

# Senate Bill 703

Sponsored by Senator PROZANSKI, Representatives GOMBERG, HOLVEY; Senators BEYER, BOQUIST, COURTNEY, DEMBROW, FAGAN, FREDERICK, GOLDEN, KNOPP, LINTHICUM, MANNING JR, MONNES ANDERSON, RILEY, ROBLAN, STEINER HAYWARD, TAYLOR, THATCHER, WAGNER, Representatives ALONSO LEON, EVANS, HERNANDEZ, LEIF, LIVELY, MEEK, NOBLE, NOSSE, PILUSO, POWER, PRUSAK, REARDON, SALINAS, SANCHEZ, SCHOUTEN, SOLLMAN, STARK, WILDE, WILSON, WITT (at the request of "Hu-manity.co")

## 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 commercial sale of health information by covered entity, business associate, subcontractor, as defined by Health Insurance Portability and Accountability Act of 1996, or other third party, without authorization of individual whose health information would be included in sale. Makes violation of prohibition unlawful practice.

Becomes operative January 1, 2021.

## A BILL FOR AN ACT

1  
2 Relating to the sale of health information; creating new provisions; and amending ORS 646.608.

3       Whereas the Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects the  
4 privacy and security of the protected health information of an individual and affords the individual  
5 the right to access, amend and obtain an accounting of disclosures of the individual's protected  
6 health information; and

7       Whereas HIPAA balances these protections and individual rights with the need to avoid the  
8 creation of unnecessary barriers to the access of quality health care; and

9       Whereas, notwithstanding individuals' expectations that protected health information will be  
10 used and disclosed as necessary to treat them, to bill for treatment and, to some extent, to operate  
11 a covered entity's health care business, protected health information is often used for purposes un-  
12 related to treatment, payment or health care operations of the covered entity; and

13       Whereas companies that provide services on behalf of covered entities that give them and their  
14 contractors access to protected health information, routinely de-identify individuals' protected health  
15 information in order to sell the information in de-identified form to third parties for remuneration;  
16 and

17       Whereas after protected health information has been de-identified, it is no longer protected by  
18 or subject to HIPAA; however, the de-identification process itself is a use of protected health in-  
19 formation that may only be performed under limited circumstances and for limited purposes under  
20 HIPAA; and

21       Whereas an individual may authorize a use or disclosure of the individual's protected health  
22 information that is not otherwise permitted by HIPAA, such as for the de-identification of protected  
23 health information for the purpose of commercial sale; and

24       Whereas the individual who authorizes the de-identification of the individual's protected health  
25 information for the purpose of commercial sale should have the right to assert a property interest  
26 in the health information such that the individual may receive remuneration in connection with the  
27 commercial sale; now, therefore,

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

2 **SECTION 1. As used in this section and section 2 of this 2019 Act:**

3 (1) **“Authorization” means an authorization that:**

4 (a) **Meets the requirements for a valid authorization as prescribed by 45 C.F.R. 164.508;**  
5 **and**

6 (b) **Includes a statement informing the individual that the individual may elect to receive**  
7 **a share of any remuneration received by the covered entity, business associate, subcontractor**  
8 **or other third party, in exchange for authorizing the commercial sale of the individual’s**  
9 **protected health information, health information or de-identified data.**

10 (2) **“Business associate” has the meaning given that term in 45 C.F.R. 160.103.**

11 (3)(a) **“Commercial sale” means the disclosure of health information, including de-**  
12 **identified data, by a covered entity, business associate, subcontractor or other third party,**  
13 **if the covered entity, business associate, subcontractor or other third party directly or indi-**  
14 **rectly receives remuneration from or on behalf of the recipient of the health information in**  
15 **exchange for the information.**

16 (b) **“Commercial sale” does not include the disclosure of health information by a covered**  
17 **entity, business associate, subcontractor or other third party for any of the following pur-**  
18 **poses:**

19 (A) **Public health activities as described in 45 C.F.R. 164.512(b);**

20 (B) **Research, as described in 45 C.F.R. 164.512(i) and 164.514(e), if the only remuneration**  
21 **received by the covered entity, business associate, subcontractor or other third party is a**  
22 **reasonable cost-based fee to cover the cost to prepare and transmit the de-identified data for**  
23 **such purposes;**

24 (C) **Judicial and administrative proceedings as described in 45 C.F.R. 164.512(e);**

25 (D) **Treatment, payment or health care operations as described in 45 C.F.R. 164.506(a) and**  
26 **(c);**

27 (E) **Sale, transfer, merger or consolidation of all or part of the covered entity, business**  
28 **associate, subcontractor or other third party and for related due diligence;**

29 (F) **Performance of services delineated in a contract or other arrangement, as described**  
30 **in 45 C.F.R. 164.502(e) or 164.504(e), in which the only remuneration provided is to a covered**  
31 **entity, business associate, subcontractor or other third party for the performance of the**  
32 **services;**

33 (G) **Activities of a health oversight agency as described in 45 C.F.R. 164.512(d);**

34 (H) **Law enforcement activities as described in 45 C.F.R. 164.512(f);**

35 (I) **To avert a serious threat to health or safety as described in 45 C.F.R. 164.512(j);**

36 (J) **Specialized governmental functions as described in 45 C.F.R. 164.512(k);**

37 (K) **Workers’ compensation as described in 45 C.F.R. 164.512(l);**

38 (L) **To address fraud, security or technical issues as may be reasonably necessary to**  
39 **protect the covered entity, business associate, subcontractor or other third party or to pro-**  
40 **tect the individual; or**

41 (M) **When required by law as described in 45 C.F.R. 164.512(a).**

42 (4) **“Covered entity” has the meaning given that term in 45 C.F.R. 160.103.**

43 (5) **“De-identified data” means health information that meets the requirements for de-**  
44 **identification of protected health information under 45 C.F.R. 164.514.**

45 (6) **“Disclosure” means the release, transfer, sharing, dissemination or any other com-**

1 munication, whether orally, in writing, electronically or by any other means, of health in-  
 2 formation to a third party.

3 (7) "Health care operations" has the meaning given that term in 45 C.F.R. 164.501.

4 (8) "Health information" has the meaning given that term in 45 C.F.R. 160.103.

5 (9) "Health oversight agency" has the meaning given that term in 45 C.F.R. 164.501.

6 (10) "Individual" means the individual who is the subject of protected health information.

7 (11) "Payment" has the meaning given that term in 45 C.F.R. 164.501.

8 (12) "Protected health information" has the meaning given that term in 45 C.F.R. 160.103.

9 (13) "Required by law" has the meaning given that term in 45 C.F.R. 164.103.

10 (14) "Research" has the meaning given that term in 45 C.F.R. 164.501.

11 (15) "Subcontractor" has the meaning given that term in 45 C.F.R. 160.103.

12 (16) "Third party" means a person who is not a covered entity, business associate or  
 13 subcontractor authorized to do business in this state and who is not the individual.

14 (17) "Treatment" has the meaning given that term in 45 C.F.R. 164.501.

15 **SECTION 2.** (1) A covered entity, business associate, subcontractor or other third party  
 16 doing business in this state may not engage in the commercial sale of protected health in-  
 17 formation, health information or de-identified data without first obtaining a signed authori-  
 18 zation from the individual.

19 (2) A covered entity, business associate, subcontractor or other third party doing busi-  
 20 ness in this state may not discriminate against or penalize an individual who declines to sign  
 21 an authorization or who elects to receive remuneration in exchange for signing an authori-  
 22 zation.

23 (3) A covered entity, business associate, subcontractor or other third party shall provide  
 24 a share of any remuneration received by the covered entity, business associate, subcontrac-  
 25 tor or other third party to an individual who elects to receive remuneration in exchange for  
 26 signing an authorization.

27 (4) A third party that has not obtained a signed authorization from the individual may  
 28 not engage in the commercial sale of any protected health information, health information  
 29 or de-identified data purchased or otherwise obtained from a covered entity, business asso-  
 30 ciate or subcontractor without first documenting that a signed authorization has been ob-  
 31 tained by the covered entity, business associate or subcontractor in accordance with  
 32 subsection (1) of this section.

33 (5) This section does not apply to a public body, a federal agency or the business associ-  
 34 ates or subcontractors of a public body or federal agency with respect to health information  
 35 created, received, transmitted or maintained by the business associate or subcontractor on  
 36 behalf of the public body or federal agency.

37 (6) Violation of subsection (1), (2), (3) or (4) of this section is an unlawful practice under  
 38 **ORS 646.608.**

39 **SECTION 3.** ORS 646.608 is amended to read:

40 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,  
 41 vocation or occupation the person does any of the following:

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

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

45 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-

1 ciation with, or certification by, another.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,

1 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-  
2 ation.

3 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

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

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

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

21 (ee) Violates ORS 646.883 or 646.885.

22 (ff) Violates ORS 646.569.

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

24 (hh) Violates ORS 646A.360.

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

26 (jj) Violates ORS 646.563.

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

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

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

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

32 (oo) Violates ORS 646A.095.

33 (pp) Violates ORS 822.046.

34 (qq) Violates ORS 128.001.

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

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

37 (tt) Violates ORS 87.686.

38 (uu) Violates ORS 646A.803.

39 (vv) Violates ORS 646A.362.

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

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

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

43 (zz) Violates ORS 87.007 (2) or (3).

44 (aaa) Violates ORS 92.405 (1), (2) or (3).

45 (bbb) Engages in an unlawful practice under ORS 646.648.

- 1 (ccc) Violates ORS 646A.365.
- 2 (ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted under ORS 98.864.
- 3 (eee) Sells a gift card in violation of ORS 646A.276.
- 4 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 5 (ggg) Violates ORS 646A.430 to 646A.450.
- 6 (hhh) Violates a provision of ORS 744.318 to 744.384.
- 7 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 8 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-  
9 scribed in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the  
10 subject of the violation.
- 11 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 12 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50  
13 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 14 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 15 (nnn) Violates ORS 646A.082.
- 16 (ooo) Violates ORS 646.647.
- 17 (ppp) Violates ORS 646A.115.
- 18 (qqq) Violates a provision of ORS 646A.405.
- 19 (rrr) Violates ORS 646A.092.
- 20 (sss) Violates a provision of ORS 646.644.
- 21 (ttt) Violates a provision of ORS 646A.295.
- 22 (uuu) Violates ORS 646A.564.
- 23 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-  
24 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to  
25 do so or unless the person is an active member of the Oregon State Bar.
- 26 (www) Violates ORS 702.012, 702.029 or 702.054.
- 27 (xxx) Violates ORS 646A.806.
- 28 (yyy) Violates ORS 646A.810 (2).
- 29 (zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws 2015.
- 30 (aaaa) Violates ORS 443.376.
- 31 **(bbbb) Violates section 2 (1), (2), (3) or (4) of this 2019 Act.**
- 32 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-  
33 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- 34 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-  
35 cuting attorney need not prove competition between the parties or actual confusion or misunder-  
36 standing.
- 37 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-  
38 torney General has first established a rule in accordance with the provisions of ORS chapter 183  
39 declaring the conduct to be unfair or deceptive in trade or commerce.
- 40 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or  
41 suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attor-  
42 ney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney  
43 fees.
- 44 **SECTION 4.** ORS 646.608, as amended by section 10, chapter 523, Oregon Laws 2015, section  
45 15, chapter 113, Oregon Laws 2017, section 3, chapter 241, Oregon Laws 2017, section 16, chapter

1 480, Oregon Laws 2017, and section 6, chapter 656, Oregon Laws 2017, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (r) Organizes or induces or attempts to induce membership in a pyramid club.
- 2 (s) Makes false or misleading representations of fact concerning the offering price of, or the
- 3 person's cost for real estate, goods or services.
- 4 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
- 5 known material defect or material nonconformity.
- 6 (u) Engages in any other unfair or deceptive conduct in trade or commerce.
- 7 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,
- 8 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-
- 9 ation.
- 10 (w) Manufactures mercury fever thermometers.
- 11 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
- 12 law, or is:
  - 13 (A) Prescribed by a person licensed under ORS chapter 677; and
  - 14 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
  - 15 on the proper cleanup of mercury should breakage occur.
- 16 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
- 17 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
- 18 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
- 19 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
- 20 graph, "thermostat" means a device commonly used to sense and, through electrical communication
- 21 with heating, cooling or ventilation equipment, control room temperature.
- 22 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
- 23 mercury light switches.
  - 24 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
  - 25 (bb) Violates ORS 646A.070 (1).
  - 26 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
  - 27 (dd) Violates the provisions of ORS 128.801 to 128.898.
  - 28 (ee) Violates ORS 646.883 or 646.885.
  - 29 (ff) Violates ORS 646.569.
  - 30 (gg) Violates the provisions of ORS 646A.142.
  - 31 (hh) Violates ORS 646A.360.
  - 32 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
  - 33 (jj) Violates ORS 646.563.
  - 34 (kk) Violates ORS 759.680 or any rule adopted pursuant thereto.
  - 35 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
  - 36 thereto.
    - 37 (mm) Violates ORS 646A.210 or 646A.214.
    - 38 (nn) Violates any provision of ORS 646A.124 to 646A.134.
    - 39 (oo) Violates ORS 646A.095.
    - 40 (pp) Violates ORS 822.046.
    - 41 (qq) Violates ORS 128.001.
    - 42 (rr) Violates ORS 646A.800 (2) to (4).
    - 43 (ss) Violates ORS 646A.090 (2) to (5).
    - 44 (tt) Violates ORS 87.686.
    - 45 (uu) Violates ORS 646A.803.

- 1 (vv) Violates ORS 646A.362.
- 2 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 3 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 4 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 5 (zz) Violates ORS 87.007 (2) or (3).
- 6 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 7 (bbb) Engages in an unlawful practice under ORS 646.648.
- 8 (ccc) Violates ORS 646A.365.
- 9 (ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted under ORS 98.864.
- 10 (eee) Sells a gift card in violation of ORS 646A.276.
- 11 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 12 (ggg) Violates ORS 646A.430 to 646A.450.
- 13 (hhh) Violates a provision of ORS 744.318 to 744.384.
- 14 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 15 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 16 scribed in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the
- 17 subject of the violation.
- 18 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 19 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 20 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 immigration consultant, as de-
- 31 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
- 32 do so or unless the person is an active member of the Oregon State Bar.
- 33 (www) Violates ORS 702.012, 702.029 or 702.054.
- 34 (xxx) Violates ORS 646A.806.
- 35 (yyy) Violates ORS 646A.810 (2).
- 36 (zzz) Violates ORS 443.376.
- 37 **(aaaa) Violates section 2 (1), (2), (3) or (4) of this 2019 Act.**
- 38 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
- 39 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- 40 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-
- 41 cuting attorney need not prove competition between the parties or actual confusion or misunder-
- 42 standing.
- 43 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
- 44 torney General has first established a rule in accordance with the provisions of ORS chapter 183
- 45 declaring the conduct to be unfair or deceptive in trade or commerce.

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

5 **SECTION 5. Sections 1 and 2 of this 2019 Act and the amendments to ORS 646.608 by**  
6 **sections 3 and 4 of this 2019 Act become operative on January 1, 2021.**

7 **SECTION 6. The Attorney General may take any action before January 1, 2021, that is**  
8 **necessary to enable the Attorney General to enforce the provisions of sections 1 and 2 of this**  
9 **2019 Act and the amendments to ORS 646.608 by sections 3 and 4 of this 2019 Act on and after**  
10 **January 1, 2021.**

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