

Requested by Senator GELSER

**PROPOSED AMENDMENTS TO  
SENATE BILL 749**

1 On page 1 of the printed bill, delete lines 5 through 30 and delete pages  
2 2 through 9 and insert:

3 **“SECTION 1. As used in sections 1 to 3 of this 2021 Act:**

4 **“(1) ‘Client’ means a parent or guardian or other person seeking a**  
5 **referral or recommendation for programs for a person under the age**  
6 **of 18 who is experiencing behavioral, emotional, mental health, sub-**  
7 **stance use, delinquency or disability-related challenges.**

8 **“(2) ‘Placement information’ means any information a person col-**  
9 **lects from a client about the client or the subject of placement, in-**  
10 **cluding but not limited to name, electronic mail address, telephone**  
11 **number, zip code, medical history, information about necessary ser-**  
12 **vices or the reasons for seeking residential care.**

13 **“(3)(a) ‘Referral agent’ means a person that provides residential**  
14 **care referrals.**

15 **“(b) ‘Referral agent’ does not include:**

16 **“(A) A residential care program or its employees.**

17 **“(B) A public body as defined in ORS 174.109.**

18 **“(C) A physician licensed under ORS chapter 677 or a nurse practi-**  
19 **tioner licensed under ORS 678.375 to 678.390 if the subject of placement**  
20 **is a patient of the physician or nurse practitioner and the physician**  
21 **or nurse practitioner has deemed the placement to be medically nec-**

1 **essary.**

2 **“(4)(a) ‘Residential care program’ means a residential program or**  
3 **facility that meets the criteria of a child-caring agency as defined in**  
4 **ORS 418.205, regardless of whether the program is located in Oregon**  
5 **or out of Oregon.**

6 **“(b) ‘Residential care program’ does not include:**

7 **“(A) A hospital as defined in ORS 442.015 or a rural hospital as de-**  
8 **fin ed in ORS 442.470.**

9 **“(B) An adoption agency.**

10 **“(C) An academic boarding school that provides educational ser-**  
11 **vices and care to children 24 hours a day and does not offer or arrange**  
12 **specialized treatment or therapeutic services to students with disabil-**  
13 **ities or to students with social, emotional or behavioral problems.**

14 **“(5) ‘Residential care referral’ means a referral to a residential care**  
15 **program in connection with which the referral agent receives com-**  
16 **pen sation from any source when:**

17 **“(a) The client or the subject of placement resides in this state;**

18 **“(b) The referral agent resides in or has a primary place of business**  
19 **in this state; or**

20 **“(c) The program to which the referral is made is located in this**  
21 **state.**

22 **“(6) ‘Subject of placement’ means the individual to be placed with**  
23 **a residential care program through a residential care referral.**

24 **“SECTION 2. (1) A referral agent shall provide a client with a dis-**  
25 **closure at the same time the client is offered information, referral or**  
26 **recommendation regarding a residential care program. The written**  
27 **disclosure must be conspicuous, provided in clear language and in-**  
28 **clude:**

29 **“(a) A description of the residential care referral to be provided by**  
30 **the referral agent, including:**

1       **“(A) The names of all agencies that license the program and the**  
2 **type of licenses the program currently holds.**

3       **“(B) All licensing actions taken against the program or its parent**  
4 **company in the prior 24 months, based on direct inquiry with each**  
5 **agency that licenses the program.**

6       **“(C) The number of substantiated allegations of abuse, deaths and**  
7 **or serious injuries at the program in the prior 24 months, based on**  
8 **direct inquiry with each agency that licenses the program or investi-**  
9 **gates abuse at the program.**

10       **“(D) The program’s restraint, seclusion and behavioral management**  
11 **policy.**

12       **“(E) Names, titles and educational background of the leadership**  
13 **team of the program.**

14       **“(F) Day and nighttime staff to student ratio of the program.**

15       **“(G) Whether the program serves youth offenders.**

16       **“(H) Names, titles and educational background of all health care**  
17 **providers who are employees of the program.**

18       **“(I) If the program advertises treatment services, whether the pro-**  
19 **gram is regulated as a behavioral health center by its state’s health**  
20 **authority.**

21       **“(b) A description of the relationship between the referral agent and**  
22 **the program the agent is making referral to, including:**

23       **“(A) A statement of whether the referral agent provides residential**  
24 **care referrals only to programs with which the agent has an existing**  
25 **contract.**

26       **“(B) A disclosure of all sources of fees, compensation or consider-**  
27 **ation the referral agent may receive in exchange for making the resi-**  
28 **dential care referral.**

29       **“(c) A description of the referral agent’s qualifications and business**  
30 **practices, including:**

1       **“(A) The referral agent’s contact information, including address**  
2 **and telephone number.**

3       **“(B) The referral agent’s educational background and qualifica-**  
4 **tions.**

5       **“(C) The referral agent’s privacy policy.**

6       **“(2) A referral agent may not:**

7       **“(a) Refer a client to a residential care program that is not licensed**  
8 **by the agency responsible for licensing child-caring agencies in the**  
9 **state where the program is located.**

10       **“(b) Refer a client to a residential care program that the agent has**  
11 **not personally toured within the prior 24 months.**

12       **“(c) Refer a client to a residential care program that has had a re-**  
13 **striction, revocation or suspension of its license by any licensing en-**  
14 **tity within the prior 12 months.**

15       **“(d) Refer a client to an organization or company that offers secure**  
16 **transportation services that is not approved by the state Department**  
17 **of Human Services to accept referrals, under rules adopted by the de-**  
18 **partment.**

19       **“(e) Share a client’s placement information with or sell a client’s**  
20 **placement information to a program or marketing affiliate without**  
21 **obtaining affirmative consent from the client for each instance of**  
22 **sharing or selling the information.**

23       **“(f) Refer a client to a residential care program in which the re-**  
24 **ferred agent or an immediate family member of the referral agent has**  
25 **an ownership interest.**

26       **“(g) Refer a client to a residential care program that provides any**  
27 **compensation, payment or consideration to the referral agent in ex-**  
28 **change for the referral.**

29       **“(h) Contact a client who has requested in writing that the referral**  
30 **agent stop contacting the client.**

1       **“(3) For each residential care program to which the referral agent**  
2 **makes residential care referrals, a referral agent shall provide to a**  
3 **client via a website or written notice:**

4       **“(a) A link to the state agency website listing licensing or abuse**  
5 **complaints concerning the program.**

6       **“(b) Contact information to facilitate reporting of abuse or neglect**  
7 **or licensing violations in the state in which the program is located.**

8       **“(c) Contact information for the law enforcement agency responsi-**  
9 **ble for coverage of the community in which the program is located.**

10       **“(4)(a) A referral agent must include in any contract with a resi-**  
11 **dential care program provisions prohibiting the referral agent from**  
12 **collecting compensation for a referral to a program when the program**  
13 **is a subsequent program as described in this subsection. A program is**  
14 **a subsequent program if:**

15       **“(A) The subject of placement enters a residential care program to**  
16 **which the subject of placement is referred by a first referral agent,**  
17 **but subsequently leaves that program; and**

18       **“(B) A new referral agent refers the subject of placement to the**  
19 **subsequent program.**

20       **“(b) When a residential care referral is made to a subsequent pro-**  
21 **gram for a subject of placement by a new referral agent as described**  
22 **in paragraph (a) of this subsection, the new referral agent must pres-**  
23 **ent evidence to the subsequent program that the first referral agent**  
24 **is not entitled to compensation for the referral.**

25       **“(5) A client may bring a cause of action for a violation of this**  
26 **section and may recover actual damages or \$750, whichever is greater.**  
27 **The court may award reasonable attorney fees to the prevailing party**  
28 **in an action under this subsection.**

29       **“SECTION 3. (1) A person may not provide a residential care re-**  
30 **ferred unless the person is registered with the Department of Human**

1 **Services under this section.**

2 **“(2) The department shall issue a registration to provide residential**  
3 **care referrals to an applicant that meets requirements established by**  
4 **the department by rule and pays a \$750 fee.**

5 **“(3) A registration issued under this section must be renewed every**  
6 **two years. The department shall set the renewal fee by rule, but the**  
7 **renewal fee may not exceed \$750.**

8 **“(4) The department shall require an applicant to:**

9 **“(a) Identify an individual responsible for the application;**

10 **“(b) Demonstrate that the applicant meets the requirements of**  
11 **section 2 of this 2021 Act;**

12 **“(c) Demonstrate that the applicant maintains at least \$1 million**  
13 **in general liability insurance; and**

14 **“(d) Perform background checks on referral agents who have direct**  
15 **contact with clients, as defined by rule of the department.**

16 **“(5) The department may adopt rules as necessary to administer**  
17 **sections 1 to 3 of this 2021 Act.**

18 **“(6) The department may impose a civil penalty on a person for vi-**  
19 **olation of sections 1 to 3 of this 2021 Act or violation of rules adopted**  
20 **under sections 1 to 3 of this 2021 Act.**

21 **“SECTION 4. ORS 419B.005 is amended to read:**

22 **“419B.005. As used in ORS 419B.005 to 419B.050, unless the context re-**  
23 **quires otherwise:**

24 **“(1)(a) ‘Abuse’ means:**

25 **“(A) Any assault, as defined in ORS chapter 163, of a child and any**  
26 **physical injury to a child which has been caused by other than accidental**  
27 **means, including any injury which appears to be at variance with the ex-**  
28 **planation given of the injury.**

29 **“(B) Any mental injury to a child, which shall include only observable**  
30 **and substantial impairment of the child’s mental or psychological ability to**

1 function caused by cruelty to the child, with due regard to the culture of the  
2 child.

3 “(C) Rape of a child, which includes but is not limited to rape, sodomy,  
4 unlawful sexual penetration and incest, as those acts are described in ORS  
5 chapter 163.

6 “(D) Sexual abuse, as described in ORS chapter 163.

7 “(E) Sexual exploitation, including but not limited to:

8 “(i) Contributing to the sexual delinquency of a minor, as defined in ORS  
9 chapter 163, and any other conduct which allows, employs, authorizes, per-  
10 mits, induces or encourages a child to engage in the performing for people  
11 to observe or the photographing, filming, tape recording or other exhibition  
12 which, in whole or in part, depicts sexual conduct or contact, as defined in  
13 ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving  
14 a child or rape of a child, but not including any conduct which is part of  
15 any investigation conducted pursuant to ORS 419B.020 or which is designed  
16 to serve educational or other legitimate purposes; and

17 “(ii) Allowing, permitting, encouraging or hiring a child to engage in  
18 prostitution as described in ORS 167.007 or a commercial sex act as defined  
19 in ORS 163.266, to purchase sex with a minor as described in ORS 163.413  
20 or to engage in commercial sexual solicitation as described in ORS 167.008.

21 “(F) Negligent treatment or maltreatment of a child, including but not  
22 limited to the failure to provide adequate food, clothing, shelter or medical  
23 care that is likely to endanger the health or welfare of the child.

24 “(G) Threatened harm to a child, which means subjecting a child to a  
25 substantial risk of harm to the child’s health or welfare.

26 “(H) Buying or selling a person under 18 years of age as described in ORS  
27 163.537.

28 “(I) Permitting a person under 18 years of age to enter or remain in or  
29 upon premises where methamphetamines are being manufactured.

30 “(J) Unlawful exposure to a controlled substance, as defined in ORS

1 475.005, or to the unlawful manufacturing of a cannabinoid extract, as de-  
2 fined in ORS 475B.015, that subjects a child to a substantial risk of harm to  
3 the child's health or safety.

4 "(b) 'Abuse' does not include reasonable discipline unless the discipline  
5 results in one of the conditions described in paragraph (a) of this subsection.

6 "(2) 'Child' means an unmarried person who:

7 "(a) Is under 18 years of age; or

8 "(b) Is under 21 years of age and residing in or receiving care or services  
9 at a child-caring agency as that term is defined in ORS 418.205.

10 "(3) 'Higher education institution' means:

11 "(a) A community college as defined in ORS 341.005;

12 "(b) A public university listed in ORS 352.002;

13 "(c) The Oregon Health and Science University; and

14 "(d) A private institution of higher education located in Oregon.

15 "(4)(a) 'Investigation' means a detailed inquiry into or assessment of the  
16 safety of a child alleged to have experienced abuse.

17 "(b) 'Investigation' does not include screening activities conducted upon  
18 the receipt of a report.

19 "(5) 'Law enforcement agency' means:

20 "(a) A city or municipal police department.

21 "(b) A county sheriff's office.

22 "(c) The Oregon State Police.

23 "(d) A police department established by a university under ORS 352.121  
24 or 353.125.

25 "(e) A county juvenile department.

26 "(6) 'Public or private official' means:

27 "(a) Physician or physician assistant licensed under ORS chapter 677 or  
28 naturopathic physician, including any intern or resident.

29 "(b) Dentist.

30 "(c) School employee, including an employee of a higher education insti-



1 tution.

2 “(d) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s  
3 aide, home health aide or employee of an in-home health service.

4 “(e) Employee of the Department of Human Services, Oregon Health Au-  
5 thority, Early Learning Division, Department of Education, Youth Develop-  
6 ment Division, Office of Child Care, the Oregon Youth Authority, a local  
7 health department, a community mental health program, a community de-  
8 velopmental disabilities program, a county juvenile department, a child-  
9 caring agency as that term is defined in ORS 418.205 or an alcohol and drug  
10 treatment program.

11 “(f) Peace officer.

12 “(g) Psychologist.

13 “(h) Member of the clergy.

14 “(i) Regulated social worker.

15 “(j) Optometrist.

16 “(k) Chiropractor.

17 “(L) Certified provider of foster care, or an employee thereof.

18 “(m) Attorney.

19 “(n) Licensed professional counselor.

20 “(o) Licensed marriage and family therapist.

21 “(p) Firefighter or emergency medical services provider.

22 “(q) A court appointed special advocate, as defined in ORS 419A.004.

23 “(r) A child care provider registered or certified under ORS 329A.030 and  
24 329A.250 to 329A.450.

25 “(s) Member of the Legislative Assembly.

26 “(t) Physical, speech or occupational therapist.

27 “(u) Audiologist.

28 “(v) Speech-language pathologist.

29 “(w) Employee of the Teacher Standards and Practices Commission di-  
30 rectly involved in investigations or discipline by the commission.

1 “(x) Pharmacist.

2 “(y) An operator of a preschool recorded program under ORS 329A.255.

3 “(z) An operator of a school-age recorded program under ORS 329A.257.

4 “(aa) Employee of a private agency or organization facilitating the pro-  
5 vision of respite services, as defined in ORS 418.205, for parents pursuant to  
6 a properly executed power of attorney under ORS 109.056.

7 “(bb) Employee of a public or private organization providing child-related  
8 services or activities:

9 “(A) Including but not limited to youth groups or centers, scout groups  
10 or camps, summer or day camps, survival camps or groups, centers or camps  
11 that are operated under the guidance, supervision or auspices of religious,  
12 public or private educational systems or community service organizations;  
13 and

14 “(B) Excluding community-based, nonprofit organizations whose primary  
15 purpose is to provide confidential, direct services to victims of domestic vi-  
16 olence, sexual assault, stalking or human trafficking.

17 “(cc) A coach, assistant coach or trainer of an amateur, semiprofessional  
18 or professional athlete, if compensated and if the athlete is a child.

19 “(dd) Personal support worker, as defined in ORS 410.600.

20 “(ee) Home care worker, as defined in ORS 410.600.

21 “(ff) Animal control officer, as defined in ORS 609.500.

22 “(gg) Member of a school district board or public charter school govern-  
23 ing body.

24 “(hh) An individual who is paid by a public body, in accordance with ORS  
25 430.215, to provide a service identified in an individualized written service  
26 plan of a child with a developmental disability.

27 “(ii) **Referral agent, as defined in section 1 of this 2021 Act.**

28 “**SECTION 5.** ORS 646.608 is amended to read:

29 “646.608. (1) A person engages in an unlawful practice if in the course of  
30 the person’s business, vocation or occupation the person does any of the

1 following:

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

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

7 “(c) Causes likelihood of confusion or of misunderstanding as to affil-  
8 iation, connection, or association with, or certification by, another.

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

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

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

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

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

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

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

30 “(k) Makes false or misleading representations concerning credit avail-

1 ability or the nature of the transaction or obligation incurred.

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

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

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

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

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

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

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

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

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

29 “(u) Engages in any other unfair or deceptive conduct in trade or com-  
30 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  
9 thermometer to avoid breakage and on the proper cleanup of mercury should  
10 breakage occur.

11 “(y) Sells a thermostat that contains mercury unless the thermostat is  
12 labeled 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  
20 1, 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.

1 “(kk) Violates ORS 759.680 or any rule adopted pursuant thereto.  
2 “(ll) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any  
3 rule adopted pursuant thereto.  
4 “(mm) Violates ORS 646A.210 or 646A.214.  
5 “(nn) Violates any provision of ORS 646A.124 to 646A.134.  
6 “(oo) Violates ORS 646A.095.  
7 “(pp) Violates ORS 822.046.  
8 “(qq) Violates ORS 128.001.  
9 “(rr) Violates ORS 646A.800 (2) to (4).  
10 “(ss) Violates ORS 646A.090 (2) to (5).  
11 “(tt) Violates ORS 87.686.  
12 “(uu) Violates ORS 646A.803.  
13 “(vv) Violates ORS 646A.362.  
14 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or  
15 646A.054.  
16 “(xx) Violates ORS 180.440 (1) or 180.486 (1).  
17 “(yy) Commits the offense of acting as a vehicle dealer without a certifi-  
18 cate under ORS 822.005.  
19 “(zz) Violates ORS 87.007 (2) or (3).  
20 “(aaa) Violates ORS 92.405 (1), (2) or (3).  
21 “(bbb) Engages in an unlawful practice under ORS 646.648.  
22 “(ccc) Violates ORS 646A.365.  
23 “(ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted un-  
24 der ORS 98.864.  
25 “(eee) Sells a gift card in violation of ORS 646A.276.  
26 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.  
27 “(ggg) Violates ORS 646A.430 to 646A.450.  
28 “(hhh) Violates a provision of ORS 744.318 to 744.384.  
29 “(iii) Violates a provision of ORS 646A.702 to 646A.720.  
30 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning

1 or declaration described in ORS 646A.530 is issued for the children’s product,  
2 as defined in ORS 646A.525, that is the subject of the violation.

3 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,  
4 697.682, 697.692 or 697.707.

5 “(LLL) Violates the consumer protection provisions of the  
6 Servicemembers Civil Relief Act, 50 U.S.C. 3901 et seq., as in effect on Jan-  
7 uary 1, 2010.

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

9 “(nnn) Violates ORS 646A.082.

10 “(ooo) Violates ORS 646.647.

11 “(ppp) Violates ORS 646A.115.

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

13 “(rrr) Violates ORS 646A.092.

14 “(sss) Violates a provision of ORS 646.644.

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

16 “(uuu) Violates ORS 646A.564.

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

21 “(www) Violates ORS 702.012, 702.029 or 702.054.

22 “(xxx) Violates ORS 646A.806.

23 “(yyy) Violates ORS 646A.810 (2).

24 “(zzz) Violates ORS 443.376.

25 “(aaaa) Violates a provision of ORS 646A.770 to 646A.787.

26 “**(bbbb) Violates section 2 of this 2021 Act.**

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

30 “(3) In order to prevail in an action or suit under ORS 336.184 and 646.605

1 to 646.652, a prosecuting attorney need not prove competition between the  
2 parties or actual confusion or misunderstanding.

3 “(4) An action or suit may not be brought under subsection (1)(u) of this  
4 section unless the Attorney General has first established a rule in accord-  
5 ance with the provisions of ORS chapter 183 declaring the conduct to be  
6 unfair or deceptive in trade or commerce.

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

11 **“SECTION 6. (1) Sections 1 to 3 of this 2021 Act and the amend-  
12 ments to ORS 419B.005 and 646.608 by sections 4 and 5 of this 2021 Act  
13 become operative on January 1, 2022.**

14 **“(2) The Department of Human Services may take any action before  
15 the operative date specified in subsection (1) of this section that is  
16 necessary to enable the department, on and after the operative date  
17 specified in subsection (1) of this section, to exercise all of the duties,  
18 functions and powers conferred on the department by sections 1 to 3  
19 of this 2021 Act and the amendments to ORS 419B.005 and 646.608 by  
20 sections 4 and 5 of this 2021 Act.**

21 **“SECTION 7. Section 2 of this 2021 Act applies only to contracts  
22 entered into between a referral agent and another party on or after  
23 January 1, 2022.**

24 **“SECTION 8. This 2021 Act being necessary for the immediate  
25 preservation of the public peace, health and safety, an emergency is  
26 declared to exist, and this 2021 Act takes effect on its passage.”.**

27