

HOUSE AMENDMENTS TO HOUSE BILL 2191

By COMMITTEE ON CONSUMER PROTECTION

April 29

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the line and lines 3 through
2 7 and insert “192.502, 646.608, 646A.110, 646A.628, 697.602, 697.612, 697.632, 697.642, 697.652, 697.662,
3 697.672, 697.682, 697.692, 697.702, 697.707, 697.722, 697.732, 697.752, 697.762, 697.822, 697.825, 697.832
4 and 705.137; repealing ORS 646A.250, 646A.252, 646A.254, 646A.256, 646A.258, 646A.260, 646A.262,
5 646A.264, 646A.266, 646A.268, 646A.270, 697.622, 697.712, 697.742, 697.772, 697.782, 697.792, 697.802
6 and 697.812; and declaring an emergency.”.

7 Delete lines 9 through 25 and delete pages 2 through 29 and insert:

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

9 “697.602. As used in ORS 697.602 to 697.842:

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

12 “[*(2) ‘Director’ means the Director of the Department of Consumer and Business Services.*]

13 “(1) **‘Consumer’ means an individual who is obligated or is allegedly obligated to pay a**
14 **debt and on whose behalf a debt management service provider performs a debt management**
15 **service.**

16 “(2) **‘Debt management service’ means an activity for which a person receives money or**
17 **other valuable consideration or expects to receive money or other valuable consideration in**
18 **return for:**

19 “(a) **Receiving or offering to receive funds from a consumer for the purpose of distrib-**
20 **uting the funds among the consumer’s creditors in full or partial payment of the consumer’s**
21 **debts, whether or not the person holds the consumer’s funds;**

22 “(b) **Improving or offering to improve or preserve a consumer’s credit record, credit**
23 **history or credit rating;**

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

25 “(d) **Obtaining or attempting to obtain as an intermediary on a consumer’s behalf a**
26 **concession from a creditor including, but not limited to, a reduction in the principal, inter-**
27 **est, penalties or fees associated with a debt.**

28 “(3) **‘Debt management service provider’ means a person that:**

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

30 “(b) **Provides or performs, or represents that the person can or will provide or perform**
31 **a debt management service in return for or in expectation of money or other valuable con-**
32 **sideration.**

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

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

2 “697.612. [(1) *A person shall not operate as a debt consolidating agency or in any way purport to*
3 *be a debt consolidating agency unless the person is first registered with the Director of the Department*
4 *of Consumer and Business Services under ORS 697.632. For purposes of this section, a person operates*
5 *as a debt consolidating agency and is subject to ORS 697.602 to 697.842 if the person in the regular*
6 *course of the person’s business directly or indirectly solicits, offers to take or takes anything of value*
7 *belonging to the debtor or an assignment of the wages, salary, income, credits or any other thing of*
8 *value of a debtor for the purpose of paying to any creditor of the debtor the debtor’s wages, salary,*
9 *income, credits or things of value, or the proceeds from the sale of the things of value.*]

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

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

13 “[(4) *A person who violates subsection (1) of this section is subject to ORS 697.762, 697.832 and*
14 *697.990 (3).*]

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

18 “(a) **Performs a debt management service; or**

19 “(b) **Receives money or other valuable consideration or expects to receive money or other**
20 **valuable consideration for:**

21 “(A) **Soliciting or receiving an application from a consumer for a debt management ser-**
22 **vice;**

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

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

27 “(D) **Providing a consumer’s name, address or other information that identifies the con-**
28 **sumer to a debt management service provider; or**

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

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

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

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

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

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

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

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

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

45 “(g) **A broker-dealer registered with the United States Securities and Exchange Com-**

1 mission or the United States Commodity Futures Trading Commission, if the broker-dealer
2 is subject to and acts in accordance with regulations promulgated by either commission.

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

4 “(i) A public body, as defined in ORS 174.109.

5 “(j) A person that is obeying or acting in accordance with a court order.

6 “(k) An accredited educational institution or program that offers or performs a debt
7 management service without receiving money or other valuable consideration, if the insti-
8 tution or program performs the debt management service as an incidental part of a class or
9 a duty the institution or program provides regularly.

10 “(L) A nonprofit budget and credit counseling agency approved in accordance with 11
11 U.S.C. 111 that:

12 “(i) Provides only an individual or group briefing, as described in 11 U.S.C. 109(h), or an
13 instructional course concerning personal financial management, as described in 11 U.S.C. 111;
14 and

15 “(ii) Does not receive or offer to receive funds from a consumer for the purpose of dis-
16 tributing the funds among the consumer’s creditors in full or partial payment of the con-
17 sumer’s debts.

18 “(m) A nonprofit entity that provides advice, assistance, instruction or instructional
19 materials to a consumer in return for a fee that is reasonably calculated to pay the cost of
20 making the advice, assistance, instruction or instructional materials available.

21 “(n) A counselor approved by the United States Department of Housing and Urban De-
22 velopment under 12 U.S.C. 1701x.

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

24 “697.632. *[(1) Subject to ORS chapter 183, the Director of the Department of Consumer and Busi-
25 ness Services shall establish by rule a program for registration of persons required to register with the
26 director by ORS 697.612. The program shall include a requirement that a person who registers with
27 the director must file and maintain with the director current information that the director requires by
28 rule. The director shall require the following information for registration under this section:]*

29 “[a) *The name and address of the person engaging in business as a debt consolidating agency.]*

30 “[b) *The name and address of the debt consolidating agency.]*

31 “[c) *Any assumed names or business names used by the debt consolidating agency.]*

32 “[d) *The names of persons who act as agents in the business of the debt consolidating agency.]*

33 “[e) *The names of persons who are agents of the debt consolidating agency for purposes of service
34 of legal process, or an appointment of the director as agent for the debt consolidating agency for the
35 service of process.]*

36 “[f) *If a person has been convicted for a criminal offense, an essential element of which is fraud,
37 information relating to the circumstances of the conviction as required by the director.]*

38 “[g) *Any other information required by rules adopted by the director.]*

39 “[h) *That a bond has been obtained and that the bond satisfies the applicable requirements of ORS
40 697.642.]*

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

43 “[a) *The director may require any filings with the director that the director determines to be nec-
44 essary to maintain current information required for registration. Filings required under this subsection
45 may include renewal of registration at reasonable intervals, filings within a reasonable time after*

1 *changes in a debt consolidating agency business and other filings the director determines to be neces-*
2 *sary. In requiring filings under this subsection, the director shall attempt to minimize burdens the*
3 *filings might place on persons required to file.]*

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

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

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

10 **“(1) The Director of the Department of Consumer and Business Services shall maintain**
11 **a registry of debt management service providers and by rule in accordance with ORS chapter**
12 **183 shall require a person that performs a debt management service, unless the person is**
13 **exempt under ORS 697.612 (3), to apply to the director to register or to renew a registration**
14 **as a debt management service provider. An applicant for registration or renewal shall pro-**
15 **vide to the director on a form and in a manner the director specifies:**

16 **“(a) The applicant’s name and address;**

17 **“(b) Any assumed business names, trade names or other identities under which the ap-**
18 **plicant performs a debt management service;**

19 **“(c) A general description of the business activities the applicant undertakes or proposes**
20 **to undertake;**

21 **“(d) The names of any members, partners, officers, directors, principals or agents the**
22 **applicant has;**

23 **“(e) The name of the applicant’s registered agent or the applicant’s agent for the purpose**
24 **of receiving service of legal process;**

25 **“(f) A signed statement that identifies and describes in detail any incident in which the**
26 **applicant or a member, partner, officer, director or principal of the applicant within the five**
27 **years before the date on which the applicant applied to register or renew a registration as**
28 **a debt management service provider was subject to:**

29 **“(A) A judgment in favor of another person in a circuit court of this state or in an**
30 **equivalent court in another state;**

31 **“(B) An arbitration award in favor of another person; or**

32 **“(C) An adverse final order from an administrative agency in this state or another state;**

33 **“(g) A copy of the corporate surety bond the applicant filed with the director under ORS**
34 **697.642; and**

35 **“(h) Other information the director may require concerning the financial responsibility,**
36 **training, background, experience and business activities of the applicant or a member, part-**
37 **ner, officer, director or principal of the applicant.**

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

42 **“(3) The director shall specify amounts for the fees described in subsection (2) of this**
43 **section that in the aggregate are sufficient to pay the costs of administering ORS 697.602 to**
44 **697.842. The director shall pay all moneys received under this section as provided in ORS**
45 **697.842.**

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

4 **“(5) The director may refuse to register the applicant or may refuse to renew a regis-**
5 **tration for a debt management service provider for any of the reasons set forth in ORS**
6 **697.752.**

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

8 “697.642. *[(1) A person who applies for registration as a debt consolidating agency shall file with*
9 *the Director of the Department of Consumer and Business Services a bond with one or more corporate*
10 *sureties authorized to do business in this state. The bond:]*

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

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

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

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

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

18 *“[(2) If the debt consolidating agency for which registration is sought is not incorporated under*
19 *subsection (c) of section 501 of the Internal Revenue Code of 1954 (as amended and in effect on April*
20 *1, 1983), the bond required under subsection (1) of this section shall be a surety bond payable to the*
21 *order of the director and be conditioned that the applicant shall pay all amounts, upon order of a court*
22 *or order of the director, resulting from any violation by the debt consolidating agency of its statutory*
23 *duties and obligations to its clients under ORS 697.652 to 697.702.]*

24 *“[(3) If the debt consolidating agency for which registration is sought is incorporated under sub-*
25 *section (c) of section 501 of the Internal Revenue Code of 1954 (as amended and in effect on April 1,*
26 *1983), the bond required under subsection (1) of this section shall be a fidelity bond, and shall be*
27 *payable to the applicant.]*

28 *“[(4) If the director has cause to believe that the proceeds of the fidelity bond required under sub-*
29 *section (3) of this section are not being used to pay damages to a client, then either upon order of a*
30 *court or order of the director upon the holder of the proceeds of the bond, the proceeds shall be paid*
31 *to the director to pay the damages for the purpose of satisfying the requirements of ORS 697.772 to*
32 *697.812.]*

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

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

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

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

43 **“(a) Be in an amount that is:**

44 **“(A) A minimum of \$10,000; or**

45 **“(B) An amount the director specifies by rule based on the total amount of consumer**

1 funds that the debt management service provider holds on an annual basis, if the debt
2 management service provider holds a consumer's funds, directly or indirectly.

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

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

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

7 **“(c) Satisfy the provisions of subsection (2) or (3) of this section.**

8 **“(2) The bond that a debt management service provider that is not a nonprofit entity
9 must file under subsection (1) of this section, in addition to the requirements set forth under
10 subsection (1) of this section, must be:**

11 **“(a) A corporate surety bond or irrevocable letter of credit issued by a financial institu-
12 tion, as defined in ORS 706.008;**

13 **“(b) Payable to the order of the director; and**

14 **“(c) Conditioned so that the corporate surety or the debt management service provider
15 upon the director's order or a court order pays all amounts due for a violation of the debt
16 management service provider's duties and obligations to consumers under ORS 697.652 to
17 697.702.**

18 **“(3) The bond that a debt management service provider that is a nonprofit entity must
19 file under subsection (1) of this section must be a fidelity bond payable to the debt manage-
20 ment service provider. If the director has cause to believe that the debt management service
21 provider is not using the proceeds of the fidelity bond required under subsection (1) of this
22 section to pay damages to a consumer, the director shall:**

23 **“(a) Obtain an order from a court or order the person that holds the proceeds of the bond
24 to pay the proceeds to the director; and**

25 **“(b) Pay the damages to the consumer from the proceeds of the bond.**

26 **“(4) If a surety cancels, revokes or otherwise terminates a bond required under sub-
27 section (1) of this section or if the amount of the bond is reduced to less than the amount
28 required under subsection (1) of this section, the debt management service provider shall
29 immediately:**

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

31 **“(b) Surrender the debt management service provider's registration to the director and
32 cease operating as a debt management service provider or providing debt management ser-
33 vices.**

34 **“(5) A person that has a right of action against a debt management service provider un-
35 der section 20 of this 2009 Act has a right of action against the bond required under sub-
36 section (1) of this section.**

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

38 **“697.652. [(1) A debt consolidating agency improperly makes a contract or an agreement with a
39 client if the debt consolidating agency does not comply with the requirements of subsection (2) or (3)
40 of this section.]**

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

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

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

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

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

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

5 “(f) A provision allowing the client to examine the client’s account in the office of the debt con-
6 solidating agency during office hours.]

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

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

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

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

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

24 **“(a) Lists the name and telephone number for the debt management service provider and
25 the consumer and, to the extent the information is available, the facsimile number, elec-
26 tronic mail address and website address or other Internet uniform resource locator for the
27 debt management service provider.**

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

31 **“(c) States in precise terms how much the consumer can reasonably pay.**

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

36 **“(e) Shows in the form of a schedule the approximate number of installments, the
37 amount of each installment and the ratio or other arrangement that will apply to the con-
38 sumer’s payment or satisfaction of the debts.**

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

40 **“(A) Examine the consumer’s account in the debt management provider’s office during
41 office hours; or**

42 **“(B) Request the debt management provider to deliver to the consumer within two busi-
43 ness days after the request a full and complete written statement of the consumer’s account.**

44 **“(g) Provides that the debt management service provider may cancel the agreement
45 without the consumer’s written authorization if the consumer fails to make scheduled peri-**

1 **odic payments under the terms of the agreement for more than 60 days.**

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

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

7 **“(j) Provides that:**

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

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

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

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

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

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

20 **“(ii) Return to the consumer all of the consumer’s funds that the debt management**
21 **service provider has not expended from among the funds that the debt management service**
22 **provider holds, directly or indirectly, if the consumer cancels the agreement under subpara-**
23 **graph (A)(ii) of this paragraph.**

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

27 **“(2) As soon as is practicable after the consumer and the debt management service pro-**
28 **vider sign and date the agreement described in subsection (1) of this section, the debt man-**
29 **agement service provider shall provide the customer with a legible copy of the signed and**
30 **dated agreement.**

31 **“(3) The debt management service provider shall give the consumer a document separate**
32 **from the agreement described in this section that evaluates whether the debt management**
33 **services the debt management service provider proposes to perform are advantageous to the**
34 **consumer.**

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

38 **“(b) A debt management service provider may not induce or attempt to induce a con-**
39 **sumer to waive a provision of ORS 697.602 to 697.842.**

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

42 **“(d) A circuit court of this state has jurisdiction in equity to restrain and enjoin a vio-**
43 **lation of ORS 697.602 to 697.842.**

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

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

2 “697.662. [(1) A debt consolidating agency commits an improper debt consolidating practice when
3 the debt consolidating agency does any of the following:]

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

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

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

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

13 “[(e) Takes a release from a client of an obligation to be performed on the part of the debt con-
14 solidating agency.]

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

17 “[(g) Commingles a client’s wages, salaries, income, credits or property held by the debt consol-
18 idating agency with the property or funds of the debt consolidating agency.]

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

21 “[(i) Violates ORS 697.707.]

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

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

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

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

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

35 **“(2) Represent that the debt management service provider or the person is authorized
36 or competent to perform a debt management service or to furnish advice concerning tax,
37 accounting, bankruptcy or legal matters unless the debt management service provider or the
38 person is actually authorized under the laws of this state to perform the debt management
39 service or furnish the advice or the debt management service provider or the person per-
40 forms the debt management service or furnishes the advice in compliance with the laws of
41 this state.**

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

45 **“(4) Offer to perform a debt management service without evaluating whether the debt**

1 management service is or would be advantageous to the consumer and giving the consumer
2 the document required under ORS 697.652 (3).

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

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

9 “(7) Accept or receive from a consumer:

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

12 “(b) A wage assignment, a mortgage on real estate, a purchase money security interest
13 or other security, all or any part of which is in an amount larger than permitted under ORS
14 697.692, to secure the debt management service provider’s or person’s fees or charges;

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

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

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

21 “(9) Commingle any of the consumer’s wages, salary, income, credits or other funds or
22 property that the debt management service provider or person holds with the debt manage-
23 ment service provider’s or person’s funds or property.

24 “(10) Cancel an agreement with a consumer without the consumer’s written authori-
25 zation, except as provided in ORS 697.652 (1)(g).

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

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

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

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

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

40 “(d) Misrepresents, directly or indirectly:

41 “(A) The nature of a service the debt management service provider or person will per-
42 form;

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

45 “(C) The debt management service provider’s or person’s ability to improve a consumer’s

1 **credit report or credit rating;**

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

5 **“(E) The debt management service provider’s or person’s qualifications, training or ex-**
6 **perience or the qualifications, training or experience of the debt management service pro-**
7 **vider’s or the person’s employees, agents or affiliates.**

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

9 *“697.672. [(1) A debt consolidating agency improperly maintains records when the debt consolidat-*
10 *ing agency does not comply with the following requirements:]*

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

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

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

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

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

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

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

28 **“(1) A debt management service provider shall make, keep and maintain accounts, cor-**
29 **respondence, memoranda, papers, books and other records that the Director of the Depart-**
30 **ment of Consumer and Business Services by rule determines are necessary to ensure that**
31 **the debt management service provider is complying with the provisions of ORS 697.602 to**
32 **697.842.**

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

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

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

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

45 *“697.682. [(1) A debt consolidating agency improperly handles funds when the debt consolidating*

1 agency does not comply with the following requirements:]

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

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

8 “[c] The debt consolidating agency shall make all disbursements to the client or on behalf of the
9 client, including any fees charged by the debt consolidating agency, from the client’s trust account.]

10 “[d] Upon request of a client, a debt consolidating agency shall provide to the client without
11 charge a statement of the money or property received from or on behalf of the client and the disburse-
12 ments made by the debt consolidating agency under the debt consolidating agreement or contract for
13 the period of time requested.]

14 “[2] A debt consolidating agency that improperly handles funds under this section is subject to
15 ORS 697.752, 697.762, 697.832 and 697.990 (3).]

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

20 **“(2) The debt management service provider may establish a separate trust account for
21 each consumer with whom the debt management service provider does business, or may es-
22 tablish a single trust account in which the debt management service provider keeps all con-
23 sumer funds. If the debt management service provider establishes a single trust account, the
24 debt management service provider shall maintain a separate ledger or other record of re-
25 ceipts and disbursements for each consumer on whose behalf the debt management service
26 provider holds funds in the account. The debt management service provider in the financial
27 statement required under subsection (4) of this section and the agreement described in ORS
28 697.652 shall disclose the amount of interest earned on the consumer’s funds in the separate
29 trust account or the amount attributable to the consumer’s share of the single trust ac-
30 count.**

31 **“(3) The debt management service provider shall deposit into the trust account all wages,
32 salary, income, credits or proceeds from property that the debt management service provider
33 receives from the consumer or the consumer’s property and shall disburse from the trust
34 account all payments the debt management service provider makes on the consumer’s be-
35 half, including payments of the debt management service provider’s fees or charges.**

36 **“(4) The debt management service provider without charge shall provide to the consumer
37 in accordance with the terms of the agreement described in ORS 697.652, or at the consum-
38 er’s request for the period of time the consumer specifies, a statement of the funds or
39 property that the debt management service provider received from or on behalf of the con-
40 sumer and the disbursements that the debt management service provider made from the
41 trust account under the terms of the agreement.**

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

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

45 **“697.692. [(1) A debt consolidating agency:]**

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

2 “(b) May charge for services performed for the client in an amount of not more than 15 percent

3 of the amount actually received by the debt consolidating agency on behalf of a client for payment to

4 creditors. A debt consolidating agency may not receive an amount from the client under this paragraph

5 until the first installment under the contract or agreement with the client is paid to any creditor of the

6 client.]

7 “(c) May not charge a person for any discussion with that person that may or may not result in

8 an agreement for services of a debt consolidating agency.]

9 “(d) Notwithstanding paragraph (c) of this subsection, may charge a fee to cover the expenses for

10 education classes if:]

11 “(A) The classes are approved by the Director of the Department of Consumer and Business Ser-

12 vices, or the classes are required by rule or order of a federal or state agency and the debt consol-

13 idating agency is certified by the federal or state agency to provide the education; and]

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

15 “(2) Notwithstanding subsection (1)(c) of this section, a debt consolidating agency that is a

16 nonprofit organization may charge a fee in an amount set by the director by rule to cover the expenses

17 of credit counseling if:]

18 “(a) The debt consolidating agency demonstrates to the director the need for the fee or the credit

19 counseling is required by rule or order of a federal or state agency and the debt consolidating agency

20 is certified by the federal or state agency to provide the credit counseling; and]

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

22 “(3) A debt consolidating agency that charges a fee not authorized under this section is subject to

23 ORS 697.752, 697.762, 697.832 and 697.990 (3).]

24 “(4) As used in this section, ‘nonprofit organization’ means an organization described in section

25 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the

26 Internal Revenue Code.]

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

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

29 **“(b) A fee reasonably calculated to recover the costs that the debt management service**

30 **provider incurs in providing counseling and education classes. The debt management service**

31 **provider may charge the fee described in this paragraph in advance, but the fee may not**

32 **exceed \$50.**

33 **“(c) A monthly fee equivalent to 15 percent of the funds that the debt management ser-**

34 **vice provider receives from a consumer for payment to the consumer’s creditors. The debt**

35 **management service provider may charge the fee described in this paragraph only if the debt**

36 **management service provider holds a consumer’s funds, directly or indirectly, on the con-**

37 **sumer’s behalf. The fee described in this paragraph may not exceed \$65 per month.**

38 **“(d) A fee equivalent to 15 percent of the amount of debt a consumer owes to one or**

39 **more creditors at the time the consumer signs the agreement described in ORS 697.652 and**

40 **places funds in a bank account that the consumer establishes or maintains in the consumer’s**

41 **own name with an insured institution, as defined in ORS 706.008, and designates specifically**

42 **for making disbursements in connection with a debt management service. The debt man-**

43 **agement service provider may charge the fee described in this paragraph only if the debt**

44 **management service provider does not hold a consumer’s funds directly or indirectly. The**

45 **debt management service provider may not charge the fee described in this paragraph in**

1 amounts or installments that exceed \$65 per month.

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

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

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

13 “(b) A transfer of funds through an electronic terminal, telephonic instrument, computer
14 or magnetic tape that transmits an order, instruction or authorization to a financial insti-
15 tution to debit or credit an account.

16 “SECTION 10. ORS 697.702 is amended to read:

17 “697.702. [(1) A person commits the offense of interfering with records of a debt consolidating
18 agency if the person does either of the following to a record to which ORS 697.672 applies:]

19 “[a) Intentionally makes a false entry in the record.]

20 “[b) Intentionally mutilates, destroys or otherwise disposes of the record.]

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

23 “(1) A person commits the offense of interfering with records of a debt management
24 service provider if, with respect to a record to which ORS 697.672 applies, the person inten-
25 tionally:

26 “(a) Makes a false entry in the record; or

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

28 “(2) Subsection (1)(b) of this section does not apply to a debt management service pro-
29 vider that disposes of a record after the retention period set forth in ORS 697.672 expires.

30 “SECTION 11. ORS 697.707 is amended to read:

31 “697.707. [(1) A debt consolidating agency may not charge or receive from a client a fee authorized
32 under ORS 697.692 for any services provided by the agency to the client before the agency provides the
33 disclosure required under this section.]

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

35 “[a) The maximum amount the debt consolidating agency may charge for services performed for
36 the client; and]

37 “[b) That the client is responsible for payment of the amount charged.]

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

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

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

45 “(a) States the maximum amount the debt management service provider may charge the

1 consumer for all debt management services that the debt management service provider will
2 perform;

3 “(b) States that the consumer is responsible for paying the debt management service
4 provider’s charges;

5 “(c) Describes, accurately and completely, the consumer’s right to review consumer
6 credit information about the consumer that a consumer reporting agency, as defined in 15
7 U.S.C. 1681a, maintains;

8 “(d) States the approximate price that a consumer reporting agency will charge a con-
9 sumer to review the consumer credit information described in paragraph (c) of this sub-
10 section and that the consumer may review the information at no charge if the consumer
11 makes a request to the consumer reporting agency within 30 days after the consumer was
12 denied credit;

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

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

18 “(g) States that the consumer may bring an action against the bond required under ORS
19 697.642 and lists the name and address of the surety that issued the bond.

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

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

25 “(b) That the debt management service provider does not make scheduled periodic pay-
26 ments to creditors;

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

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

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

34 “(f) That the debt management service provider will withdraw fees for debt management
35 services from the account described in paragraph (e) of this subsection only with the con-
36 sumer’s specific authorization and that the debt management service provider does not have
37 custody, control or separate or additional access to the account.

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

41 “SECTION 12. ORS 697.722 is amended to read:

42 “697.722. Funds in a trust account [*maintained by*] **that** a debt [*consolidating agency*] **manage-**
43 **ment service provider maintains** under ORS 697.682 are not subject to execution or attachment
44 on [*any*] a claim against the debt **management service provider** [*consolidating agency*].

45 “SECTION 13. ORS 697.732 is amended to read:

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

3 “[*(a) Upon the director’s own motion or upon receipt of a complaint by a client of a debt consol-*
4 *idating agency or of a person acting as a debt consolidating agency without registration, audit the trust*
5 *accounts of the agency or person for the purpose of investigating any violation of ORS 697.642 to*
6 *697.702. The debt consolidating agency or person acting as a debt consolidating agency without regis-*
7 *tration shall pay the reasonable cost of the audit, as determined by the director.*.]

8 “[*(b) Undertake investigations, including investigations outside of this state, that the director con-*
9 *siders necessary to:*]

10 “[*(A) Determine whether a person has violated, is violating or is about to violate ORS 697.612 or*
11 *697.642 to 697.702 or any rule of the director adopted under ORS 697.632; or]*

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

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

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

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

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

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

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

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

30 “[**(a) Examine a debt management service provider or a person required to obtain a reg-**
31 **istration as a debt management service provider under ORS 697.612 and the debt manage-**
32 **ment service provider’s or the person’s accounts for the purpose of investigating a violation**
33 **of ORS 697.642 to 697.702.**]

34 “[**(b) Undertake an investigation, including an investigation outside this state, that the**
35 **director considers necessary to:**]

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

40 “[**(B) Aid in enforcing the provisions of ORS 697.612 and 697.642 to 697.702 and in formu-**
41 **lating rules for adoption under ORS 697.632.**]

42 “[**(c) Require a debt management service provider or a person required to obtain a regis-**
43 **tration as a debt management service provider under ORS 697.612 to file a written statement,**
44 **under oath or otherwise, that addresses a matter the director is investigating.**]

45 “[**(d) Administer oaths and affirmations, subpoena witnesses, compel the witnesses to at-**]

1 tend, take evidence and require a person that the director is investigating to produce books,
2 papers, correspondence, memoranda, agreements or other documents or records that the
3 director deems relevant or material to the investigation. A witness who appears before the
4 director under a subpoena shall receive the fees and mileage described in ORS 44.415 (2).

5 “(e) Charge and require a debt management service provider or a person required to ob-
6 tain a registration as a debt management service provider under ORS 697.612 to pay for the
7 reasonable cost of an examination or investigation conducted under this section in an
8 amount the director specifies.

9 “(2) If a person does not comply with a subpoena that the director issues under this
10 section, a circuit court in this state upon the director’s application shall begin contempt
11 proceedings to compel compliance in the same manner in which the court would compel
12 compliance with a subpoena in a civil action.

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

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

20 “(A) Suspended, revoked or refused to renew a person’s registration as a debt manage-
21 ment service provider; or

22 “(B) Imposed a civil penalty under ORS 697.832.

23 “(b) The record that the director maintains of the director’s order shall show:

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

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

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

27 “(c) The director shall maintain as a public record any notice or other information that
28 indicates that a collection on a deposit or on the bond required under ORS 697.642 has oc-
29 curred.

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

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

34 “697.752. [(1) *The Director of the Department of Consumer and Business Services may refuse to*
35 *issue or renew or may revoke or suspend the registration of a debt consolidating agency if the director*
36 *determines any of the following facts:]*

37 “[*(a) The debt consolidating agency has filed false or untruthful information with the director un-*
38 *der ORS 697.632.]*

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

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

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

44 “[*(e) There has been any lapse in or any reduction of the amount of any bond filed under ORS*
45 *697.642.]*

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

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

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

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

11 **“(2) Engaged in dishonest, fraudulent or illegal practices or conduct in a business or
12 profession, or unfair or unethical practices or conduct in connection with a debt manage-
13 ment service;**

14 **“(3) Filed false or untruthful information with the director under ORS 697.632;**

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

17 **“(5) Filed an application for registration that on the date the director issued a registra-
18 tion or on the date the director denied, suspended, conditioned or revoked a registration was
19 incomplete in a material respect or contained a statement that was false or misleading with
20 respect to a material fact in light of the circumstances in which the applicant or debt man-
21 agement service provider made the statement;**

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

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

26 **“(8) Is subject to a director’s order that denied, suspended, conditioned or revoked a
27 registration as a debt management service provider, or a license or registration that the di-
28 rector issued under another provision of law;**

29 **“(9) Is subject to a cease and desist order that the director entered within the previous
30 five years after giving the applicant or debt management service provider notice and an op-
31 portunity for a hearing;**

32 **“(10) Demonstrated negligence or incompetence in performing a debt management ser-
33 vice or an act, the performance of which requires the applicant or debt management service
34 provider to obtain a registration or license;**

35 **“(11) Failed to supervise diligently and control an employee’s or agent’s actions related
36 to a debt management service that the applicant or debt management service provider per-
37 formed;**

38 **“(12) Was convicted of a felony or of a misdemeanor for which an essential element is
39 fraud, either as an individual that is subject to the requirement to register as a debt man-
40 agement service provider or as a member, partner, officer, director or principal of an appli-
41 cant or debt management service provider;**

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

44 **“(14) Knowingly made a false entry in a consumer’s record; or**

45 **“(15) Knowingly mutilated, destroyed or otherwise disposed of a consumer’s record unless**

1 **the record concerns a consumer that no longer receives a debt management service from the**
2 **applicant or debt management service provider or the record is not subject to the retention**
3 **requirement set forth in ORS 697.672.**

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

5 “697.762. (1) If the Director of the Department of Consumer and Business Services determines
6 that *[any]* a person has engaged in, is engaging in or is about to engage in *[any]* an act or practice
7 that the director believes is in violation of ORS 697.612, *[or]* 697.642 to 697.702 **or 697.752, in ad-**
8 **dition to actions the director may take under ORS 697.752** the director may bring suit in the
9 name of the State of Oregon in *[any]* a circuit court of this state to enjoin the *[acts or practices]*
10 **act or practice.** Upon a proper showing, the court shall grant a permanent or temporary injunction
11 or restraining order and may appoint a receiver or conservator for the defendant or the defendant’s
12 assets. The court may not require the director to post a bond. The court may award reasonable at-
13 torney fees to the director if the director prevails in an action under this section. The court may
14 award reasonable attorney fees to a defendant *[who]* **if the defendant** prevails in an action under
15 this section **and** *[if]* the court determines that the director *[had no]* **did not have an** objectively
16 reasonable basis for asserting the claim or *[no]* a reasonable basis for appealing an adverse decision
17 of the trial court.

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

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

25 “697.822. The remedy provided for in *[ORS 697.782]* **section 20 of this 2009 Act:**

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

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

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

31 “697.825. (1) The Director of the Department of Consumer and Business Services may, if the di-
32 rector has reason to believe that a person *[has]*:

33 “(a) Violated, is violating or is about to violate ORS 697.612 or 697.642 to 697.702, a rule adopted
34 under ORS 697.632 or an order issued under ORS 697.732 or *[697.742]* **697.652,** issue an order to
35 cease and desist from the violation.

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

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

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

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

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

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

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

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

5 “(3) The authority conferred by this section is in addition to and not in lieu of any other au-
6 thority conferred on the director.

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

8 “697.832. (1) In addition to any other liability or penalty provided by law, the Director of the
9 Department of Consumer and Business Services may impose a civil penalty on a person in an amount
10 not to exceed [*\$1,000*] **\$5,000** for each violation of ORS 697.612 or 697.642 to 697.702, rules adopted
11 under ORS 697.632 or order issued under ORS 697.825.

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

14 “(3) Notwithstanding ORS 183.745, the person to whom the notice is addressed [*shall have*] **has**
15 10 days from the date **on which** [*of mailing of*] the notice **was mailed** in which to apply for a
16 hearing before the director.

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

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

22 “**SECTION 19.** Sections 20 and 21 of this 2009 Act are added to and made a part of ORS
23 **697.602 to 697.842.**

24 “**SECTION 20.** (1) A debt management service provider or a person required to obtain a
25 registration as a debt management service provider under ORS 697.612 is liable to a con-
26 sumer who suffers an ascertainable loss of money or property, real or personal, in con-
27 nection with the debt management service provider’s or person’s violation of a provision of
28 ORS 697.652, 697.662, 697.682, 697.692 or 697.707.

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

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

41 “(4)(a) Except as provided in paragraph (b) of this subsection, a court may award rea-
42 sonable attorney fees to a plaintiff that prevails in an action brought under this section.

43 “(b) A court may not award attorney fees to a debt management service provider that
44 prevails in an action that a consumer brings under this section in connection with a contract
45 for a debt management service, unless the court finds that the consumer brought the action

1 **in bad faith or solely for the purposes of harassment.**

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

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

6 “192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

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

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

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

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

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

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

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

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

34 “(5) Information or records of the Department of Corrections, including the State Board of
35 Parole and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabili-
36 tation of a person in custody of the department or substantially prejudice or prevent the carrying
37 out of the functions of the department, if the public interest in confidentiality clearly outweighs the
38 public interest in disclosure.

39 “(6) Records, reports and other information received or compiled by the Director of the De-
40 partment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not
41 otherwise required by law to be made public, to the extent that the interests of lending institutions,
42 their officers, employees and customers in preserving the confidentiality of such information out-
43 weighs the public interest in disclosure.

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

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

1 regulations.

2 “(9)(a) Public records or information the disclosure of which is prohibited or restricted or oth-
3 erwise made confidential or privileged under Oregon law.

4 “(b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual informa-
5 tion compiled in a public record when:

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

7 “(B) The factual information is not prohibited from disclosure under any applicable state or
8 federal law, regulation or court order and is not otherwise exempt from disclosure under ORS
9 192.410 to 192.505;

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

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

16 “(E) The holder of the privilege under ORS 40.225 has made or authorized a public statement
17 characterizing or partially disclosing the factual information compiled by or at the attorney’s di-
18 rection.

19 “(10) Public records or information described in this section, furnished by the public body ori-
20 ginally compiling, preparing or receiving them to any other public officer or public body in con-
21 nection with performance of the duties of the recipient, if the considerations originally giving rise
22 to the confidential or exempt nature of the public records or information remain applicable.

23 “(11) Records of the Energy Facility Siting Council concerning the review or approval of secu-
24 rity programs pursuant to ORS 469.530.

25 “(12) Employee and retiree address, telephone number and other nonfinancial membership re-
26 cords and employee financial records maintained by the Public Employees Retirement System pur-
27 suant to ORS chapters 238 and 238A.

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

32 “(a) The exemption does not apply to:

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

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

37 “(b) An investment in a publicly traded investment is no longer active when acquisition, ex-
38 change or liquidation of the investment has been concluded.

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

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

1 “(B) Financial statements of an investment fund, an asset ownership or their respective invest-
2 ment vehicles.

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

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

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

9 “(F) Investment agreements and related documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

40 “(a) Personal financial statements.

41 “(b) Financial statements of applicants.

42 “(c) Customer lists.

43 “(d) Information of an applicant pertaining to litigation to which the applicant is a party if the
44 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such
45 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been

1 concluded, and nothing in this paragraph shall limit any right or opportunity granted by discovery
2 or deposition statutes to a party to litigation or potential litigation.

3 “(e) Production, sales and cost data.

4 “(f) Marketing strategy information that relates to applicant’s plan to address specific markets
5 and applicant’s strategy regarding specific competitors.

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

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

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

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

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

22 “(20) Workers’ compensation claim records of the Department of Consumer and Business Ser-
23 vices, except in accordance with rules adopted by the Director of the Department of Consumer and
24 Business Services, in any of the following circumstances:

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

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

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

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

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

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

36 “(23) The records of a library, including:

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

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

40 “(c) The electronic mail address of a patron.

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

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

45 “(b) Credit reports.

- 1 “(c) Project appraisals.
- 2 “(d) Market studies and analyses.
- 3 “(e) Articles of incorporation, partnership agreements and operating agreements.
- 4 “(f) Commitment letters.
- 5 “(g) Project pro forma statements.
- 6 “(h) Project cost certifications and cost data.
- 7 “(i) Audits.
- 8 “(j) Project tenant correspondence.
- 9 “(k) Personal information about a tenant.
- 10 “(L) Housing assistance payments.
- 11 “(25) Raster geographic information system (GIS) digital databases, provided by private
12 forestland owners or their representatives, voluntarily and in confidence to the State Forestry De-
13 partment, that is not otherwise required by law to be submitted.
- 14 “(26) Sensitive business, commercial or financial information furnished to or developed by a
15 public body engaged in the business of providing electricity or electricity services, if the information
16 is directly related to a transaction described in ORS 261.348, or if the information is directly related
17 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and
18 disclosure of the information would cause a competitive disadvantage for the public body or its re-
19 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-
20 velopment or review of generally applicable rate schedules.
- 21 “(27) Sensitive business, commercial or financial information furnished to or developed by the
22 City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath
23 Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085
24 and disclosure of the information would cause a competitive disadvantage for the Klamath
25 Cogeneration Project. This subsection does not apply to cost-of-service studies used in the develop-
26 ment or review of generally applicable rate schedules.
- 27 “(28) Personally identifiable information about customers of a municipal electric utility or a
28 people’s utility district or the names, dates of birth, driver license numbers, telephone numbers,
29 electronic mail addresses or Social Security numbers of customers who receive water, sewer or
30 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-
31 lease personally identifiable information about a customer, and a public body providing water, sewer
32 or storm drain services may release the name, date of birth, driver license number, telephone num-
33 ber, electronic mail address or Social Security number of a customer, if the customer consents in
34 writing or electronically, if the disclosure is necessary for the utility, district or other public body
35 to render services to the customer, if the disclosure is required pursuant to a court order or if the
36 disclosure is otherwise required by federal or state law. The utility, district or other public body
37 may charge as appropriate for the costs of providing such information. The utility, district or other
38 public body may make customer records available to third party credit agencies on a regular basis
39 in connection with the establishment and management of customer accounts or in the event such
40 accounts are delinquent.
- 41 “(29) A record of the street and number of an employee’s address submitted to a special district
42 to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.
- 43 “(30) Sensitive business records, capital development plans or financial or commercial informa-
44 tion of Oregon Corrections Enterprises that is not customarily provided to business competitors.
- 45 “(31) Documents, materials or other information submitted to the Director of the Department

1 of Consumer and Business Services in confidence by a state, federal, foreign or international regu-
2 latory or law enforcement agency or by the National Association of Insurance Commissioners, its
3 affiliates or subsidiaries under ORS [646A.250 to 646A.270,] 697.005 to 697.095, 697.602 to 697.842,
4 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 722, 723, 725 or 726, the Bank Act
5 or the Insurance Code when:

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

9 “(b) The director has obligated the Department of Consumer and Business Services not to dis-
10 close the document, material or other information.

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

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

13 “(a) Generation, storage or conveyance of:

14 “(A) Electricity;

15 “(B) Gas in liquefied or gaseous form;

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

17 “(D) Petroleum products;

18 “(E) Sewage; or

19 “(F) Water.

20 “(b) Telecommunication systems, including cellular, wireless or radio systems.

21 “(c) Data transmissions by whatever means provided.

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

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

26 “646.608. (1) A person engages in an unlawful practice when in the course of the person’s busi-
27 ness, vocation or occupation the person does any of the following:

28 “(a) Passes off real estate, goods or services as those of another.

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

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

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

35 “(e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
36 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
37 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

38 “(f) Represents that real estate or goods are original or new if they are deteriorated, altered,
39 reconditioned, reclaimed, used or secondhand.

40 “(g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
41 or that real estate or goods are of a particular style or model, if they are of another.

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

44 “(i) Advertises real estate, goods or services with intent not to provide them as advertised, or
45 with intent not to supply reasonably expectable public demand, unless the advertisement discloses

1 a limitation of quantity.

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

4 “(k) Makes false or misleading representations concerning credit availability or the nature of
5 the transaction or obligation incurred.

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

9 “(m) Performs service on or dismantles any goods or real estate when not authorized by the
10 owner or apparent owner thereof.

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

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

19 “(p) Makes any false or misleading statement about a prize, contest or promotion used to pub-
20 licize a product, business or service.

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

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

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

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

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

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

31 “(w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

1 “(bb) Violates ORS 646A.070 (1).
2 “(cc) Violates any requirement of ORS 646A.030 to 646A.040.
3 “(dd) Violates the provisions of ORS 128.801 to 128.898.
4 “(ee) Violates ORS 646.883 or 646.885.
5 “(ff) Violates any provision of ORS 646A.020.
6 “(gg) Violates ORS 646.569.
7 “(hh) Violates the provisions of ORS 646A.142.
8 “(ii) Violates ORS 646A.360.
9 “(jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
10 “(kk) Violates ORS 646.563.
11 “(LL) Violates ORS 759.690 or any rule adopted pursuant thereto.
12 “(mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
13 thereto.
14 “(nn) Violates ORS 646A.210 or 646A.214.
15 “(oo) Violates any provision of ORS 646A.124 to 646A.134.
16 “[*pp*] *Violates ORS 646A.254.*
17 “[*qq*] (**pp**) Violates ORS 646A.095.
18 “[*rr*] (**qq**) Violates ORS 822.046.
19 “[*ss*] (**rr**) Violates ORS 128.001.
20 “[*tt*] (**ss**) Violates ORS 646.649 (2) to (4).
21 “[*uu*] (**tt**) Violates ORS 646A.090 (2) to (4).
22 “[*vv*] (**uu**) Violates ORS 87.686.
23 “[*ww*] (**vv**) Violates ORS 646.651.
24 “[*xx*] (**ww**) Violates ORS 646A.362.
25 “[*yy*] (**xx**) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
26 “[*zz*] (**yy**) Violates ORS 180.440 (1).
27 “[*aaa*] (**zz**) Commits the offense of acting as a vehicle dealer without a certificate under ORS
28 822.005.
29 “[*bbb*] (**aaa**) Violates ORS 87.007 (2) or (3).
30 “[*ccc*] (**bbb**) Violates ORS 92.405 (1), (2) or (3).
31 “[*ddd*] (**ccc**) Engages in an unlawful practice under ORS 646.648.
32 “[*eee*] (**ddd**) Violates ORS 646A.365.
33 “[*fff*] (**eee**) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
34 “[*ggg*] (**fff**) Sells a gift card in violation of ORS 646A.276.
35 “[*hhh*] (**ggg**) Violates ORS 646A.102, 646A.106 or 646A.108.
36 “[*iii*] (**hhh**) Violates ORS 646A.430 to 646A.450.
37 “[*jjj*] (**iii**) Violates a provision of sections 2 to 6, chapter 19, Oregon Laws 2008.
38 “[*kkk*] (**jjj**) Violates section 2, chapter 31, Oregon Laws 2008, 30 or more days after a recall
39 notice, warning or declaration described in section 2, chapter 31, Oregon Laws 2008, is issued for
40 the children’s product, as defined in section 1, chapter 31, Oregon Laws 2008, that is the subject of
41 the violation.
42 “(**kkk**) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or
43 697.707.
44 “(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifes-
45 tation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

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

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

6 “(5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is
7 brought under subsection [(1)(zz)] (1)(yy) of this section by a person other than a prosecuting at-
8 torney, relief is limited to an injunction and the prevailing party may be awarded reasonable attor-
9 ney fees.

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

11 “646A.628. Notwithstanding ORS 705.145 (2), (3) and (5), the Director of the Department of
12 Consumer and Business Services can allocate as deemed appropriate the moneys derived pursuant
13 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
14 717.200 to 717.320 and 731.804 and ORS chapters 59, 645, 706 to 716, 722, 723, 725 and 726 to im-
15 plement ORS 646A.600 to 646A.628.

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

17 “705.137. (1) Except as provided in subsection (3) of this section, [any] a document, material or
18 other information that is in the possession or control of the Department of Consumer and Business
19 Services for the purpose of administering ORS [646A.250 to 646A.270,] 697.005 to 697.095, 697.602 to
20 697.842, 717.200 to 717.320, 717.900 and 717.905, ORS chapters 59, 722, 723, 725 and 726, the Bank
21 Act and the Insurance Code and that is described in statute as confidential or as not subject to
22 disclosure is not subject to disclosure under ORS 192.410 to 192.505, is not subject to subpoena and
23 is not subject to discovery or admissible in evidence in [any] a private civil action. The Director
24 of the Department of Consumer and Business Services may use [such] a confidential [documents,
25 materials] **document, material** or other information in administering ORS [646A.250 to 646A.270,]
26 697.005 to 697.095, 697.602 to 697.842, 717.200 to 717.320, 717.900 and 717.905, ORS chapters 59, 722,
27 723, 725 and 726, the Bank Act and the Insurance Code and in [the furtherance of any other] **fur-**
28 **thering** a regulatory or legal action brought as a part of the director’s duties.

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

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

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

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

1 mation.

2 “(c) *[May receive documents, materials and]* **Receive a document, material or** other informa-
3 tion, including **an** otherwise confidential *[documents, materials and]* **document, material or** other
4 information, from state, federal, foreign and international regulatory and law enforcement agencies
5 and from the National Association of Insurance Commissioners and *[its]* affiliates or subsidiaries **of**
6 **the National Association of Insurance Commissioners. As provided in this section,** the direc-
7 tor shall maintain *[as confidential as provided in this section any such document, material]* **the**
8 **confidentiality of documents, materials** or other information received upon notice or with an
9 understanding that *[it is]* **the document, material or other information** is confidential or privi-
10 leged under the laws of the jurisdiction that is the source of the document, material or other infor-
11 mation.

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

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

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

24 “646A.110. (1) ORS 646.608 *[(1)(fff)]* (1)(**eee**), 646A.100 to 646A.110 and 646A.112 apply only to
25 persons who engage in the retail sale of merchandise in the regular course of their business.

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

28 “**SECTION 27.** ORS 646A.250, 646A.252, 646A.254, 646A.256, 646A.258, 646A.260, 646A.262,
29 646A.264, 646A.266, 646A.268, 646A.270, 697.622, 697.712, 697.742, 697.772, 697.782, 697.792, 697.802
30 and 697.812 are repealed.

31 “**SECTION 28.** (1) Sections 20 and 21 of this 2009 Act, the amendments to ORS 192.502,
32 646.608, 646A.110, 646A.628, 697.602, 697.612, 697.632, 697.642, 697.652, 697.662, 697.672, 697.682,
33 697.692, 697.702, 697.707, 697.722, 697.732, 697.752, 697.762, 697.822, 697.825, 697.832 and 705.137
34 by sections 1 to 18 and 22 to 26 of this 2009 Act and the repeal of ORS 646A.250, 646A.252,
35 646A.254, 646A.256, 646A.258, 646A.260, 646A.262, 646A.264, 646A.266, 646A.268, 646A.270,
36 697.622, 697.712, 697.742, 697.772, 697.782, 697.792, 697.802 and 697.812 by section 27 of this 2009
37 Act become operative on January 1, 2010.

38 “(2) The Director of the Department of Consumer and Business Services may take any
39 action before January 1, 2010, that is necessary to enable the director to exercise, on and
40 after January 1, 2010, all the duties, functions and powers conferred on the director by
41 sections 20 and 21 of this 2009 Act and the amendments to ORS 192.502, 646.608, 646A.110,
42 646A.628, 697.602, 697.612, 697.632, 697.642, 697.652, 697.662, 697.672, 697.682, 697.692, 697.702,
43 697.707, 697.722, 697.732, 697.752, 697.762, 697.822, 697.825, 697.832 and 705.137 by sections 1 to
44 18 and 22 to 26 of this 2009 Act.

45 “**SECTION 29.** This 2009 Act being necessary for the immediate preservation of the public

1 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
2 **on its passage.”**

3
