

# Enrolled House Bill 2191

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Consumer and Business Services)

CHAPTER .....

AN ACT

Relating to debt management services; creating new provisions; amending ORS 192.502, 646.608, 646A.110, 646A.628, 697.602, 697.612, 697.632, 697.642, 697.652, 697.662, 697.672, 697.682, 697.692, 697.702, 697.707, 697.722, 697.732, 697.752, 697.762, 697.822, 697.825, 697.832 and 705.137; repealing ORS 646A.250, 646A.252, 646A.254, 646A.256, 646A.258, 646A.260, 646A.262, 646A.264, 646A.266, 646A.268, 646A.270, 697.622, 697.712, 697.742, 697.772, 697.782, 697.792, 697.802 and 697.812; and declaring an emergency.

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

**SECTION 1.** ORS 697.602 is amended to read:

697.602. As used in ORS 697.602 to 697.842:

[(1) "*Client*" means a debtor on whose behalf a debt consolidating agency is performing the services of a debt consolidating agency as described in ORS 697.612.]

[(2) "*Director*" means the Director of the Department of Consumer and Business Services.]

(1) "**Consumer**" means an individual who is obligated or is allegedly obligated to pay a debt and on whose behalf a debt management service provider performs or agrees to perform a debt management service.

(2) "**Debt management service**" means an activity for which a person receives money or other valuable consideration or expects to receive money or other valuable consideration in return for:

(a) Receiving or offering to receive funds from a consumer for the purpose of distributing the funds among the consumer's creditors in full or partial payment of the consumer's debts, whether or not the person holds the consumer's funds;

(b) Improving or offering to improve or preserve a consumer's credit record, credit history or credit rating;

(c) Modifying or offering to modify terms and conditions of an existing loan or obligation; or

(d) Obtaining or attempting to obtain as an intermediary on a consumer's behalf a concession from a creditor including, but not limited to, a reduction in the principal, interest, penalties or fees associated with a debt.

(3) "**Debt management service provider**" means a person that:

(a) Resides or does business in this state; and

(b) Provides or performs, or represents that the person can or will provide or perform a debt management service in return for or in expectation of money or other valuable consideration.

(4) "Nonprofit entity" means a person, corporation, organization, board, association or other entity described in 26 U.S.C. 501(c)(3), as in effect on the effective date of this 2009 Act, that is exempt from taxation under 26 U.S.C. 501(a).

**SECTION 2.** ORS 697.612 is amended to read:

697.612. [(1) A person shall not operate as a debt consolidating agency or in any way purport to be a debt consolidating agency unless the person is first registered with the Director of the Department of Consumer and Business Services under ORS 697.632. For purposes of this section, a person operates as a debt consolidating agency and is subject to ORS 697.602 to 697.842 if the person in the regular course of the person's business directly or indirectly solicits, offers to take or takes anything of value belonging to the debtor or an assignment of the wages, salary, income, credits or any other thing of value of a debtor for the purpose of paying to any creditor of the debtor the debtor's wages, salary, income, credits or things of value, or the proceeds from the sale of the things of value.]

[(2) An employee of a debt consolidating agency is not required to register with the director under subsection (1) of this section if the debt consolidating agency is registered under ORS 697.632.]

[(3) Subsection (1) of this section is subject to the exemptions in ORS 697.622.]

[(4) A person who violates subsection (1) of this section is subject to ORS 697.762, 697.832 and 697.990 (3).]

(1) A person that has not registered with the Director of the Department of Consumer and Business Services under ORS 697.632 may not engage in business in this state in the course of which the person:

(a) Performs a debt management service; or

(b) Receives money or other valuable consideration or expects to receive money or other valuable consideration for:

(A) Soliciting or receiving an application from a consumer for a debt management service;

(B) Forwarding or providing a completed application for a debt management service to a debt management service provider;

(C) Referring a consumer to another debt management service provider, if the person is a debt management service provider;

(D) Providing a consumer's name, address or other information that identifies the consumer to a debt management service provider for the purpose of arranging the provision of a debt management service; or

(E) Providing advice, assistance, instruction or instructional material concerning a debt management service to a consumer.

(2) A debt management service provider registered under ORS 697.632 may negotiate on a consumer's behalf for a reasonable alternative repayment schedule or to reduce a claim described in 11 U.S.C. 502 if the debt management service provider is a nonprofit budget and credit counseling agency approved in accordance with 11 U.S.C. 111.

(3) Subsection (1) of this section does not apply to:

(a) An employee of a debt management service provider, if the debt management service provider is registered under ORS 697.632.

(b) An attorney licensed or authorized to practice law in this state, if the attorney provides a debt management service only incidentally in the practice of law.

(c) A financial institution or a trust company, both as defined in ORS 706.008.

(d) A consumer finance company licensed under ORS chapter 725.

(e) An escrow agent licensed under ORS 696.505 to 696.590.

(f) A mortgage banker or mortgage broker licensed under ORS 59.840 to 59.980 or a loan originator, as defined in ORS 59.840.

(g) A broker-dealer registered with the United States Securities and Exchange Commission or the United States Commodity Futures Trading Commission, if the broker-dealer is subject to and acts in accordance with regulations promulgated by either commission.

(h) A consumer reporting agency, as defined in 15 U.S.C. 1681a(f).

- (i) A public body, as defined in ORS 174.109.
- (j) A person that is obeying or acting in accordance with a court order.
- (k) An accredited educational institution or program that offers or performs a debt management service without receiving money or other valuable consideration, if the institution or program performs the debt management service as an incidental part of a class or a duty the institution or program provides regularly.
- (L) A nonprofit budget and credit counseling agency approved in accordance with 11 U.S.C. 111 that:
  - (i) Provides only an individual or group briefing, as described in 11 U.S.C. 109(h), or an instructional course concerning personal financial management, as described in 11 U.S.C. 111; and
  - (ii) Does not receive or offer to receive funds from a consumer for the purpose of distributing the funds among the consumer's creditors in full or partial payment of the consumer's debts.
- (m) A nonprofit entity that provides advice, assistance, instruction or instructional materials to a consumer in return for a fee that is reasonably calculated to pay the cost of making the advice, assistance, instruction or instructional materials available.
- (n) An organization or a counselor approved by the United States Department of Housing and Urban Development under 12 U.S.C. 1701x.

**SECTION 3.** ORS 697.632 is amended to read:

697.632. *[(1) Subject to ORS chapter 183, the Director of the Department of Consumer and Business Services shall establish by rule a program for registration of persons required to register with the director by ORS 697.612. The program shall include a requirement that a person who registers with the director must file and maintain with the director current information that the director requires by rule. The director shall require the following information for registration under this section:]*

- [(a) The name and address of the person engaging in business as a debt consolidating agency.]*
- [(b) The name and address of the debt consolidating agency.]*
- [(c) Any assumed names or business names used by the debt consolidating agency.]*
- [(d) The names of persons who act as agents in the business of the debt consolidating agency.]*
- [(e) The names of persons who are agents of the debt consolidating agency for purposes of service of legal process, or an appointment of the director as agent for the debt consolidating agency for the service of process.]*
- [(f) If a person has been convicted for a criminal offense, an essential element of which is fraud, information relating to the circumstances of the conviction as required by the director.]*
- [(g) Any other information required by rules adopted by the director.]*
- [(h) That a bond has been obtained and that the bond satisfies the applicable requirements of ORS 697.642.]*

*[(2) The director may include any of the following in the program for the registration established under this section:]*

*[(a) The director may require any filings with the director that the director determines to be necessary to maintain current information required for registration. Filings required under this subsection may include renewal of registration at reasonable intervals, filings within a reasonable time after changes in a debt consolidating agency business and other filings the director determines to be necessary. In requiring filings under this subsection, the director shall attempt to minimize burdens the filings might place on persons required to file.]*

*[(b) The director may issue certificates of registration or other indicia of registration that the director determines will be of assistance to persons engaged in a debt consolidating agency business in establishing that the persons are registered under this section.]*

*[(3) The director shall collect a biennial registration fee of \$200.]*

*[(4) The director shall maintain current records of the information required for registration under this section.]*

(1) The Director of the Department of Consumer and Business Services shall maintain a registry of debt management service providers and by rule in accordance with ORS chapter 183 shall require a person that performs a debt management service, unless the person is exempt under ORS 697.612 (3), to apply to the director to register or to renew a registration as a debt management service provider. An applicant for registration or renewal shall provide to the director on a form and in a manner the director specifies:

- (a) The applicant's name and address;
- (b) Any assumed business names, trade names or other identities under which the applicant performs a debt management service;
- (c) A general description of the debt management service business activities the applicant undertakes or proposes to undertake;
- (d) The names of any managing members, managing partners, executive officers, directors, principals or agents the applicant has;
- (e) The name of the applicant's registered agent or the applicant's agent for the purpose of receiving service of legal process;
- (f) A signed statement that identifies and describes in detail any incident in which the applicant or a member, partner, officer, director or principal of the applicant within the five years before the date on which the applicant applied to register or renew a registration as a debt management service provider was subject to:
  - (A) A judgment in favor of another person in a circuit court of this state or in an equivalent court in another state;
  - (B) An arbitration award in favor of another person; or
  - (C) An adverse final order from an administrative agency in this state or another state;
- (g) A copy of the corporate surety bond the applicant filed with the director under ORS 697.642; and
- (h) Other information the director may require concerning the financial responsibility, training, background, experience and business activities of the applicant or a member, partner, officer, director or principal of the applicant.

(2) At the time an applicant submits an application for registration under this section, the applicant shall pay a nonrefundable fee in an amount the director specifies by rule. An applicant who applies to renew a registration shall pay another fee in an amount the director specifies by rule.

(3) The director shall specify amounts for the fees described in subsection (2) of this section that in the aggregate are sufficient to pay the costs of administering ORS 697.602 to 697.842. The director shall pay all moneys received under this section as provided in ORS 697.842.

(4) A registration under this section is valid for two years. In order to continue to provide a debt management service, a debt management service provider must renew the registration at the end of the two-year period.

(5) The director may refuse to register the applicant or may refuse to renew a registration for a debt management service provider for any of the reasons set forth in ORS 697.752.

**SECTION 4.** ORS 697.642 is amended to read:

697.642. [(1) A person who applies for registration as a debt consolidating agency shall file with the Director of the Department of Consumer and Business Services a bond with one or more corporate sureties authorized to do business in this state. The bond:]

[(a) Must be in the amount of \$10,000.]

[(b) Must require the surety company to provide written notice to the director by registered or certified mail of any cancellation or revocation of the bond:]

[(A) At least 30 days in advance of the cancellation or revocation; or]

[(B) Upon any payment made for a loss under the bond.]

[(c) Must satisfy the provisions of subsection (2) or (3) of this section, whichever is applicable to the debt consolidating agency.]

*[(2) If the debt consolidating agency for which registration is sought is not incorporated under subsection (c) of section 501 of the Internal Revenue Code of 1954 (as amended and in effect on April 1, 1983), the bond required under subsection (1) of this section shall be a surety bond payable to the order of the director and be conditioned that the applicant shall pay all amounts, upon order of a court or order of the director, resulting from any violation by the debt consolidating agency of its statutory duties and obligations to its clients under ORS 697.652 to 697.702.]*

*[(3) If the debt consolidating agency for which registration is sought is incorporated under subsection (c) of section 501 of the Internal Revenue Code of 1954 (as amended and in effect on April 1, 1983), the bond required under subsection (1) of this section shall be a fidelity bond, and shall be payable to the applicant.]*

*[(4) If the director has cause to believe that the proceeds of the fidelity bond required under subsection (3) of this section are not being used to pay damages to a client, then either upon order of a court or order of the director upon the holder of the proceeds of the bond, the proceeds shall be paid to the director to pay the damages for the purpose of satisfying the requirements of ORS 697.772 to 697.812.]*

*[(5) The bond required by this section shall be continuously on file with the director in the amount required by this section. Upon termination or cancellation of the bond or reduction of the bond to less than the required amount, the debt consolidating agency immediately:]*

*[(a) Shall file a replacement bond; or]*

*[(b) Shall surrender its registration to the director and cease operating as a debt consolidating agency.]*

**(1) An applicant for registration as a debt management service provider at the time of application shall file with the Director of the Department of Consumer and Business Services a bond issued by one or more corporate sureties authorized to do business in this state. The bond must:**

**(a) Be in an amount that is:**

**(A) A minimum of \$10,000; or**

**(B) An amount the director specifies by rule.**

**(b) Require the surety company to provide written notice to the director by registered or certified mail:**

**(A) At least 30 days before the surety company cancels or revokes the bond; or**

**(B) Whenever the surety company pays for a loss under the bond.**

**(c) Satisfy the provisions of subsection (2) of this section.**

**(2) The bond that a debt management service provider must file under subsection (1) of this section, in addition to the requirements set forth under subsection (1) of this section, must be:**

**(a) Payable to the order of the director; and**

**(b) Conditioned so that the corporate surety or the debt management service provider upon the director's order or a court order pays all amounts due for a violation of the debt management service provider's duties and obligations to consumers under ORS 697.652 to 697.702.**

**(3) If a surety cancels, revokes or otherwise terminates a bond required under subsection (1) of this section or if the amount of the bond is reduced to less than the amount required under subsection (1) of this section, the debt management service provider shall immediately:**

**(a) File a replacement bond; or**

**(b) Surrender the debt management service provider's registration to the director and cease operating as a debt management service provider or providing debt management services.**

**(4) A person that has a right of action against a debt management service provider under section 20 of this 2009 Act has a right of action against the bond required under subsection (1) of this section.**

**SECTION 5.** ORS 697.652 is amended to read:

697.652. [(1) A debt consolidating agency improperly makes a contract or an agreement with a client if the debt consolidating agency does not comply with the requirements of subsection (2) or (3) of this section.]

[(2) A debt consolidating agency shall include the following items in each debt consolidating contract or agreement with a client:]

[(a) The name and address of the debt consolidating agency and of the client.]

[(b) A listing of every debt to be consolidated. The listing must disclose the creditor's name and address and the approximate total of all such debts.]

[(c) A statement, in precise terms, of payments reasonably within the ability of the client to pay.]

[(d) A statement, in precise terms, of the rate to be charged by the debt consolidating agency.]

[(e) A statement of the approximate number of installments and the amount of each installment, in the form of a schedule showing the ratio or other arrangement made to pay the debts in full.]

[(f) A provision allowing the client to examine the client's account in the office of the debt consolidating agency during office hours.]

[(g) A provision that the debt consolidating agency may cancel a debt consolidating contract or agreement without the client's written authorization while the client is employed and the client's salary is subject to any wage assignment made to the debt consolidating agency, if the client fails or refuses to make all of the client's debts subject to the contract or agreement, if the client knowingly enters into new credit obligations while subject to a debt consolidating contract or agreement without the prior approval of the debt consolidating agency or if the client by any means knowingly withholds from the debt consolidating agency any wages that are subject to wage assignment.]

[(3) A debt consolidating agency shall deliver a legible copy of a contract or agreement between the debt consolidating agency and the client to the client immediately after the client executes it. The client's copy shall be executed by the debt consolidating agency.]

[(4) A debt consolidating agency which improperly makes a contract or agreement with a client is subject to ORS 697.752, 697.762, 697.832 and 697.990 (3).]

[(5) A contract or agreement is not effective until a client has made a payment or a payment has been made under a wage assignment to the debt consolidating agency for distribution to the client's creditors.]

**(1) A debt management service provider may not perform a debt management service for a consumer without entering into a written agreement with the consumer that:**

**(a) Lists the name and telephone number for the debt management service provider and the consumer and, to the extent the information is available, the facsimile number, electronic mail address and website address or other Internet uniform resource locator for the debt management service provider.**

**(b) Lists every debt for which the debt management service provider will provide a debt management service on the consumer's behalf. The list must disclose the creditor's name and the approximate total of all of the identified debts.**

**(c) States in precise terms how much the consumer can reasonably pay, if the debt management service provider holds, directly or indirectly, a consumer's funds for distribution to creditors.**

**(d) Describes in precise terms the debt management services the debt management service provider will perform, itemizes the fees the debt management service provider will charge and explains how the debt management service provider calculated the amount of the fees.**

**(e) Shows in the form of a schedule the approximate number of installments, the amount of each installment and the ratio or other arrangement that will apply to the consumer's payment or satisfaction of the debts.**

**(f) Provides that the consumer may:**

**(A) Examine the consumer's account in the debt management provider's office during office hours; or**

**(B) Request the debt management service provider to deliver to the consumer a full and complete written statement of the consumer's account:**

**(i) Within two business days, if the debt management service provider delivers the statement electronically; or**

**(ii) Within seven business days, if the debt management service provider delivers the statement by mail.**

**(g) Provides that the debt management service provider may cancel the agreement without the consumer's written authorization if the consumer fails to make scheduled periodic payments under the terms of the agreement for more than 60 days.**

**(h) Estimates the time period necessary to complete the debt management services identified in the agreement.**

**(i) Provides that the debt management service provider must deliver to the consumer each calendar quarter a financial statement of the consumer's funds, if any, that the debt management service provider holds, directly or indirectly.**

**(j) Provides that:**

**(A) The consumer may cancel the agreement:**

**(i) At any time before midnight of the third business day after the consumer entered into the agreement with the debt management service provider; or**

**(ii) At any time during the remaining term of the agreement, for any reason, after giving 10 calendar days' written notice of the cancellation to the debt management service provider;**

**(B) The consumer's cancellation is effective on the date the consumer mails a notice of cancellation or immediately if the consumer sends the cancellation by electronic mail or facsimile; and**

**(C) The debt management service provider shall:**

**(i) Refund all fees the consumer paid before the cancellation if the consumer cancels the agreement under subparagraph (A)(i) of this paragraph; or**

**(ii) Return to the consumer all of the consumer's funds that the debt management service provider has not expended from among the funds that the debt management service provider holds, directly or indirectly, if the consumer cancels the agreement under subparagraph (A)(ii) of this paragraph.**

**(k) Provides that the debt management service provider shall notify the consumer's creditors in writing that the debt management service provider may negotiate with the creditors concerning the consumer's debts on the consumer's behalf.**

**(2) Before the consumer and the debt management service provider sign the agreement described in subsection (1) of this section, the debt management service provider shall give the consumer an analysis of the consumer's budget that is separate from the agreement and that evaluates whether the debt management services the debt management service provider proposes to perform are advantageous to the consumer.**

**(3) As soon as is practicable after the consumer and the debt management service provider sign and date the agreement described in subsection (1) of this section, the debt management service provider shall provide the consumer with a legible copy of the signed and dated agreement.**

**(4)(a) A consumer's waiver or an agreement or contract between a debt management service provider and a consumer that purports to waive or otherwise violate a provision of ORS 697.602 to 697.842 is void and unenforceable as contrary to public policy.**

**(b) A debt management service provider may not induce or attempt to induce a consumer to waive a provision of ORS 697.602 to 697.842.**

**(c) A person that claims an exemption from a provision of ORS 697.602 to 697.842 has the burden of proof with respect to the claim in a proceeding under ORS 697.602 to 697.842.**

**(d) A circuit court of this state has jurisdiction in equity to restrain and enjoin a violation of ORS 697.602 to 697.842.**

**(e) This subsection does not prohibit a person from enforcing a right provided under ORS 646.608 and 697.602 to 697.842 or other applicable law.**

**SECTION 6.** ORS 697.662 is amended to read:

697.662. *[(1) A debt consolidating agency commits an improper debt consolidating practice when the debt consolidating agency does any of the following:]*

*[(a) Takes a contract, promise to pay or other instrument that has any blank spaces when it is signed by a client.]*

*[(b) Takes a negotiable instrument, other than a check or draft, as payment or security for the charges of the debt consolidating agency.]*

*[(c) Takes a wage assignment, real estate mortgage, purchase money security interest or other security, all or any part of which is an amount greater than that provided in ORS 697.692, to secure the charges of the debt consolidating agency.]*

*[(d) Takes a confession of judgment or a power of attorney to confess judgment against the client or to appear for the client in a judicial proceeding.]*

*[(e) Takes a release from a client of an obligation to be performed on the part of the debt consolidating agency.]*

*[(f) Makes any contract or agreement with a client that provides for later charges or reserves for liquidated damages.]*

*[(g) Commingles a client's wages, salaries, income, credits or property held by the debt consolidating agency with the property or funds of the debt consolidating agency.]*

*[(h) Except as authorized in ORS 697.712, cancels a debt consolidating contract or agreement without a client's written authorization.]*

*[(i) Violates ORS 697.707.]*

*[(2) A person commits an improper debt consolidating practice if the person advertises, prints, displays, publishes, distributes or broadcasts, or causes to be advertised, printed, displayed, published, distributed or broadcasted, any false or misleading statement or representation with regard to the rates, terms or services of a debt consolidating agency.]*

*[(3) A debt consolidating agency that commits an improper debt consolidating practice under this section is subject to ORS 697.752, 697.762, 697.832 and 697.990 (3).]*

*[(4) A person other than a debt consolidating agency that commits an improper debt consolidating practice under subsection (2) of this section is subject to ORS 697.762, 697.832 and 697.990 (3).]*

**A debt management service provider or a person required to obtain a registration as a debt management service provider under ORS 697.612 may not:**

**(1) Make, or counsel or advise a consumer to make, a statement that is untrue or misleading or that the debt management service provider or the person in the exercise of reasonable care should know is untrue or misleading.**

**(2) Represent that the debt management service provider or the person is authorized or competent to perform a debt management service or to furnish advice concerning tax, accounting, bankruptcy or legal matters unless the debt management service provider or the person is actually authorized under the laws of this state to perform the debt management service or furnish the advice or the debt management service provider or the person performs the debt management service or furnishes the advice in compliance with the laws of this state.**

**(3) Charge or receive money or other valuable consideration solely to refer a consumer to another person who may or will extend credit to the consumer on substantially the same terms that the other person provides to the other person's customers.**

**(4) Offer to perform a debt management service without evaluating as part of the budget analysis the debt management service provider must perform under ORS 697.652 (2) whether the debt management service is or would be advantageous to the consumer.**

**(5) Perform a debt management service without having a good faith belief formed after conducting an evaluation described in subsection (4) of this section that the consumer can or will comply with the terms of the agreement described in ORS 697.652.**



(6) Solicit, accept or receive an agreement, contract, promise to pay or other instrument that has blank spaces at or after the time the consumer signs the agreement, contract, promise to pay or instrument.

(7) Accept or receive from a consumer:

(a) Payment or security for the debt management service provider's or person's fees or charges other than as provided in ORS 697.692 (2);

(b) A wage assignment, a mortgage on real estate, a purchase money security interest or other security, all or any part of which is in an amount larger than permitted under ORS 697.692, to secure the debt management service provider's or person's fees or charges;

(c) A confession of judgment or a power of attorney to confess judgment against the consumer or to appear for the consumer in a judicial proceeding; or

(d) A release of an obligation that the debt management service provider or person must perform.

(8) Agree or form a contract with a consumer, the terms of which provide for later charges or reserves for liquidated damages.

(9) Commingle any of the consumer's wages, salary, income, credits or other funds or property that the debt management service provider or person holds with the debt management service provider's or person's funds or property.

(10) Cancel an agreement with a consumer without the consumer's written authorization, except as provided in ORS 697.652 (1)(g).

(11) Violate a provision of ORS 697.602 to 697.842.

(12) Publish, distribute or broadcast or cause to be published, distributed or broadcast an advertisement, presentation or other communication or promotional material that:

(a) Contains a false, misleading or deceptive statement or representation, including a statement or representation that the debt management service provider or person can alter or remove factually correct information from a consumer's credit report;

(b) Identifies the debt management service provider or person by a name other than the name that appears on the registration that the Director of the Department of Consumer and Business Services issued or the assumed business name that the debt management service provider or person registered under ORS chapter 648;

(c) Displays an emblem, logo or other sign or device that is similar to an emblem, logo, sign or device that a government agency uses to identify the government agency or a product or service the government agency provides, including but not limited to an eagle, flag or crest; or

(d) Misrepresents, directly or indirectly:

(A) The nature of a service the debt management service provider or person will perform;

(B) The time within which the debt management service provider or person will perform a service;

(C) The debt management service provider's or person's ability to improve a consumer's credit report or credit rating;

(D) The amount, type or quality of credit a consumer may or will receive as a result of a service the debt management service provider or person performs or offers to perform; or

(E) The debt management service provider's or person's qualifications, training or experience or the qualifications, training or experience of the debt management service provider's or the person's employees, agents or affiliates.

**SECTION 7.** ORS 697.672 is amended to read:

697.672. *[(1) A debt consolidating agency improperly maintains records when the debt consolidating agency does not comply with the following requirements:]*

*[(a) A debt consolidating agency shall maintain a record of all wages, salaries, income, credits and property of a client that are received by the debt consolidating agency, and a record of all property of the client sold by the debt consolidating agency, for the purpose of remitting the proceeds to creditors of the client.]*

*[(b) A debt consolidating agency shall maintain a record of all disbursements that the debt consolidating agency has made to creditors of the client.]*

*[(c) A debt consolidating agency shall maintain records described in paragraphs (a) and (b) of this subsection for a period of three years from the date of the last entry on the records.]*

*[(d) The debt consolidating agency shall allow the Director of the Department of Consumer and Business Services or any authorized agent of the director to inspect all records described in paragraphs (a) and (b) of this subsection.]*

*[(e) The debt consolidating agency shall allow a client to inspect records of the client during the business hours of the debt consolidating agency.]*

*[(2) A debt consolidating agency that improperly maintains records under this section is subject to ORS 697.752, 697.762, 697.832 and 697.990 (3).]*

*[(3) A debt consolidating agency may dispose of records to which this section applies after the three-year period provided in subsection (1) of this section has expired.]*

**(1) A debt management service provider shall make, keep and maintain accounts, correspondence, memoranda, papers, books and other records that the Director of the Department of Consumer and Business Services by rule determines are necessary to ensure that the debt management service provider is complying with the provisions of ORS 697.602 to 697.842.**

**(2) A debt management service provider shall maintain records for each consumer with which the debt management service provider does business in a form and with contents the director specifies by rule. The debt management service provider shall maintain each consumer record for a period of three years after the date of the last entry in the record. The debt management service provider may dispose of the record in accordance with applicable law after the three-year period described in this subsection has expired.**

**(3) A debt management service provider shall record all disbursements that the debt management service provider makes, if any, to a consumer's creditors.**

**(4) The director may at any reasonable time examine the debt management service provider, the records described in subsection (1) of this section or the debt management service provider's activities in connection with performing a debt management service.**

**SECTION 8.** ORS 697.682 is amended to read:

*697.682. [(1) A debt consolidating agency improperly handles funds when the debt consolidating agency does not comply with the following requirements:]*

*[(a) The debt consolidating agency shall keep either a separate trust account for each client or a single account for all clients. If a single account is kept for all clients, the debt consolidating agency shall keep a separate ledger or other record on receipts and disbursements for each client. The debt consolidating agency shall maintain the trust account or accounts in this state.]*

*[(b) The debt consolidating agency shall deposit in the trust account all wages, salaries, income, credits or property received from the client and all proceeds received from property of the client.]*

*[(c) The debt consolidating agency shall make all disbursements to the client or on behalf of the client, including any fees charged by the debt consolidating agency, from the client's trust account.]*

*[(d) Upon request of a client, a debt consolidating agency shall provide to the client without charge a statement of the money or property received from or on behalf of the client and the disbursements made by the debt consolidating agency under the debt consolidating agreement or contract for the period of time requested.]*

*[(2) A debt consolidating agency that improperly handles funds under this section is subject to ORS 697.752, 697.762, 697.832 and 697.990 (3).]*

**(1) A debt management service provider that holds a consumer's funds, directly or indirectly, shall establish a trust account in this state with an insured institution, as defined in ORS 706.008, in which to keep the consumer funds that the debt management service provider holds.**

**(2) The debt management service provider may establish a separate trust account for each consumer with whom the debt management service provider does business, or may es-**

establish a single trust account in which the debt management service provider keeps all consumer funds. If the debt management service provider establishes a single trust account, the debt management service provider shall maintain a separate ledger or other record of receipts and disbursements for each consumer on whose behalf the debt management service provider holds funds in the account. The debt management service provider in the financial statement required under subsection (4) of this section and the agreement described in ORS 697.652 shall disclose the amount of interest earned on the consumer's funds in the separate trust account or the amount attributable to the consumer's share of the single trust account to the extent that the interest earned exceeds the fees the financial institution charges to maintain the trust account.

(3) The debt management service provider shall deposit into the trust account all wages, salary, income, credits or proceeds from property that the debt management service provider receives from the consumer or the consumer's property and shall disburse from the trust account all payments the debt management service provider makes on the consumer's behalf, including payments of the debt management service provider's fees or charges.

(4) The debt management service provider without charge shall provide to the consumer in accordance with the terms of the agreement described in ORS 697.652, or at the consumer's request for the period of time the consumer specifies, a statement of the funds or property that the debt management service provider received from or on behalf of the consumer and the disbursements that the debt management service provider made from the trust account under the terms of the agreement.

(5) A debt management service provider may not deposit in a trust account on a single consumer's behalf more than \$250,000 in consumer funds.

**SECTION 9.** ORS 697.692 is amended to read:

697.692. *[(1) A debt consolidating agency:]*

*[(a) May charge a client an initial set-up fee of not more than \$25.]*

*[(b) May charge for services performed for the client in an amount of not more than 15 percent of the amount actually received by the debt consolidating agency on behalf of a client for payment to creditors. A debt consolidating agency may not receive an amount from the client under this paragraph until the first installment under the contract or agreement with the client is paid to any creditor of the client.]*

*[(c) May not charge a person for any discussion with that person that may or may not result in an agreement for services of a debt consolidating agency.]*

*[(d) Notwithstanding paragraph (c) of this subsection, may charge a fee to cover the expenses for education classes if:]*

*[(A) The classes are approved by the Director of the Department of Consumer and Business Services, or the classes are required by rule or order of a federal or state agency and the debt consolidating agency is certified by the federal or state agency to provide the education; and]*

*[(B) A request to charge the fee has been approved in writing by the director.]*

*[(2) Notwithstanding subsection (1)(c) of this section, a debt consolidating agency that is a nonprofit organization may charge a fee in an amount set by the director by rule to cover the expenses of credit counseling if:]*

*[(a) The debt consolidating agency demonstrates to the director the need for the fee or the credit counseling is required by rule or order of a federal or state agency and the debt consolidating agency is certified by the federal or state agency to provide the credit counseling; and]*

*[(b) A request to charge the fee has been approved in writing by the director.]*

*[(3) A debt consolidating agency that charges a fee not authorized under this section is subject to ORS 697.752, 697.762, 697.832 and 697.990 (3).]*

*[(4) As used in this section, "nonprofit organization" means an organization described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the Internal Revenue Code.]*

**(1) A debt management service provider may charge a consumer only the following fees:**

(a) An initial fee of not more than \$50.

(b) A fee reasonably calculated to recover the costs that the debt management service provider incurs in providing an initial counseling session or education class. The debt management service provider may charge the fee described in this paragraph in advance, but the fee may not exceed \$50.

(c) A monthly fee equivalent to 15 percent of the funds that the debt management service provider receives from a consumer for payment to the consumer's creditors. The debt management service provider may charge the fee described in this paragraph only if the debt management service provider holds a consumer's funds, directly or indirectly, on the consumer's behalf. The fee described in this paragraph may not exceed \$65 per month.

(d) A fee equivalent to 15 percent of the amount of debt a consumer owes to one or more creditors at the time the consumer signs the agreement described in ORS 697.652 and places funds in a bank account that the consumer establishes or maintains in the consumer's own name with an insured institution, as defined in ORS 706.008, and designates specifically for making disbursements in connection with a debt management service. The debt management service provider may charge the fee described in this paragraph only if the debt management service provider does not hold a consumer's funds directly or indirectly. The debt management service provider may not charge the fee described in this paragraph in amounts or installments that exceed \$65 per month.

(e) A fee equivalent to 7.5 percent of the difference between the principal amount of the debt the consumer owed to the consumer's creditor at the time the consumer signed the agreement described in ORS 697.652 and the amount the consumer paid to the creditor to settle the debt, exclusive of fees the consumer paid to the debt management service provider under paragraph (a), (b) or (d) of this subsection. The debt management service provider may charge the fee described in this paragraph only if the debt management service provider obtains from the consumer's creditor a reduction in the principal amount of the consumer's debt.

(f) Additional counseling fees that the Director of the Department of Consumer and Business Services specifies by rule, provided that the director limits the counseling fee to:

(A) \$25 per counseling session; and

(B) \$50 for all counseling sessions that occur within a 30-day period.

(2) A debt management service provider may accept payment for a fee described in subsection (1) of this section by means of:

(a) A check, draft or similar paper instrument; or

(b) A transfer of funds through an electronic terminal, telephonic instrument, computer or magnetic tape that transmits an order, instruction or authorization to a financial institution to debit or credit an account.

**SECTION 9a.** ORS 697.692, as amended by section 9 of this 2009 Act, is amended to read:

697.692. (1) A debt management service provider may charge a consumer only the following fees:

(a) An initial fee of not more than \$50.

(b) A fee reasonably calculated to recover the costs that the debt management service provider incurs in providing an initial counseling session or education class. The debt management service provider may charge the fee described in this paragraph in advance, but the fee may not exceed \$50.

(c) A monthly fee equivalent to 15 percent of the funds that the debt management service provider receives from a consumer for payment to the consumer's creditors. The debt management service provider may charge the fee described in this paragraph only if the debt management service provider holds a consumer's funds, directly or indirectly, on the consumer's behalf. The fee described in this paragraph may not exceed \$65 per month.

(d) A fee equivalent to 15 percent of the amount of debt a consumer owes to one or more creditors at the time the consumer signs the agreement described in ORS 697.652 and places funds in a bank account that the consumer establishes or maintains in the consumer's own name with an insured institution, as defined in ORS 706.008, and designates specifically for making disbursements

in connection with a debt management service. The debt management service provider may charge the fee described in this paragraph only if the debt management service provider does not hold a consumer's funds directly or indirectly. The debt management service provider may not charge the fee described in this paragraph in amounts or installments that exceed \$65 per month.

(e) A fee equivalent to 7.5 percent of the difference between the principal amount of the debt the consumer owed to the consumer's creditor at the time the consumer signed the agreement described in ORS 697.652 and the amount the consumer paid to the creditor to settle the debt, exclusive of fees the consumer paid to the debt management service provider under paragraph (a), (b) or (d) of this subsection. The debt management service provider may charge the fee described in this paragraph only if the debt management service provider obtains from the consumer's creditor a reduction in the principal amount of the consumer's debt.

*[(f) Additional counseling fees that the Director of the Department of Consumer and Business Services specifies by rule, provided that the director limits the counseling fee to:]*

*[(A) \$25 per counseling session; and]*

*[(B) \$50 for all counseling sessions that occur within a 30-day period.]*

(2) A debt management service provider may accept payment for a fee described in subsection (1) of this section by means of:

(a) A check, draft or similar paper instrument; or

(b) A transfer of funds through an electronic terminal, telephonic instrument, computer or magnetic tape that transmits an order, instruction or authorization to a financial institution to debit or credit an account.

**SECTION 10.** ORS 697.702 is amended to read:

697.702. *[(1) A person commits the offense of interfering with records of a debt consolidating agency if the person does either of the following to a record to which ORS 697.672 applies:]*

*[(a) Intentionally makes a false entry in the record.]*

*[(b) Intentionally mutilates, destroys or otherwise disposes of the record.]*

*[(2) Subsection (1)(b) of this section does not apply to the disposal of records by a debt consolidating agency that occurs after the expiration of the retention period in ORS 697.672.]*

**(1) A person commits the offense of interfering with records of a debt management service provider if, with respect to a record to which ORS 697.672 applies, the person intentionally:**

**(a) Makes a false entry in the record; or**

**(b) Mutilates, destroys or otherwise disposes of the record.**

**(2) Subsection (1)(b) of this section does not apply to a debt management service provider that disposes of a record after the retention period set forth in ORS 697.672 expires.**

**SECTION 11.** ORS 697.707 is amended to read:

697.707. *[(1) A debt consolidating agency may not charge or receive from a client a fee authorized under ORS 697.692 for any services provided by the agency to the client before the agency provides the disclosure required under this section.]*

*[(2) A debt consolidating agency shall disclose in writing to each client on a separate form:]*

*[(a) The maximum amount the debt consolidating agency may charge for services performed for the client; and]*

*[(b) That the client is responsible for payment of the amount charged.]*

*[(3) The form described in subsection (2) of this section must contain a space for the client to sign the form, indicating that the client has read and understands the information disclosed on the form.]*

**(1) A debt management service provider may not charge or receive from a consumer a fee described in ORS 697.692 until after the debt management service provider makes the disclosures described in this section.**

**(2) A debt management service provider shall give to every consumer for whom the debt management service provider offers to perform a debt management service a document that:**

(a) States the maximum amount the debt management service provider may charge the consumer for all debt management services that the debt management service provider will perform;

(b) States that the consumer is responsible for paying the debt management service provider's charges;

(c) Warns the consumer that canceled debt may constitute income that is subject to state and federal taxation and advises the consumer to consult with a tax professional;

(d) Describes completely and in detail the debt management services that the debt management service provider will perform for the consumer and states the amount the consumer must pay for each service and for all services; and

(e) States that the consumer may bring an action against the bond required under ORS 697.642 and lists the name and address of the surety that issued the bond.

(3) A debt management service provider that performs a debt management service as defined in ORS 697.602 (2)(b) or described in ORS 697.612 (1)(b)(E), in the document required under subsection (2) of this section, shall:

(a) Describe, accurately and completely, the consumer's right to review consumer credit information about the consumer that a consumer reporting agency, as defined in 15 U.S.C. 1681a, maintains; and

(b) State the approximate price that a consumer reporting agency will charge a consumer to review the consumer credit information described in paragraph (a) of this subsection and that the consumer may review the information at no charge if the consumer makes a request to the consumer reporting agency within 30 days after the consumer was denied credit.

(4) A debt management service provider that does not hold a consumer's funds, directly or indirectly, shall include in the document required under subsection (2) of this section these additional statements:

(a) That the debt management service provider does not predict or guarantee specific results and cannot force or require a creditor to accept a specific settlement;

(b) That the debt management service provider does not make scheduled periodic payments to creditors;

(c) That creditors may continue collection efforts, including lawsuits;

(d) That the consumer's failure to make monthly payments on outstanding debt will likely have a negative impact on the consumer's credit score;

(e) That the consumer must make regular monthly deposits of funds in an account the consumer establishes and maintains in the consumer's name with an insured institution, as defined in ORS 706.008, and designates specifically for making disbursements in connection with a debt management service; and

(f) That the debt management service provider will withdraw fees for debt management services from the account described in paragraph (e) of this subsection only with the consumer's specific authorization and that the debt management service provider does not have custody, control or separate or additional access to the account.

(5) The document described in this section must provide a space for the consumer to sign the form under a statement that indicates that the consumer has read and understands the disclosures set forth in the document.

**SECTION 12.** ORS 697.722 is amended to read:

697.722. Funds in a trust account [maintained by] **that** a debt [consolidating agency] **management service provider maintains** under ORS 697.682 are not subject to execution or attachment on [any] a claim against the debt **management service provider** [consolidating agency].

**SECTION 13.** ORS 697.732 is amended to read:

697.732. (1) To enforce **the provisions of** ORS 697.612 and 697.642 to 697.702, the Director of the Department of Consumer and Business Services may:

*[(a) Upon the director's own motion or upon receipt of a complaint by a client of a debt consolidating agency or of a person acting as a debt consolidating agency without registration, audit the trust*

accounts of the agency or person for the purpose of investigating any violation of ORS 697.642 to 697.702. The debt consolidating agency or person acting as a debt consolidating agency without registration shall pay the reasonable cost of the audit, as determined by the director.]

*[(b) Undertake investigations, including investigations outside of this state, that the director considers necessary to:]*

*[(A) Determine whether a person has violated, is violating or is about to violate ORS 697.612 or 697.642 to 697.702 or any rule of the director adopted under ORS 697.632; or]*

*[(B) Aid in the enforcement of ORS 697.612 and 697.642 to 697.702 and in the formulation of rules and forms under ORS 697.632.]*

*[(c) Require a person to file a statement in writing, under oath or otherwise, concerning the matter being investigated.]*

*[(2) All debt consolidating agencies and persons acting as debt consolidating agencies without registration shall provide the director with free access during all reasonable hours to offices and places of business, books, accounts, records, papers, files, safes and vaults for the purpose of investigating violations of ORS 697.612 or 697.642 to 697.702.]*

*[(3) The director shall maintain for public inspection records of any civil penalty imposed under ORS 697.832, any suspension, revocation or refusal to renew the registration of a debt consolidating agency and any collection on the bond or deposit of a debt consolidating agency. The record of each action shall show:]*

*[(a) The order of the director or the court relating to the action.]*

*[(b) The debt consolidating agency against whom the action was taken.]*

*[(c) The grounds for the action.]*

*[(4) Except as provided in subsection (3) of this section, records, reports and other information received or compiled by the director as a result of investigations under this section are exempt from the public disclosure required by ORS 192.420.]*

**(a) Examine a debt management service provider or a person required to obtain a registration as a debt management service provider under ORS 697.612 and the debt management service provider's or the person's accounts for the purpose of investigating a violation of ORS 697.642 to 697.702.**

**(b) Undertake an investigation, including an investigation outside this state, that the director considers necessary to:**

**(A) Determine whether a debt management service provider or a person required to obtain a registration as a debt management service provider under ORS 697.612 violated, is violating or is about to violate ORS 697.612 or 697.642 to 697.702 or a rule the director adopted under ORS 697.632; or**

**(B) Aid in enforcing the provisions of ORS 697.612 and 697.642 to 697.702 and in formulating rules for adoption under ORS 697.632.**

**(c) Require a debt management service provider or a person required to obtain a registration as a debt management service provider under ORS 697.612 to file a written statement, under oath or otherwise, that addresses a matter the director is investigating.**

**(d) Administer oaths and affirmations, subpoena witnesses, compel the witnesses to attend, take evidence and require a person that the director is investigating to produce books, papers, correspondence, memoranda, agreements or other documents or records that the director deems relevant or material to the investigation. A witness who appears before the director under a subpoena shall receive the fees and mileage described in ORS 44.415 (2).**

**(e) Charge and require a debt management service provider or a person required to obtain a registration as a debt management service provider under ORS 697.612 to pay for the reasonable cost of an examination or investigation conducted under this section in an amount the director specifies.**

**(2) If a person does not comply with a subpoena that the director issues under this section, a circuit court in this state upon the director's application shall begin contempt pro-**

ceedings to compel compliance in the same manner in which the court would compel compliance with a subpoena in a civil action.

(3) A debt management service provider or a person required to obtain a registration as a debt management service provider under ORS 697.612 shall provide the director for the purpose of investigating a violation of ORS 697.612 or 697.642 to 697.702 with free access to the debt management service provider's or the person's offices, places of business, books, accounts, records, papers, files, safes and vaults.

(4)(a) The director shall maintain for public inspection a record of any order the director issued that:

(A) Suspended, revoked or refused to renew a person's registration as a debt management service provider; or

(B) Imposed a civil penalty under ORS 697.832.

(b) The record that the director maintains of the director's order shall show:

(A) The form of the order that the director issued;

(B) The name of the person that is the subject of the order; and

(C) The grounds for the action that the director took in the order.

(c) The director shall maintain as a public record any notice or other information that indicates that a collection on a deposit or on the bond required under ORS 697.642 has occurred.

(d) Except as provided in this subsection, records, reports and other information that the director receives or compiles as a result of an investigation conducted under this section are exempt from the disclosure required under ORS 192.420.

**SECTION 14.** ORS 697.752 is amended to read:

697.752. [(1) *The Director of the Department of Consumer and Business Services may refuse to issue or renew or may revoke or suspend the registration of a debt consolidating agency if the director determines any of the following facts:*]

[(a) *The debt consolidating agency has filed false or untruthful information with the director under ORS 697.632.*]

[(b) *The debt consolidating agency has violated any of the rules of the director adopted under ORS 697.632.*]

[(c) *The debt consolidating agency has violated any provision of ORS 697.642 to 697.702.*]

[(d) *Any person required to register to engage in the business of debt consolidating has been convicted of a felony or a misdemeanor, an essential element of which is fraud.*]

[(e) *There has been any lapse in or any reduction of the amount of any bond filed under ORS 697.642.*]

[(2) *A revocation or suspension under this section may be for a time certain or upon condition that the debt consolidating agency meets conditions specified by the director.*]

[(3) *The conduct of hearings, issuance of orders and judicial review of orders are governed by ORS chapter 183.*]

**The Director of the Department of Consumer and Business Services may deny, suspend, condition, revoke or refuse to issue or renew a registration as a debt management service provider if the director determines that an applicant or debt management service provider:**

(1) **Cannot meet financial obligations as the obligations mature, has liabilities that exceed assets or is in a financial condition that prevents the applicant or debt management service provider from continuing in business with safety to consumers;**

(2) **Engaged in dishonest, fraudulent or illegal practices or conduct in a business or profession, or unfair or unethical practices or conduct in connection with a debt management service;**

(3) **Filed, knowingly or negligently, false or untruthful information with the director under ORS 697.632;**

(4) **Violated a provision of ORS 697.642 to 697.702 or a rule the director adopted under ORS 697.632;**



(5) Filed an application for registration that on the date the director issued a registration or on the date the director denied, suspended, conditioned or revoked a registration was incomplete in a material respect or contained a statement that was false or misleading with respect to a material fact in light of the circumstances in which the applicant or debt management service provider made the statement;

(6) Failed to account to interested persons for money or property the applicant or debt management service provider received;

(7) Was temporarily or permanently enjoined from engaging in or continuing a conduct or practice involving a debt management service by a court of competent jurisdiction;

(8) Is subject to a director's order that denied, suspended, conditioned or revoked a registration as a debt management service provider, or a license or registration that the director issued under another provision of law;

(9) Is subject to a cease and desist order that the director entered within the previous five years after giving the applicant or debt management service provider notice and an opportunity for a hearing;

(10) Demonstrated negligence or incompetence in performing a debt management service or an act, the performance of which requires the applicant or debt management service provider to obtain a registration or license;

(11) Failed to supervise diligently and control an employee's or agent's actions related to a debt management service that the applicant or debt management service provider performed;

(12) Was convicted of a felony or of a misdemeanor for which an essential element is fraud, either as an individual that is subject to the requirement to register as a debt management service provider or as a member, partner, officer, director or principal of an applicant or debt management service provider;

(13) Reduced the amount of the bond required under ORS 697.642 or allowed the bond to lapse;

(14) Knowingly made a false entry in a consumer's record; or

(15) Knowingly mutilated, destroyed or otherwise disposed of a consumer's record unless the record concerns a consumer that no longer receives a debt management service from the applicant or debt management service provider or the record is not subject to the retention requirement set forth in ORS 697.672.

**SECTION 15.** ORS 697.762 is amended to read:

697.762. (1) If the Director of the Department of Consumer and Business Services determines that *[any]* a person has engaged in, is engaging in or is about to engage in *[any]* an act or practice that the director believes is in violation of ORS 697.612, *[or]* 697.642 to 697.702 **or 697.752, in addition to actions the director may take under ORS 697.752** the director may bring suit in the name of the State of Oregon in *[any]* a circuit court of this state to enjoin the *[acts or practices]* **act or practice**. Upon a proper showing, the court shall grant a permanent or temporary injunction or restraining order and may appoint a receiver or conservator for the defendant or the defendant's assets. The court may not require the director to post a bond. The court may award reasonable attorney fees to the director if the director prevails in an action under this section. The court may award reasonable attorney fees to a defendant *[who]* **if the defendant** prevails in an action under this section **and** *[if]* the court determines that the director *[had no]* **did not have an** objectively reasonable basis for asserting the claim or *[no]* a reasonable basis for appealing an adverse decision of the trial court.

(2) The director may include in *[any]* a suit authorized by subsection (1) of this section a claim for damages on behalf of *[any other]* a person injured by *[any]* an act or practice against which **the director sought** an injunction or restraining order *[is sought]*. The court may award appropriate relief to the person if the court finds that *[enforcement of the]* **enforcing the person's** right *[of the person]* by private civil action or suit, whether by class action or otherwise, would be so burdensome or expensive as to be impracticable.

**SECTION 16.** ORS 697.822 is amended to read:

697.822. The remedy provided for in [ORS 697.782] **section 20 of this 2009 Act:**

(1) Is in addition to and not exclusive of [any] other remedies provided by law.

(2) Does not limit [any] **a person's** statutory or common-law [rights of a person] **right** to bring an action in any court for an act of a debt [consolidating agency] **management service provider**, or the right of the state to punish a person for [violation of any] **violating a law**.

**SECTION 17.** ORS 697.825 is amended to read:

697.825. (1) The Director of the Department of Consumer and Business Services may, if the director has reason to believe that a person [has]:

[*(a) Violated, is violating or is about to violate ORS 697.612 or 697.642 to 697.702, a rule adopted under ORS 697.632 or an order issued under ORS 697.732 or 697.742, issue an order to cease and desist from the violation.*]

**(a) Violated, is violating or is about to violate ORS 697.612, 697.642 to 697.702 or 697.752, a rule adopted under ORS 697.632 or an order issued under ORS 697.652 or 697.732, issue an order to cease and desist from the violation.**

(b) Filed information under ORS 697.632 that is false or untruthful, issue an order to correct the filing.

(c) Failed to maintain in effect the bond required under ORS 697.642, issue an order to remedy the failure.

(2)(a) The director shall serve an order under this section on the person named in the order.

(b) An order issued under this section becomes effective upon service on the person named in the order.

(c) ORS 183.413 to 183.470 apply to an order issued under this section.

(d) Notwithstanding paragraph (c) of this subsection, a person may not obtain a hearing on the order unless the person requests the hearing in writing within 20 days after service of the order.

(e) A person who does not request a contested case hearing may not obtain judicial review of the order.

(f) The director may vacate or modify an order issued under this section. A modified order is effective upon service on the person named in the order.

(3) The authority conferred by this section is in addition to and not in lieu of any other authority conferred on the director.

**SECTION 18.** ORS 697.832 is amended to read:

697.832. (1) In addition to any other liability or penalty provided by law, the Director of the Department of Consumer and Business Services may impose a civil penalty on a person in an amount not to exceed [\$1,000] **\$5,000** for each violation of ORS 697.612 or 697.642 to 697.702, rules adopted under ORS 697.632 or order issued under ORS 697.825.

(2) The director shall impose a civil penalty on a person under this section in the manner provided [by] **in** ORS 183.745.

(3) Notwithstanding ORS 183.745, the person to whom the notice is addressed [*shall have*] **has** 10 days from the date **on which** [*of mailing of*] the notice **was mailed** in which to apply for a hearing before the director.

(4) [*The payment or tendering of payment of*] **Paying or tendering payment for** a civil penalty imposed under this section [*shall*] **does** not relieve [*the*] **a person from the** obligation [*of a person*] to comply with the applicable statute or rule.

(5) All penalties recovered under this section shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses.

**SECTION 19. Sections 20 and 21 of this 2009 Act are added to and made a part of ORS 697.602 to 697.842.**

**SECTION 20. (1) A debt management service provider or a person required to obtain a registration as a debt management service provider under ORS 697.612 is liable to a consumer who suffers an ascertainable loss of money or property, real or personal, in con-**

nection with the debt management service provider's or person's violation of a provision of ORS 697.652, 697.662, 697.682, 697.692 or 697.707.

(2) Except as provided in this subsection, an action or suit may not be commenced under this section more than three years after the date on which the debt management service provider or person enters into an agreement for a debt management service with the consumer that suffered the ascertainable loss of money or property or more than three years after the debt management service provider or person performs a debt management service that violates ORS 697.652. An action under this section may be commenced within three years after the transaction that is the subject of the action or within two years after the facts on which the action is based were or should have been discovered, but an action may not be commenced more than five years after the transaction. Failure to commence an action on a timely basis is an affirmative defense.

(3) A consumer that has a right of action against a debt management service provider under this section has a right of action against the bond required under ORS 697.642.

(4) A court may award reasonable attorney fees to the prevailing party in an action brought under this section.

**SECTION 21.** The Director of the Department of Consumer and Business Services may adopt, amend and repeal rules that are necessary to carry out the provisions of ORS 697.602 to 697.842.

**SECTION 22.** ORS 192.502 is amended to read:

192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

(1) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

(2) Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(3) Public body employee or volunteer addresses, Social Security numbers, dates of birth and telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services. This exemption:

(a) Does not apply to the addresses, dates of birth and telephone numbers of employees or volunteers who are elected officials, except that a judge or district attorney subject to election may seek to exempt the judge's or district attorney's address or telephone number, or both, under the terms of ORS 192.445;

(b) Does not apply to employees or volunteers to the extent that the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in a particular instance;

(c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a professional education association of which the substitute teacher may be a member; and

(d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

(4) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

(5) Information or records of the Department of Corrections, including the State Board of Parole and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the

functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure.

(6) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services in the administration of ORS chapters 723 and 725 not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure.

(7) Reports made to or filed with the court under ORS 137.077 or 137.530.

(8) Any public records or information the disclosure of which is prohibited by federal law or regulations.

(9)(a) Public records or information the disclosure of which is prohibited or restricted or otherwise made confidential or privileged under Oregon law.

(b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual information compiled in a public record when:

(A) The basis for the claim of exemption is ORS 40.225;

(B) The factual information is not prohibited from disclosure under any applicable state or federal law, regulation or court order and is not otherwise exempt from disclosure under ORS 192.410 to 192.505;

(C) The factual information was compiled by or at the direction of an attorney as part of an investigation on behalf of the public body in response to information of possible wrongdoing by the public body;

(D) The factual information was not compiled in preparation for litigation, arbitration or an administrative proceeding that was reasonably likely to be initiated or that has been initiated by or against the public body; and

(E) The holder of the privilege under ORS 40.225 has made or authorized a public statement characterizing or partially disclosing the factual information compiled by or at the attorney's direction.

(10) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the confidential or exempt nature of the public records or information remain applicable.

(11) Records of the Energy Facility Siting Council concerning the review or approval of security programs pursuant to ORS 469.530.

(12) Employee and retiree address, telephone number and other nonfinancial membership records and employee financial records maintained by the Public Employees Retirement System pursuant to ORS chapters 238 and 238A.

(13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the agents of the treasurer or the council relating to active or proposed publicly traded investments under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or liquidation of the investments. For the purposes of this subsection:

(a) The exemption does not apply to:

(A) Information in investment records solely related to the amount paid directly into an investment by, or returned from the investment directly to, the treasurer or council; or

(B) The identity of the entity to which the amount was paid directly or from which the amount was received directly.

(b) An investment in a publicly traded investment is no longer active when acquisition, exchange or liquidation of the investment has been concluded.

(14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the agents of the treasurer, council or board relating to actual or proposed investments under ORS chapter 293 or 348 in a privately placed investment fund or a private asset including but not limited to records regarding the solicitation, acquisition, deployment, exchange or liquidation of the investments including but not limited to:

(A) Due diligence materials that are proprietary to an investment fund, to an asset ownership or to their respective investment vehicles.

(B) Financial statements of an investment fund, an asset ownership or their respective investment vehicles.

(C) Meeting materials of an investment fund, an asset ownership or their respective investment vehicles.

(D) Records containing information regarding the portfolio positions in which an investment fund, an asset ownership or their respective investment vehicles invest.

(E) Capital call and distribution notices of an investment fund, an asset ownership or their respective investment vehicles.

(F) Investment agreements and related documents.

(b) The exemption under this subsection does not apply to:

(A) The name, address and vintage year of each privately placed investment fund.

(B) The dollar amount of the commitment made to each privately placed investment fund since inception of the fund.

(C) The dollar amount of cash contributions made to each privately placed investment fund since inception of the fund.

(D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the agents of the treasurer, council or board from each privately placed investment fund.

(E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment Council, the Oregon Growth Account Board or the agents of the treasurer, council or board.

(F) The net internal rate of return of each privately placed investment fund since inception of the fund.

(G) The investment multiple of each privately placed investment fund since inception of the fund.

(H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end basis to each privately placed investment fund.

(I) The dollar amount of cash profit received from each privately placed investment fund on a fiscal year-end basis.

(15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

(16) Reports of unclaimed property filed by the holders of such property to the extent permitted by ORS 98.352.

(17) The following records, communications and information submitted to the Oregon Economic and Community Development Commission, the Economic and Community Development Department, the State Department of Agriculture, the Oregon Growth Account Board, the Port of Portland or other ports, as defined in ORS 777.005, by applicants for investment funds, loans or services including, but not limited to, those described in ORS 285A.224:

(a) Personal financial statements.

(b) Financial statements of applicants.

(c) Customer lists.

(d) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur; this exemption does not apply to litigation which has been concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery or deposition statutes to a party to litigation or potential litigation.

(e) Production, sales and cost data.

(f) Marketing strategy information that relates to applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

(18) Records, reports or returns submitted by private concerns or enterprises required by law to be submitted to or inspected by a governmental body to allow it to determine the amount of any transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such information is in a form which would permit identification of the individual concern or enterprise. Nothing in this subsection shall limit the use which can be made of such information for regulatory purposes or its admissibility in any enforcement proceedings. The public body shall notify the taxpayer of the delinquency immediately by certified mail. However, in the event that the payment or delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the public body shall disclose, upon the request of any person, the following information:

(a) The identity of the individual concern or enterprise that is delinquent over 60 days in the payment or delivery of the taxes.

(b) The period for which the taxes are delinquent.

(c) The actual, or estimated, amount of the delinquency.

(19) All information supplied by a person under ORS 151.485 for the purpose of requesting appointed counsel, and all information supplied to the court from whatever source for the purpose of verifying the financial eligibility of a person pursuant to ORS 151.485.

(20) Workers' compensation claim records of the Department of Consumer and Business Services, except in accordance with rules adopted by the Director of the Department of Consumer and Business Services, in any of the following circumstances:

(a) When necessary for insurers, self-insured employers and third party claim administrators to process workers' compensation claims.

(b) When necessary for the director, other governmental agencies of this state or the United States to carry out their duties, functions or powers.

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim.

(d) When a worker or the worker's representative requests review of the worker's claim record.

(21) Sensitive business records or financial or commercial information of the Oregon Health and Science University that is not customarily provided to business competitors.

(22) Records of Oregon Health and Science University regarding candidates for the position of president of the university.

(23) The records of a library, including:

(a) Circulation records, showing use of specific library material by a named person;

(b) The name of a library patron together with the address or telephone number of the patron; and

(c) The electronic mail address of a patron.

(24) The following records, communications and information obtained by the Housing and Community Services Department in connection with the department's monitoring or administration of financial assistance or of housing or other developments:

(a) Personal and corporate financial statements and information, including tax returns.

(b) Credit reports.

(c) Project appraisals.

(d) Market studies and analyses.

(e) Articles of incorporation, partnership agreements and operating agreements.

(f) Commitment letters.

(g) Project pro forma statements.

(h) Project cost certifications and cost data.

(i) Audits.

(j) Project tenant correspondence.

(k) Personal information about a tenant.

(L) Housing assistance payments.

(25) Raster geographic information system (GIS) digital databases, provided by private forestland owners or their representatives, voluntarily and in confidence to the State Forestry Department, that is not otherwise required by law to be submitted.

(26) Sensitive business, commercial or financial information furnished to or developed by a public body engaged in the business of providing electricity or electricity services, if the information is directly related to a transaction described in ORS 261.348, or if the information is directly related to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and disclosure of the information would cause a competitive disadvantage for the public body or its retail electricity customers. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(27) Sensitive business, commercial or financial information furnished to or developed by the City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085 and disclosure of the information would cause a competitive disadvantage for the Klamath Cogeneration Project. This subsection does not apply to cost-of-service studies used in the development or review of generally applicable rate schedules.

(28) Personally identifiable information about customers of a municipal electric utility or a people's utility district or the names, dates of birth, driver license numbers, telephone numbers, electronic mail addresses or Social Security numbers of customers who receive water, sewer or storm drain services from a public body as defined in ORS 174.109. The utility or district may release personally identifiable information about a customer, and a public body providing water, sewer or storm drain services may release the name, date of birth, driver license number, telephone number, electronic mail address or Social Security number of a customer, if the customer consents in writing or electronically, if the disclosure is necessary for the utility, district or other public body to render services to the customer, if the disclosure is required pursuant to a court order or if the disclosure is otherwise required by federal or state law. The utility, district or other public body may charge as appropriate for the costs of providing such information. The utility, district or other public body may make customer records available to third party credit agencies on a regular basis in connection with the establishment and management of customer accounts or in the event such accounts are delinquent.

(29) A record of the street and number of an employee's address submitted to a special district to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

(30) Sensitive business records, capital development plans or financial or commercial information of Oregon Corrections Enterprises that is not customarily provided to business competitors.

(31) Documents, materials or other information submitted to the Director of the Department of Consumer and Business Services in confidence by a state, federal, foreign or international regulatory or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates or subsidiaries under ORS [646A.250 to 646A.270,] 697.005 to 697.095, 697.602 to 697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 722, 723, 725 or 726, the Bank Act or the Insurance Code when:

(a) The document, material or other information is received upon notice or with an understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information; and

(b) The director has obligated the Department of Consumer and Business Services not to disclose the document, material or other information.

(32) A county elections security plan developed and filed under ORS 254.074.

(33) Information about review or approval of programs relating to the security of:

(a) Generation, storage or conveyance of:

(A) Electricity;

(B) Gas in liquefied or gaseous form;

(C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(D) Petroleum products;

- (E) Sewage; or
- (F) Water.

- (b) Telecommunication systems, including cellular, wireless or radio systems.
- (c) Data transmissions by whatever means provided.

(34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court designates the information as confidential by rule under ORS 1.002.

**SECTION 23.** ORS 646.608, as amended by section 8, chapter 19, Oregon Laws 2008, and section 5, chapter 31, Oregon Laws 2008, is amended to read:

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

- (a) Passes off real estate, goods or services as those of another.
- (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.
- (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.
- (d) Uses deceptive representations or designations of geographic origin in connection with real estate, goods or services.
- (e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.
- (f) Represents that real estate or goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.
- (g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if they are of another.
- (h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.
- (i) Advertises real estate, goods or services with intent not to provide them as advertised, or with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.
- (j) Makes false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions.
- (k) Makes false or misleading representations concerning credit availability or the nature of the transaction or obligation incurred.
- (L) Makes false or misleading representations relating to commissions or other compensation to be paid in exchange for permitting real estate, goods or services to be used for model or demonstration purposes or in exchange for submitting names of potential customers.
- (m) Performs service on or dismantles any goods or real estate when not authorized by the owner or apparent owner thereof.
- (n) Solicits potential customers by telephone or door to door as a seller unless the person provides the information required under ORS 646.611.
- (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate, discount or other value is contingent upon occurrence of an event subsequent to the time the customer enters into the transaction.
- (p) Makes any false or misleading statement about a prize, contest or promotion used to publicize a product, business or service.
- (q) Promises to deliver real estate, goods or services within a certain period of time with intent not to deliver them as promised.
- (r) Organizes or induces or attempts to induce membership in a pyramid club.



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

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

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

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

(w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

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

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

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

(ee) Violates ORS 646.883 or 646.885.

(ff) Violates any provision of ORS 646A.020.

(gg) Violates ORS 646.569.

(hh) Violates the provisions of ORS 646A.142.

(ii) Violates ORS 646A.360.

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

(kk) Violates ORS 646.563.

(LL) Violates ORS 759.690 or any rule adopted pursuant thereto.

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

(nn) Violates ORS 646A.210 or 646A.214.

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

*[(pp) Violates ORS 646A.254.]*

*[(qq)] (pp)* Violates ORS 646A.095.

*[(rr)] (qq)* Violates ORS 822.046.

*[(ss)] (rr)* Violates ORS 128.001.

*[(tt)] (ss)* Violates ORS 646.649 (2) to (4).

*[(uu)] (tt)* Violates ORS 646A.090 (2) to (4).

*[(vv)] (uu)* Violates ORS 87.686.

*[(ww)] (vv)* Violates ORS 646.651.

*[(xx)] (ww)* Violates ORS 646A.362.

*[(yy)] (xx)* Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

*[(zz)] (yy)* Violates ORS 180.440 (1).

*[(aaa)] (zz)* Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

*[(bbb)] (aaa)* Violates ORS 87.007 (2) or (3).

*[(ccc)] (bbb)* Violates ORS 92.405 (1), (2) or (3).

[(ddd)] **(ccc)** Engages in an unlawful practice under ORS 646.648.

[(eee)] **(ddd)** Violates ORS 646A.365.

[(fff)] **(eee)** Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

[(ggg)] **(fff)** Sells a gift card in violation of ORS 646A.276.

[(hhh)] **(ggg)** Violates ORS 646A.102, 646A.106 or 646A.108.

[(iii)] **(hhh)** Violates ORS 646A.430 to 646A.450.

[(jjj)] **(iii)** Violates a provision of sections 2 to 6, chapter 19, Oregon Laws 2008.

[(kkk)] **(jjj)** Violates section 2, chapter 31, Oregon Laws 2008, 30 or more days after a recall notice, warning or declaration described in section 2, chapter 31, Oregon Laws 2008, is issued for the children's product, as defined in section 1, chapter 31, Oregon Laws 2008, that is the subject of the violation.

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

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

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

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

(5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought under subsection [(1)(zz)] **(1)(yy)** of this section by a person other than a prosecuting attorney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

**SECTION 24.** ORS 646A.628 is amended to read:

646A.628. Notwithstanding ORS 705.145 (2), (3) and (5), the Director of the Department of Consumer and Business Services can allocate as deemed appropriate the moneys derived pursuant to ORS [646A.252 to 646A.270,] 650.005 to 650.100, 697.005 to 697.095, 697.602 to 697.842, 705.350 and 717.200 to 717.320 and 731.804 and ORS chapters 59, 645, 706 to 716, 722, 723, 725 and 726 to implement ORS 646A.600 to 646A.628.

**SECTION 25.** ORS 705.137 is amended to read:

705.137. (1) Except as provided in subsection (3) of this section, [any] a document, material or other information that is in the possession or control of the Department of Consumer and Business Services for the purpose of administering ORS [646A.250 to 646A.270,] 697.005 to 697.095, 697.602 to 697.842, 717.200 to 717.320, 717.900 and 717.905, ORS chapters 59, 722, 723, 725 and 726, the Bank Act and the Insurance Code and that is described in statute as confidential or as not subject to disclosure is not subject to disclosure under ORS 192.410 to 192.505, is not subject to subpoena and is not subject to discovery or admissible in evidence in [any] a private civil action. The Director of the Department of Consumer and Business Services may use [such] a confidential [documents, materials] **document, material** or other information in administering ORS [646A.250 to 646A.270,] 697.005 to 697.095, 697.602 to 697.842, 717.200 to 717.320, 717.900 and 717.905, ORS chapters 59, 722, 723, 725 and 726, the Bank Act and the Insurance Code and in [the furtherance of any other] **furthering a** regulatory or legal action brought as a part of the director's duties.

(2) [Any] **A** document, material or other information to which subsection (1) of this section applies is subject to the public officer privilege described in ORS 40.270.

(3) In order to assist in the performance of the director's duties, the director **may**:

(a) [May authorize the sharing of] **Authorize sharing a** confidential [documents, materials and] **document, material or** other information **that is** subject to subsection (1) of this section as appropriate among the administrative divisions and staff offices of the department created under ORS 705.115 for the purpose of administering and enforcing the statutes [referred to] **identified** in subsection (1) of this section, in order to enable the administrative divisions and staff offices to carry out [their] **the** functions and responsibilities **of the administrative divisions and staff offices.**

(b) *[May share documents, materials and]* **Share a document, material or** other information, including *[the]* **a confidential** *[documents, materials and]* **document, material or** other information that is subject to subsection (1) of this section or that is otherwise confidential under ORS 192.501 or 192.502, with other state, federal, foreign and international regulatory and law enforcement agencies and with the National Association of Insurance Commissioners and *[its]* affiliates or subsidiaries **of the National Association of Insurance Commissioners**, if the recipient agrees to maintain the confidentiality of the *[documents, materials and]* **document, material or** other information.

(c) *[May receive documents, materials and]* **Receive a document, material or** other information, including **an** otherwise confidential *[documents, materials and]* **document, material or** other information, from state, federal, foreign and international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and *[its]* affiliates or subsidiaries **of the National Association of Insurance Commissioners**. **As provided in this section**, the director shall maintain *[as confidential as provided in this section any such document, material]* **the confidentiality of documents, materials** or other information received upon notice or with an understanding that *[it is]* **the document, material or other information** is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

(4) *[Neither disclosure of documents, materials]* **Disclosing a document, material** or other information to the director under this section *[nor the]* **or** sharing *[of documents, materials]* **a document, material** or other information as authorized in subsection (3) of this section *[waives any]* **does not waive an** applicable privilege or claim of confidentiality in the *[documents, materials]* **document, material** or other information.

(5) This section does not prohibit the director from releasing **a final, adjudicated** *[actions]* **action**, including *[suspensions or revocations of certificates]* **a suspension or revocation of a certificate** of authority or *[licenses, when]* **a license if** the *[actions are]* **action is** otherwise open to public inspection, to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners or *[its]* affiliates or subsidiaries **of the National Association of Insurance Commissioners**.

**SECTION 26.** ORS 646A.110 is amended to read:

646A.110. (1) ORS 646.608 *[(1)(fff)]* **(1)(eee)**, 646A.100 to 646A.110 and 646A.112 apply only to persons who engage in the retail sale of merchandise in the regular course of their business.

(2) ORS 646.608 *[(1)(fff)]* **(1)(eee)**, 646A.100 to 646A.110 and 646A.112 do not apply to public officials acting within the scope of their duties as public officials.

**SECTION 27.** ORS 646A.250, 646A.252, 646A.254, 646A.256, 646A.258, 646A.260, 646A.262, 646A.264, 646A.266, 646A.268, 646A.270, 697.622, 697.712, 697.742, 697.772, 697.782, 697.792, 697.802 and 697.812 are repealed.

**SECTION 28.** (1) Sections 20 and 21 of this 2009 Act, the amendments to ORS 192.502, 646.608, 646A.110, 646A.628, 697.602, 697.612, 697.632, 697.642, 697.652, 697.662, 697.672, 697.682, 697.692, 697.702, 697.707, 697.722, 697.732, 697.752, 697.762, 697.822, 697.825, 697.832 and 705.137 by sections 1 to 9, 10 to 18 and 22 to 26 of this 2009 Act and the repeal of ORS 646A.250, 646A.252, 646A.254, 646A.256, 646A.258, 646A.260, 646A.262, 646A.264, 646A.266, 646A.268, 646A.270, 697.622, 697.712, 697.742, 697.772, 697.782, 697.792, 697.802 and 697.812 by section 27 of this 2009 Act become operative on January 1, 2010.

(2) The Director of the Department of Consumer and Business Services may take any action before January 1, 2010, that is necessary to enable the director to exercise, on and after January 1, 2010, all the duties, functions and powers conferred on the director by sections 20 and 21 of this 2009 Act and the amendments to ORS 192.502, 646.608, 646A.110, 646A.628, 697.602, 697.612, 697.632, 697.642, 697.652, 697.662, 697.672, 697.682, 697.692, 697.702, 697.707, 697.722, 697.732, 697.752, 697.762, 697.822, 697.825, 697.832 and 705.137 by sections 1 to 9, 10 to 18 and 22 to 26 of this 2009 Act.

**SECTION 29.** Sections 20 and 21 of this 2009 Act, the amendments to ORS 192.502, 646.608, 646A.110, 646A.628, 697.602, 697.612, 697.632, 697.642, 697.652, 697.662, 697.672, 697.682, 697.692, 697.702, 697.707, 697.722, 697.732, 697.752, 697.762, 697.822, 697.825, 697.832 and 705.137 by sections 1 to 9, 10 to 18 and 22 to 26 of this 2009 Act and the repeal of ORS 646A.250, 646A.252, 646A.254, 646A.256, 646A.258, 646A.260, 646A.262, 646A.264, 646A.266, 646A.268, 646A.270, 697.622, 697.712, 697.742, 697.772, 697.782, 697.792, 697.802 and 697.812 by section 27 of this 2009 Act apply to a contract for debt management services entered into on or after the effective date of this 2009 Act.

**SECTION 30.** The amendments to ORS 697.692 by section 9a of this 2009 Act become operative on January 1, 2012.

**SECTION 31.** This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by House May 5, 2009

Received by Governor:

Repassed by House June 9, 2009

.....M.,....., 2009

Approved:

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Chief Clerk of House

.....M.,....., 2009

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Speaker of House

.....  
Governor

Passed by Senate June 4, 2009

Filed in Office of Secretary of State:

.....M.,....., 2009

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President of Senate

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Secretary of State