

Requested by Representative OSBORNE

**PROPOSED MINORITY REPORT AMENDMENTS TO
HOUSE BILL 4098**

1 On page 1 of the printed bill, line 3, delete “, 646.608”.

2 Delete lines 5 through 24 and delete pages 2 through 9 and insert:

3 **“SECTION 1. ORS 646.605 is amended to read:**

4 **“646.605. As used in ORS 336.184 and 646.605 to 646.652:**

5 **“(1) ‘Appropriate court’ means the circuit court of a county:**

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

8 **“(b) [*Where one or more of the defendants maintain*] **In which a defend-****
9 ****ant maintains** a principal place of business;**

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

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

15 **“(2) ‘Documentary material’ means the original or a copy of any book,**
16 **record, report, memorandum, paper, communication, tabulation, map, chart,**
17 **photograph, mechanical transcription, or other tangible document or record-**
18 **ing, wherever situated.**

19 **“(3) ‘Examination’ of documentary material [*includes inspection, study*]**
20 ****means inspecting, studying** or copying [*of*] any documentary material[,]**
21 **and taking testimony under oath or acknowledgment [*regarding any docu-***

mentary material or copy thereof] **about the documentary material or a copy of the documentary material.**

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

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

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

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

“(A) ‘Real estate’ does not cover conduct covered by ORS chapter 90.

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

“(7) ‘Telephone solicitation’ means a solicitation [*where*] **in which** a person, in the course of the person’s business, vocation or occupation, uses a telephone or an automatic dialing-announcing device to initiate telephonic contact with a potential customer and the person is not one of the following:

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

“(b) A real estate licensee or a person who is otherwise authorized to engage in professional real estate activity [*pursuant to*] **under** ORS chapter

1 696, *[when]* **if** the solicitation involves professional real estate activity.

2 “(c) A person licensed or exempt from licensure as a builder *[pursuant*
3 *to]* **under** ORS chapter 701, *[when]* **if** the solicitation involves *[the con-*
4 *struction, alteration, repair, improvement or demolition of]* **constructing, al-**
5 **tering, repairing, improving or demolishing** a structure.

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

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

13 “[*(f)*] **(e)** A person *[soliciting]* **that solicits**, without the intent to com-
14 plete, and who does not complete *[the]* **a** sales presentation during the tele-
15 phone solicitation and *[who]* **that** only completes the sales presentation at
16 a later face-to-face meeting between the *[solicitor]* **person** and the prospec-
17 tive purchaser.

18 “[*(g)*] **(f)** A supervised financial institution or parent, subsidiary or affil-
19 iate *[thereof]* **of a supervised financial institution**. As used in this para-
20 graph, ‘supervised financial institution’ means any financial institution or
21 trust company, as those terms are defined in ORS 706.008, or any personal
22 property broker, consumer finance lender, commercial finance lender or
23 insurer that is subject to regulation by an official or agency of this state or
24 of the United States.

25 “[*(h)*] **(g)** A person *[who]* **that** is authorized to conduct prearrangement
26 or preconstruction funeral or cemetery sales, *[pursuant to]* **under** ORS
27 chapter 692, *[when]* **if** the solicitation involves prearrangement or precon-
28 struction funeral or cemetery plans.

29 “[*(i)*] **(h)** A person *[who]* **that** solicits the services *[provided by]* **that** a
30 cable television system licensed or franchised *[pursuant to]* **under** state, local

1 or federal law **provides**, *[when]* **if** the solicitation involves cable television
2 services.

3 “[*j*)] (i) A person or affiliate of a person *[whose]* **the** business *[is regu-*
4 *lated by]* **of which** the Public Utility Commission *[of Oregon]* **regulates**.

5 “[*k*)] (j) A person who sells farm products, as defined *[by]* **in** ORS
6 576.006, if the *[solicitation neither intends to nor actually results]* **person**
7 **does not intend to complete a sale and the solicitation does not actu-**
8 **ally result** in a sale that costs the purchaser in excess of \$100.

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

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

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

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

24 “(9) ‘Unconscionable tactics’ include, but are not limited to, actions by
25 which a person:

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

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

30 “(c) Permits a customer to enter into a transaction *[with knowledge that*

1 *there is no reasonable probability of payment of the attendant financial obli-*
2 *gation in full by the customer when due]* **knowing that the customer does**
3 **not have a reasonable probability of paying the attendant financial**
4 **obligations in full when due; or**

5 “(d) Knowingly takes advantage of a customer who is a disabled veteran,
6 a disabled servicemember or a servicemember in active service, or the spouse
7 of a disabled veteran, disabled servicemember or servicemember in active
8 service. For purposes of this paragraph:

9 “(A) ‘Disabled veteran’ has the meaning given that term in ORS 408.225.

10 “(B) ‘Disabled servicemember’ means a servicemember, as defined in 50
11 U.S.C. 3911 as in effect on *[January 1, 2010]* **the effective date of this 2026**
12 **Act**, who may be entitled to disability compensation under laws administered
13 by the United States Department of Veterans Affairs.

14 “(C) ‘Servicemember in active service’ means:

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

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

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

22 “[*(11) A loan is made ‘in close connection with the sale of a manufactured*
23 *dwelling’ if:*]

24 “[*(a) The lender directly or indirectly controls, is controlled by or is under*
25 *common control with the seller, unless the relationship is remote and is not a*
26 *factor in the transaction;*]

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

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

1 “(d) *The seller directly and materially assists the borrower in obtaining*
2 *the loan;*]

3 “(e) *The seller prepares documents that are given to the lender and used*
4 *in connection with the loan; or]*

5 “(f) *The lender supplies documents to the seller used by the borrower in*
6 *obtaining the loan.]*

7 **“SECTION 2.** ORS 646.612 is amended to read:

8 “646.612. ORS 646.607 and 646.608 do not apply to:

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

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

18 **“SECTION 3.** ORS 646.636 is amended to read:

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

26 **“SECTION 4.** ORS 646.638 is amended to read:

27 “646.638. (1) Except as provided in subsections (8) and (9) of this section,
28 a person that suffers an ascertainable loss of money or property, real or
29 personal, as a result of another person’s willful use or employment of a
30 method, act or practice declared unlawful under ORS 646.608, may bring an

1 individual action in an appropriate court to recover actual damages or stat-
2 utory damages of \$200, whichever is greater, **and to obtain appropriate**
3 **equitable relief.** The court or the jury may award punitive damages and the
4 court may provide any equitable relief the court considers necessary or
5 proper.

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

14 “(3) The court may award reasonable attorney fees and costs at trial and
15 on appeal to a prevailing plaintiff in an action under this section. The court
16 may award reasonable attorney fees and costs at trial and on appeal to a
17 prevailing defendant only if the court finds that an objectively reasonable
18 basis for bringing the action or asserting the ground for appeal did not exist.

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

22 “(5) Any permanent injunction or final judgment or order the court makes
23 under ORS 646.632 or 646.636 is prima facie evidence in an action brought
24 under this section that the respondent used or employed a method, act or
25 practice declared unlawful under ORS 646.608, but an assurance of voluntary
26 compliance, whether or not approved by the court, is not evidence of the
27 violation.

28 “(6) Actions brought under this section must be commenced within one
29 year after the discovery of the unlawful method, act or practice. Notwith-
30 standing this limitation, if a prosecuting attorney filed a complaint to pre-

1 vent, restrain or punish a violation of ORS 646.608, the complaint tolls the
2 statute of limitations with respect to every private right of action under this
3 section that is based in whole or in part on any matter set forth in the
4 prosecuting attorney's complaint for the period of time in which the pro-
5 ceeding that the prosecuting attorney initiated is pending.

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

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

13 “(a) Statutory damages under subsection (1) of this section may be re-
14 covered on behalf of class members only if the plaintiffs in the action es-
15 tablish that the members have sustained an ascertainable loss of money or
16 property as a result of a reckless or knowing use or employment by the de-
17 fendant 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
22 for violation of laws relating to odometers are provided under ORS 815.410
23 and 815.415.

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

25 **“SECTION 5.** ORS 646.648 is amended to read:

26 “646.648. (1) As used in this section:

27 “(a) ‘Buyer’ means a person who buys or agrees to buy a manufactured
28 dwelling from a manufactured dwelling dealer.

29 “(b) ‘Cash sale price’ means the price for which a manufactured dwelling
30 dealer would sell to a buyer, and the buyer would buy from a dealer, a

1 manufactured dwelling that is covered by a purchase agreement, if the sale
2 were a sale for cash instead of a retail installment sale.

3 “(c) ‘Manufactured dwelling’ has the meaning given that term in ORS
4 446.003.

5 “(d) ‘Manufactured dwelling dealer’ means a person licensed under ORS
6 446.691 or 446.696 or a temporary manufactured structure dealer licensee
7 under ORS 446.701.

8 “(e) ‘Retail installment sale’ has the meaning given that term in ORS
9 83.510.

10 “(2) A manufactured dwelling dealer engages in an unlawful practice
11 when, in a sale of a manufactured dwelling, the dealer does any of the fol-
12 lowing:

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

15 “(A) Credit life insurance;

16 “(B) Credit disability insurance;

17 “(C) Credit unemployment insurance;

18 “(D) Credit property insurance;

19 “(E) Health insurance;

20 “(F) Life insurance; or

21 “(G) An extended warranty.

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

23 “(A) The cash sale price;

24 “(B) The amount of the buyer’s down payment; or

25 “(C) The buyer’s credit or employment history.

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

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

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

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

“(d) The seller directly and materially assists the borrower in obtaining the loan;

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

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

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