **to be named as a party in any action or proceeding that the prose-**
27 **cuting attorney commences at the director's request.**

28 **SECTION 10. Section 9 of this 2019 Act and the amendments to ORS**
29 **646.605, 646.608, 646.612, 646.636, 646.638 and 646.648 by sections 1 to 7 of**
30 **this 2019 Act apply to proceedings that begin on or after the effective**
31 **date of this 2019 Act.**

1 **SECTION 11. This 2019 Act being necessary for the immediate**
2 **preservation of the public peace, health and safety, an emergency is**
3 **declared to exist, and this 2019 Act takes effect on its passage.**

4
