

Minority Report

A-Engrossed

House Bill 4098

Ordered by the House February 16
Including House Minority Report Amendments dated February 16

Sponsored by nonconcurring members of the House Committee on Commerce and Consumer Protection: Representatives OSBORNE, WALLAN

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. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: Removes exemption for insurance from the bad acts that are subject to the UTPA and related to real estate, goods or services. Lets a person get from a court relief in addition to damages under the UTPA. (Flesch Readability Score: 60.0).

[*Digest: Adds bad acts done with respect to insurance to the list of bad acts that are subject to the Unlawful Trade Practices Act. Lets a person get from a court relief in addition to damages under the UTPA. Tells a district attorney to get permission from a state agency to take action under the UTPA in relation to insurance. (Flesch Readability Score: 60.6).*]

Removes exemption for insurance from the definition of "real estate, goods or services" under the Unlawful Trade Practices Act.

[*Provides that a violation of prohibitions against certain practices with respect to insurance is subject to an enforcement action under the Unlawful Trade Practices Act. Specifies exemptions.*]

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

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

A BILL FOR AN ACT

1 Relating to violations of the Insurance Code as unlawful trade practices; creating new provisions;
2 and amending ORS 646.605, 646.612, 646.636, 646.638 and 646.648.

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

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

6 646.605. As used in ORS 336.184 and 646.605 to 646.652:

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

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

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

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

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

15 (2) "Documentary material" means the original or a copy of any book, record, report, memo-
16 randum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or
17 other tangible document or recording, wherever situated.

18 (3) "Examination" of documentary material [*includes inspection, study*] **means inspecting**,

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 **studying** or copying [of] any documentary material[,] and taking testimony under oath or acknowledg-
 2 edgment [regarding any documentary material or copy thereof] **about the documentary material**
 3 **or a copy of the documentary material.**

4 (4) "Person" means a natural [persons, corporations, trusts, partnerships,] **person, a corporation,**
 5 **a trust, a partnership, an** incorporated or unincorporated [associations] **association** and any other
 6 legal entity except [bodies or officers] **a body or officer that is** acting under the statutory authority
 7 of this state or the United States.

8 (5) "Prosecuting attorney" means the Attorney General or the district attorney of any county
 9 in which a violation of ORS 336.184 and 646.605 to 646.652 is alleged to have occurred.

10 (6)(a) "Real estate, goods or services" means those that are or may be obtained primarily for
 11 personal, family or household purposes, or that are or may be obtained for any purposes as a result
 12 of a telephone solicitation, and includes loans and extensions of credit, and franchises,
 13 distributorships and other similar business opportunities[but does not include insurance].

14 (b) Notwithstanding paragraph (a) of this subsection:

15 (A) "Real estate" does not cover conduct covered by ORS chapter 90.

16 (B) "Loans and extensions of credit" does not include transactions involving a pawnbroker, as
 17 defined in ORS 726.010, that is required to be licensed under ORS chapter 726.

18 (7) "Telephone solicitation" means a solicitation [where] **in which** a person, in the course of the
 19 person's business, vocation or occupation, uses a telephone or an automatic dialing-announcing de-
 20 vice to initiate telephonic contact with a potential customer and the person is not one of the fol-
 21 lowing:

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

25 (b) A real estate licensee or a person who is otherwise authorized to engage in professional real
 26 estate activity [pursuant to] **under** ORS chapter 696, [when] **if** the solicitation involves professional
 27 real estate activity.

28 (c) A person licensed or exempt from licensure as a builder [pursuant to] **under** ORS chapter
 29 701, [when] **if** the solicitation involves [the construction, alteration, repair, improvement or demolition
 30 of] **constructing, altering, repairing, improving or demolishing** a structure.

31 [(d) A person licensed or otherwise authorized to sell insurance as an insurance producer pursuant
 32 to ORS chapter 744, when the solicitation involves insurance.]

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

36 [(f)] (e) A person [soliciting] **that solicits**, without the intent to complete, and who does not
 37 complete [the] **a** sales presentation during the telephone solicitation and [who] **that** only completes
 38 the sales presentation at a later face-to-face meeting between the [solicitor] **person** and the pro-
 39spective purchaser.

40 [(g)] (f) A supervised financial institution or parent, subsidiary or affiliate [thereof] **of a super-**
 41 **vised financial institution.** As used in this paragraph, "supervised financial institution" means any
 42 financial institution or trust company, as those terms are defined in ORS 706.008, or any personal
 43 property broker, consumer finance lender, commercial finance lender or insurer that is subject to
 44 regulation by an official or agency of this state or of the United States.

45 [(h)] (g) A person [who] **that** is authorized to conduct prearrangement or preconstruction fu-

1 neral or cemetery sales, [*pursuant to*] **under** ORS chapter 692, [*when*] **if** the solicitation involves
2 prearrangement or preconstruction funeral or cemetery plans.

3 [(i)] **(h)** A person [*who*] **that** solicits the services [*provided by*] **that** a cable television system
4 licensed or franchised [*pursuant to*] **under** state, local or federal law **provides**, [*when*] **if** the solic-
5 itation involves cable television services.

6 [(j)] **(i)** A person or affiliate of a person [*whose*] **the** business [*is regulated by*] **of which** the
7 Public Utility Commission [*of Oregon*] **regulates**.

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

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

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

17 [(n)] **(m)** A telecommunications utility with access lines of 15,000 or less or a cooperative tele-
18 phone association, [*when*] **if** the solicitation involves regulated goods or services.

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

22 (9) "Unconscionable tactics" include, but are not limited to, actions by which a person:

23 (a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or ina-
24 bility to understand the language of the agreement;

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

27 (c) Permits a customer to enter into a transaction [*with knowledge that there is no reasonable
probability of payment of the attendant financial obligation in full by the customer when due*] **knowing
that the customer does not have a reasonable probability of paying the attendant financial
obligations in full when due**; or

28 (d) Knowingly takes advantage of a customer who is a disabled veteran, a disabled
29 servicemember or a servicemember in active service, or the spouse of a disabled veteran, disabled
30 servicemember or servicemember in active service. For purposes of this paragraph:

31 (A) "Disabled veteran" has the meaning given that term in ORS 408.225.

32 (B) "Disabled servicemember" means a servicemember, as defined in 50 U.S.C. 3911 as in effect
33 on [*January 1, 2010*] **the effective date of this 2026 Act**, who may be entitled to disability com-
34 pensation under laws administered by the United States Department of Veterans Affairs.

35 (C) "Servicemember in active service" means:

36 (i) A servicemember called into active service under Title 10 or Title 32 of the United States
37 Code as in effect on [*January 1, 2010*] **the effective date of this 2026 Act**; or

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

39 (10) A willful violation occurs when the person committing the violation knew or should have
40 known that the conduct of the person was a violation.

41 [(11) *A loan is made "in close connection with the sale of a manufactured dwelling" if:*]

42 [(a) *The lender directly or indirectly controls, is controlled by or is under common control with the*

1 *seller, unless the relationship is remote and is not a factor in the transaction;]*
 2 *[(b) The lender gives a commission, rebate or credit in any form to a seller who refers the borrower*
 3 *to the lender, other than payment of the proceeds of the loan jointly to the seller and the borrower;]*
 4 *[(c) The lender is related to the seller by blood or marriage;]*
 5 *[(d) The seller directly and materially assists the borrower in obtaining the loan;]*
 6 *[(e) The seller prepares documents that are given to the lender and used in connection with the*
 7 *loan; or]*
 8 *[(f) The lender supplies documents to the seller used by the borrower in obtaining the loan.]*

9 **SECTION 2.** ORS 646.612 is amended to read:

10 646.612. ORS 646.607 and 646.608 do not apply to:

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

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

17 **SECTION 3.** ORS 646.636 is amended to read:

18 646.636. [*The*] **A** court may make [*such*] additional orders or judgments [*as may be*] **that the**
 19 **court deems** necessary to restore to any person in interest any moneys or property, real or per-
 20 sonal, of which the person was deprived by means of any practice declared to be unlawful in ORS
 21 646.607 or 646.608, [*or as may be necessary*] to ensure cessation of unlawful trade practices **and to**
 22 **provide any other equitable relief that the court deems appropriate.**

23 **SECTION 4.** ORS 646.638 is amended to read:

24 646.638. (1) Except as provided in subsections (8) and (9) of this section, a person that suffers
 25 an ascertainable loss of money or property, real or personal, as a result of another person's willful
 26 use or employment of a method, act or practice declared unlawful under ORS 646.608, may bring an
 27 individual action in an appropriate court to recover actual damages or statutory damages of \$200,
 28 whichever is greater, **and to obtain appropriate equitable relief.** The court or the jury may award
 29 punitive damages and the court may provide any equitable relief the court considers necessary or
 30 proper.

31 (2) A person that brings an action under subsection (1) of this section shall mail a copy of the
 32 complaint or other initial pleading to the Attorney General at the time the action commences and,
 33 upon entry of any judgment in the action, shall mail a copy of the judgment to the Attorney General.
 34 Failure to mail a copy of the complaint is not a jurisdictional defect, but a court may not enter
 35 judgment for the plaintiff until proof of mailing is filed with the court. Proof of mailing may be by
 36 affidavit or by return receipt of mailing.

37 (3) The court may award reasonable attorney fees and costs at trial and on appeal to a pre-
 38 vailing plaintiff in an action under this section. The court may award reasonable attorney fees and
 39 costs at trial and on appeal to a prevailing defendant only if the court finds that an objectively
 40 reasonable basis for bringing the action or asserting the ground for appeal did not exist.

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

44 (5) Any permanent injunction or final judgment or order the court makes under ORS 646.632 or
 45 646.636 is *prima facie* evidence in an action brought under this section that the respondent used or

1 employed a method, act or practice declared unlawful under ORS 646.608, but an assurance of vol-
2 untary compliance, whether or not approved by the court, is not evidence of the violation.

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

9 (7) Notwithstanding subsection (6) of this section, in any action that a seller or lessor brings
10 against a purchaser or lessee of real estate, goods or services, the purchaser or lessee may assert
11 any counterclaim that the purchaser or lessee has arising out of a violation of ORS 336.184 and
12 646.605 to 646.652.

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

14 (a) Statutory damages under subsection (1) of this section may be recovered on behalf of class
15 members only if the plaintiffs in the action establish that the members have sustained an
16 ascertainable loss of money or property as a result of a reckless or knowing use or employment by
17 the defendant of a method, act or practice declared unlawful by ORS 646.608;

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

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

20 (9) This section does not apply to:

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

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

24 **SECTION 5.** ORS 646.648 is amended to read:

25 646.648. (1) As used in this section:

26 (a) "Buyer" means a person who buys or agrees to buy a manufactured dwelling from a manu-
27 factured dwelling dealer.

28 (b) "Cash sale price" means the price for which a manufactured dwelling dealer would sell to
29 a buyer, and the buyer would buy from a dealer, a manufactured dwelling that is covered by a
30 purchase agreement, if the sale were a sale for cash instead of a retail installment sale.

31 (c) "Manufactured dwelling" has the meaning given that term in ORS 446.003.

32 (d) "Manufactured dwelling dealer" means a person licensed under ORS 446.691 or 446.696 or a
33 temporary manufactured structure dealer licensee under ORS 446.701.

34 (e) "Retail installment sale" has the meaning given that term in ORS 83.510.

35 (2) A manufactured dwelling dealer engages in an unlawful practice when, in a sale of a manu-
36 factured dwelling, the dealer does any of the following:

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

38 (A) Credit life insurance;

39 (B) Credit disability insurance;

40 (C) Credit unemployment insurance;

41 (D) Credit property insurance;

42 (E) Health insurance;

43 (F) Life insurance; or

44 (G) An extended warranty.

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

1 (A) The cash sale price;
2 (B) The amount of the buyer's down payment; or
3 (C) The buyer's credit or employment history.

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

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

8 **(b) The lender gives a commission, rebate or credit in any form to a seller who refers the**
9 **borrower to the lender, other than paying the proceeds of the loan jointly to the seller and**
10 **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 obtaining the loan;**
13 **(e) The seller prepares documents that are given to the lender and used in connection**
14 **with the loan; or**

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

17 **SECTION 6.** The amendments to ORS 646.605, 646.612, 646.636, 646.638 and 646.648 by
18 sections 1 to 5 of this 2026 Act apply to acts that occur on or after the effective date of this
19 2026 Act.