

House Bill 2191

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

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes Director of Department of Consumer and Business Services to register persons that provide debt management services. Requires person to register as debt management services organization in order to provide debt management services, unless exempt. Specifies information director may require for registration. Authorizes director to require registrants or applicants for registration to file and maintain corporate surety bond or irrevocable letter of credit.

Specifies contents of contracts for debt management services between registrants and consumers. Prohibits registrants from taking certain actions. Requires registrant to provide report to consumer for whom registrant holds funds in trust account.

Authorizes director to investigate violations of Act and impose civil penalty in amount not to exceed \$2,500 for violation of Act. Permits person aggrieved by registrant to maintain action against registrant's corporate surety bond or irrevocable letter of credit.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to debt management services; creating new provisions; amending ORS 192.501, 192.502,
3 646.608, 646A.628, 697.005, 697.990, 697.992 and 705.137; repealing ORS 646A.250, 646A.252,
4 646A.254, 646A.256, 646A.258, 646A.260, 646A.262, 646A.264, 646A.266, 646A.268, 646A.270,
5 697.602, 697.612, 697.622, 697.632, 697.642, 697.652, 697.662, 697.672, 697.682, 697.692, 697.702,
6 697.707, 697.712, 697.722, 697.732, 697.742, 697.752, 697.762, 697.772, 697.782, 697.792, 697.802,
7 697.812, 697.822, 697.825, 697.832 and 697.842; and declaring an emergency.

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

9 **SECTION 1. As used in sections 1 to 12 of this 2009 Act:**

10 (1) **"Affiliate" means a person that directly or indirectly, through one or more interme-**
11 **diaries, controls, is controlled by or is under common control with a registrant.**

12 (2) **"Applicant" means a person that applies to register or to renew a registration under**
13 **section 3 of this 2009 Act.**

14 (3) **"Consumer" means an individual who is a resident of this state.**

15 (4) **"Debt management service organization" means a person that sells, provides or per-**
16 **forms, or represents that the person can or will sell, provide or perform, debt management**
17 **services to a consumer in return for money or other valuable consideration.**

18 (5) **"Debt management services" means:**

19 (a) **Receiving or offering to receive funds from a consumer for the purpose of distributing**
20 **the funds among the consumer's creditors in full or partial payment of the consumer's debts;**

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

23 (c) **Negotiating or offering to negotiate with a consumer's creditor to settle or eliminate**
24 **the consumer's debt;**

25 (d) **Providing a briefing, as described in 11 U.S.C. 109(h), or an instructional course, as**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 described in 11 U.S.C. 111, to a debtor, as defined in 11 U.S.C. 109; or

2 (e) Providing advice, assistance, instruction or instructional materials to a consumer as
3 part of an effort to:

4 (A) Distribute funds among a consumer's creditors in full or partial payment of the
5 consumer's debts;

6 (B) Improve a consumer's credit record, credit history or credit rating; or

7 (C) Negotiate, settle or eliminate a consumer's debt.

8 (6) "Person" means an individual, corporation, partnership, association, limited liability
9 company, limited liability partnership, public body or other entity, however organized and
10 whether organized for profit or not for profit.

11 (7) "Registrant" means a debt management service organization registered under section
12 3 of this 2009 Act.

13 (8) "Trust account" means:

14 (a) An account a registrant or an applicant establishes with an insured institution, as
15 defined in ORS 706.008, in order to hold funds a consumer pays to the registrant or applicant
16 for disbursement on the consumer's behalf among the consumer's creditors;

17 (b) An account the registrant or applicant designates as a trust account; or

18 (c) An account, the funds of which the registrant or applicant indicates are:

19 (A) Not the registrant's or applicant's funds or the funds of the registrant's or appli-
20 cant's owners, officers or employees; and

21 (B) Unavailable to the registrant's or applicant's creditors.

22 **SECTION 2.** (1) A person may not engage in or offer to engage in, represent to the public
23 in any manner that the person is engaged in or charge fees related to debt management
24 services unless the person is registered as a debt management service organization under
25 section 3 of this 2009 Act.

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

27 (a) An attorney licensed or authorized to practice law in this state, if the attorney pro-
28 vides debt management services only incidentally in the practice of law;

29 (b) A financial institution or a trust company, as defined in ORS 706.008;

30 (c) An escrow agent licensed under ORS 696.505 to 696.590;

31 (d) A public officer;

32 (e) A person obeying or acting in accordance with a court order;

33 (f) A registrant's employees, while performing services for the registrant;

34 (g) The employees of a person exempted under this subsection from the requirement to
35 register, while performing services for the person;

36 (h) A certified public accountant or public accountant licensed or otherwise authorized
37 to practice accountancy in this state, if the certified public accountant or public accountant
38 provides debt management services only incidentally in the practice of accountancy; or

39 (i) A person or individual the Director of the Department of Consumer and Business
40 Services exempts from the requirement to register.

41 **SECTION 3.** (1) The Director of the Department of Consumer and Business Services shall
42 maintain a registry of debt management service organizations. The director shall require a
43 person that provides debt management services, unless the person is exempted under section
44 2 (2) of this 2009 Act, to apply to the director for registration as a debt management service
45 organization. In the application for registration, the person shall provide the following in-

1 **formation:**

2 (a) **The person's name and address;**

3 (b) **The name and address of the business the person owns or operates for the purpose**
4 **of providing debt management services;**

5 (c) **The assumed business name, if any, the person uses while providing debt management**
6 **services;**

7 (d) **A description of the activities the person conducts or plans to conduct;**

8 (e) **The name and address of the person's agent or affiliate or another person that con-**
9 **tracts with the person to provide debt management services to a consumer;**

10 (f) **The name and address of the person's registered agent or another person designated**
11 **to receive service of process on the person's behalf; and**

12 (g) **Other information the director may require to administer sections 1 to 12 of this 2009**
13 **Act.**

14 (2)(a) **The director may require an applicant or registrant to file a corporate surety bond**
15 **or an irrevocable letter of credit provided by one or more corporate sureties or financial in-**
16 **stitutions that are authorized to do business in this state. The amount of the corporate**
17 **surety bond or irrevocable letter of credit required under this section may not exceed**
18 **\$75,000. The director may set the amount of the corporate surety bond or irrevocable letter**
19 **of credit based on:**

20 (A) **The amount of consumer funds the applicant or registrant receives and distributes**
21 **in a particular period of time;**

22 (B) **The degree to which the applicant or registrant has access to consumer funds;**

23 (C) **The number of places of business the applicant or registrant owns or operates; or**

24 (D) **Other considerations of a similar nature.**

25 (b) **The corporate surety bond or irrevocable letter of credit must:**

26 (A) **Run to the benefit of the State of Oregon;**

27 (B) **Name the applicant or registrant as obligor; and**

28 (C) **Be conditioned such that:**

29 (i) **The applicant or registrant pledges faithfully to conform with and obey the provisions**
30 **of sections 1 to 12 of this 2009 Act and all rules or orders the director adopts or issues; and**

31 (ii) **The corporate surety bond or letter of credit is subject to an action brought by the**
32 **State of Oregon for, or by a person injured because of, the applicant's or registrant's vio-**
33 **lation of a provision of sections 1 to 12 of this 2009 Act or of a rule or order the director**
34 **adopted or issued.**

35 (c) **The registrant or applicant shall maintain the corporate surety bond or irrevocable**
36 **letter of credit continuously in the amount the director requires under this subsection.**

37 (3) **The director by rule may:**

38 (a) **Require an applicant or registrant to pay a fee with an application for registration**
39 **or an application to renew a registration or any filing submitted to the director. The director**
40 **shall ensure that the aggregate of the fees collected under this section is not more than is**
41 **necessary to pay the costs incurred in administering and enforcing sections 1 to 12 of this**
42 **2009 Act, plus a reasonable amount held as a reserve. Fees collected under this section shall**
43 **be paid into the State Treasury and credited to the Consumer and Business Services Fund**
44 **in accordance with ORS 705.145.**

45 (b) **Require a registrant to file an annual report, submit information necessary to update**

1 or keep current the director's records in the registry established under subsection (1) of this
2 section or periodically renew a registration.

3 (c) Specify how an applicant or registrant may establish or use a trust account.

4 (d) Limit how much or specify when a registrant may charge a consumer for debt man-
5 agement services.

6 (e) Establish classifications for registrants.

7 (f) Issue a certificate or other indicia of registration that describes the activities a reg-
8 istrant may perform.

9 (g) Specify which books and records a registrant must keep and how long the registrant
10 must keep the books and records.

11 (4) The director shall ensure that the information recorded in the director's registry
12 under this section is current.

13 **SECTION 4.** The Director of the Department of Consumer and Business Services by order
14 may deny an application for registration or an application to renew a registration made un-
15 der section 3 of this 2009 Act or may suspend or revoke a registration issued under section
16 3 of this 2009 Act if the director finds any of the following:

17 (1) The applicant or registrant is insolvent, in that the applicant or registrant:

18 (a) Has liabilities that exceed the applicant's or registrant's assets; or

19 (b) Has filed for reorganization under the protection of federal bankruptcy law.

20 (2) The character, reputation, experience, financial responsibility or general fitness of the
21 applicant or registrant, or of a member, senior officer, director, trustee or principal of the
22 applicant or registrant, does not warrant the director's belief that the applicant or registrant
23 would conduct business fairly, efficiently, in the public interest or in accordance with law.

24 (3) The applicant or registrant made a false or misleading statement on an application
25 submitted under section 3 of this 2009 Act or in information submitted to the director.

26 (4) The applicant or registrant knowingly or repeatedly violated a material provision of
27 sections 1 to 12 of this 2009 Act or a rule or order the director adopted or issued.

28 (5) The applicant or registrant failed to pay a fee required under sections 1 to 12 of this
29 2009 Act.

30 (6) The applicant or registrant commingled a consumer's funds with the applicant's or
31 registrant's funds.

32 (7) The applicant or registrant failed to account to the consumer for funds the consumer
33 entrusted to the applicant or registrant.

34 (8) The applicant or registrant charged a consumer a fee that exceeded limits set by the
35 director.

36 (9) The applicant or registrant failed to file or keep in effect the corporate surety bond
37 or irrevocable letter of credit required by the director or failed to maintain the prescribed
38 amount of the corporate surety bond or letter of credit.

39 **SECTION 5.** The Director of the Department of Consumer and Business Services may:

40 (1) Conduct investigations within or outside this state that the director considers neces-
41 sary to:

42 (a) Determine whether to grant or deny an application for registration or an application
43 to renew a registration submitted under section 3 of this 2009 Act;

44 (b) Determine whether to suspend or revoke a registration issued under section 3 of this
45 2009 Act;

1 (c) Determine whether a person has violated, is violating or is about to violate a provision
2 of sections 1 to 12 of this 2009 Act or a rule or order the director adopted or issued; or

3 (d) Develop information needed to enforce a provision of or adopt a rule or issue an order
4 concerning sections 1 to 12 of this 2009 Act.

5 (2) Charge the person the director investigates under this section for the reasonable
6 costs of the investigation, including actual expenses for travel and lodging and a per diem,
7 and bring an action in a court with appropriate jurisdiction to recover the costs charged.

8 (3) Require a person to file a statement in writing, under oath or otherwise, concerning
9 a matter under investigation.

10 (4) Compel the attendance of witnesses.

11 (5) Compel the production of evidence by:

12 (a) Taking testimony from witnesses; and

13 (b) Requiring the production of books, papers, correspondence, memoranda, agreements
14 or other documents or records the director considers relevant or material to a proceeding
15 or a matter under investigation.

16 (5) Issue an order to cease and desist from violating a provision of sections 1 to 12 of this
17 2009 Act or a rule or order the director has adopted or issued.

18 (6) Exchange information with an agency of the United States or another state that
19 regulates the applicant or registrant or that administers laws, rules or programs related to
20 debt management services.

21 **SECTION 6.** (1) The Director of the Department of Consumer and Business Services shall
22 serve an order the director issues under section 5 of this 2009 Act on the person named in
23 the order.

24 (2) An order issued under section 5 of this 2009 Act becomes effective upon service of the
25 order on the person named in the order.

26 (3) ORS 183.413 to 183.470 apply to an order the director issues under section 5 of this
27 2009 Act.

28 (4) Notwithstanding subsection (3) of this section, a person may not obtain a hearing on
29 an order issued under section 5 of this 2009 Act unless the person requests the hearing in
30 writing within 20 days of service of the order.

31 (5) A person that does not request a hearing under ORS 183.413 to 183.470 may not obtain
32 judicial review of an order issued under section 5 of this 2009 Act.

33 (6) The director may vacate or modify an order the director issues under section 5 of this
34 2009 Act. A modified order is effective upon service of the order on the person named in the
35 order.

36 **SECTION 7.** (1) A registrant may not perform debt management services for a consumer
37 unless the registrant and the consumer have first signed a written contract, the subject
38 matter of which is the debt management services the registrant will provide for the con-
39 sumer. The registrant shall give a copy of the signed contract to the consumer and shall
40 retain a copy of the signed contract.

41 (2) The contract between the registrant and the consumer must:

42 (a) Display the consumer's signature and the date on which the parties executed the
43 contract;

44 (b) Identify the registrant and the consumer by name and address;

45 (c) Describe the debt management services the registrant will provide to the consumer

1 fully and in detail;

2 (d) Estimate the date by which the registrant will provide the debt management services
3 or the length of time the registrant will take to provide the debt management services;

4 (e) Describe fully the fees the registrant will charge the consumer for debt management
5 services and the fees, charges or contributions the consumer has agreed to pay or make to
6 the registrant or to the registrant’s agent or affiliate;

7 (f) Include the following disclosures, if the registrant will have direct or indirect access
8 to the consumer’s funds:

9 (A) A complete list of the consumer’s debts concerning which the registrant will provide
10 debt management services under the terms of the contract, together with a list of the names
11 and addresses of the creditors that hold the debts;

12 (B) A full description and schedule of the amount of consumer funds that the registrant
13 or the registrant’s agent or affiliate will collect from the consumer and distribute to the
14 consumer’s creditors, itemized according to the identity of each creditor and the amount
15 that will be distributed to each creditor;

16 (C) The name, address and phone number or other contact information for the insured
17 institution in which the registrant will establish a trust account in accordance with the
18 contract;

19 (D) Whether the registrant has filed a corporate surety bond or irrevocable letter of
20 credit with the Director of the Department of Consumer and Business Services and the
21 amount of the corporate surety bond or irrevocable letter of credit; and

22 (E) A statement that informs the consumer that by signing the contract the consumer
23 authorizes the insured institution that administers the trust account in which the registrant
24 holds the consumer’s funds to disclose financial records concerning the trust account to the
25 director;

26 (g) State that the consumer may contact the director with any questions or complaints
27 the consumer may have about the registrant; and

28 (h) Display, in a conspicuous manner near the space in the contract reserved for the
29 consumer’s signature, the following notice:

30 _____

31
32 **NOTICE TO CONSUMER**

33 **Do not sign this contract if it contains blanks to be filled in later. Do not sign this contract**
34 **before you read it. You must be given a copy of this contract.**

35 _____

36
37 (3) A registrant, at the time the consumer signs a contract for debt management ser-
38 vices, shall provide the consumer with a form the consumer may use to cancel the contract.
39 The director by rule shall prescribe the format and contents of the form.

40 (4) A consumer may cancel a contract for debt management services made with a regis-
41 trant:

42 (a) Without penalty or obligation if the consumer notifies the registrant of the consum-
43 er’s intention to cancel at any time before midnight of the third business day after the date
44 on which the consumer signs the contract. The registrant shall refund all fees or other
45 charges the consumer paid and return to the consumer all unexpended consumer funds the

1 registrant or the registrant's agent or affiliate holds, directly or indirectly.

2 (b) For any reason at any time by giving the registrant 10 calendar days' written notice
3 of the consumer's intention to cancel. The registrant shall return to the consumer all un-
4 expended consumer funds the registrant or the registrant's agent or affiliate holds, directly
5 or indirectly.

6 (5) A registrant may cancel a contract for debt management services made with a con-
7 sumer if:

8 (a) The consumer has failed for 60 calendar days to make payments required under the
9 terms of the contract; and

10 (b) The registrant immediately returns to the consumer all unexpended consumer funds
11 the registrant or the registrant's agent or affiliate holds, directly or indirectly.

12 **SECTION 8.** A registrant that, directly or indirectly, holds a consumer's funds under the
13 terms of a contract for debt management services shall provide or make available to the
14 consumer each month and upon the cancellation or termination of the contract a report that
15 states:

16 (1) The total amount of consumer funds the registrant has received since the date of the
17 previous report;

18 (2) The total amount the registrant has paid to each of the consumer's creditors since
19 the date of the previous report;

20 (3) The amount of debt principal that remains to be paid to each of the consumer's
21 creditors that agreed to accept payments made under the terms of the debt management
22 services contract as payment in full for the debt the consumer owes to the creditor;

23 (4) The amount of fees paid to the registrant by or on behalf of the consumer since the
24 date of the previous report; and

25 (5) The amount of the consumer's funds the registrant holds in a trust account estab-
26 lished in accordance with the contract for debt management services.

27 **SECTION 9.** A registrant may not:

28 (1) Make a statement or counsel or advise a consumer to make a statement about the
29 consumer's creditworthiness, credit standing or credit capacity that is untrue or misleading
30 to:

31 (a) A person that extended credit to the consumer; or

32 (b) A person to which the consumer applies for an extension of credit.

33 (2) Make a statement or counsel or advise a consumer to make a statement, the intended
34 effect of which is to conceal or fail to correctly display information material to the con-
35 sumer's credit record, credit history or credit rating that is accurate and up to date, to:

36 (a) A consumer reporting agency;

37 (b) A person that extended credit to the consumer; or

38 (c) A person to which the consumer applies for an extension of credit.

39 (3) Represent the registrant's debt management services falsely or misleadingly in any
40 manner.

41 (4) Engage, directly or indirectly, in an act, a practice or a course of business that con-
42 stitutes or results in the commission of or an attempt to commit a fraud or deception upon
43 a person in connection with the sale or offer to sell debt management services.

44 (5) Perform any of the following acts in connection with debt management services pro-
45 vided to a consumer:

1 (a) Purchase a debt or obligation of a consumer;

2 (b) Lend money or extend credit to a consumer; or

3 (c) Obtain a mortgage or other security interest in a consumer's property.

4 (6) Own, operate or function as a debt collection agency in this state.

5 (7) Structure a contract for a consumer that, at the termination of the contract for debt
6 management services between the registrant and the consumer, would result in negative
7 amortization of the consumer's debt to a creditor.

8 (8) Provide debt management services for compensation to a consumer if the registrant
9 was previously one of the consumer's creditors.

10 (9) Transfer or assign or attempt to transfer or assign a registration issued to the reg-
11 istrant under section 3 of this 2009 Act to another person.

12 (10) Encourage a voluntary contribution or require a payment from a consumer that
13 would cause the registrant or an agent or affiliate of the registrant to receive fees that ex-
14 ceed the maximum fees established by the Director of the Department of Consumer and
15 Business Services.

16 (11) Require a consumer to purchase a counseling session, an educational program or
17 materials or supplies as a condition of entering into a contract under which the registrant
18 will collect funds from the consumer for the purpose of distributing the funds among the
19 consumer's creditors.

20 (12) Cause or attempt to cause a consumer to waive a right or benefit provided under
21 sections 1 to 12 of this 2009 Act.

22 **SECTION 10.** (1) In addition to any other liability or penalty provided by law, the Director
23 of the Department of Consumer and Business Services may impose a civil penalty in an
24 amount not to exceed \$2,500 on a person that violates a provision of sections 1 to 12 of this
25 2009 Act or a rule or order the director adopts or issues.

26 (2) The director shall impose a civil penalty under this section in the manner provided
27 under ORS 183.745.

28 (3) Notwithstanding ORS 183.745, the person on which the director imposes a civil penalty
29 has 20 days from the date on which the notice imposing the civil penalty is mailed in which
30 to apply for a hearing before the director.

31 (4) A person's paying or tendering payment for a civil penalty imposed under this section
32 does not relieve the person of the obligation to comply with the statute, rule or order the
33 violation of which caused the director to impose the civil penalty.

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

36 **SECTION 11.** (1) A person may maintain an action in a court with appropriate jurisdic-
37 tion against a corporate surety bond or irrevocable letter of credit the Director of the De-
38 partment of Consumer and Business Services required a registrant to file under section 3
39 of this 2009 Act if the person is aggrieved by:

40 (a) The registrant's violation of a provision of sections 1 to 12 of this 2009 Act or a rule
41 or order the director adopted or issued; or

42 (b) Other misconduct by the registrant.

43 (2) The aggregate liability of the surety or the person that provided the irrevocable letter
44 of credit for claims against the bond or letter of credit may not exceed the penal sum set
45 forth in the bond or letter of credit for as long as the bond or letter of credit remains in

1 **force. An extension of the term of the bond or letter of credit by continuation certificate,**
 2 **reinstatement, reissue or renewal does not increase the liability of the surety or the person**
 3 **that provided the letter of credit.**

4 **SECTION 12. In accordance with ORS chapter 183, the Director of the Department of**
 5 **Consumer and Business Services may adopt rules for the purposes of protecting consumers,**
 6 **providing clarity to registrants and applicants and otherwise carrying out and enforcing**
 7 **sections 1 to 12 of this 2009 Act.**

8 **SECTION 13.** ORS 192.501, as amended by section 1, chapter 48, Oregon Laws 2008, is amended
 9 to read:

10 192.501. The following public records are exempt from disclosure under ORS 192.410 to 192.505
 11 unless the public interest requires disclosure in the particular instance:

12 (1) Records of a public body pertaining to litigation to which the public body is a party if the
 13 complaint has been filed, or if the complaint has not been filed, if the public body shows that such
 14 litigation is reasonably likely to occur. This exemption does not apply to litigation which has been
 15 concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery
 16 or deposition statutes to a party to litigation or potential litigation.

17 (2) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to,
 18 any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or
 19 compilation of information which is not patented, which is known only to certain individuals within
 20 an organization and which is used in a business it conducts, having actual or potential commercial
 21 value, and which gives its user an opportunity to obtain a business advantage over competitors who
 22 do not know or use it.

23 (3) Investigatory information compiled for criminal law purposes. The record of an arrest or the
 24 report of a crime shall be disclosed unless and only for so long as there is a clear need to delay
 25 disclosure in the course of a specific investigation, including the need to protect the complaining
 26 party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or
 27 granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the
 28 record of an arrest or the report of a crime includes, but is not limited to:

29 (a) The arrested person's name, age, residence, employment, marital status and similar bi-
 30 ographical information;

31 (b) The offense with which the arrested person is charged;

32 (c) The conditions of release pursuant to ORS 135.230 to 135.290;

33 (d) The identity of and biographical information concerning both complaining party and victim;

34 (e) The identity of the investigating and arresting agency and the length of the investigation;

35 (f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and

36 (g) Such information as may be necessary to enlist public assistance in apprehending fugitives
 37 from justice.

38 (4) Test questions, scoring keys, and other data used to administer a licensing examination,
 39 employment, academic or other examination or testing procedure before the examination is given
 40 and if the examination is to be used again. Records establishing procedures for and instructing
 41 persons administering, grading or evaluating an examination or testing procedure are included in
 42 this exemption, to the extent that disclosure would create a risk that the result might be affected.

43 (5) Information consisting of production records, sale or purchase records or catch records, or
 44 similar business records of a private concern or enterprise, required by law to be submitted to or
 45 inspected by a governmental body to allow it to determine fees or assessments payable or to estab-

1 lish production quotas, and the amounts of such fees or assessments payable or paid, to the extent
 2 that such information is in a form which would permit identification of the individual concern or
 3 enterprise. This exemption does not include records submitted by long term care facilities as defined
 4 in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for pa-
 5 tient care. Nothing in this subsection shall limit the use which can be made of such information for
 6 regulatory purposes or its admissibility in any enforcement proceeding.

7 (6) Information relating to the appraisal of real estate prior to its acquisition.

8 (7) The names and signatures of employees who sign authorization cards or petitions for the
 9 purpose of requesting representation or decertification elections.

10 (8) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825,
 11 until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under
 12 ORS 659A.850.

13 (9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and
 14 663.180.

15 (10) Records, reports and other information received or compiled by the Director of the De-
 16 partment of Consumer and Business Services under [ORS 697.732] **section 5 of this 2009 Act.**

17 (11) Information concerning the location of archaeological sites or objects as those terms are
 18 defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and
 19 the need for the information is related to that Indian tribe's cultural or religious activities. This
 20 exemption does not include information relating to a site that is all or part of an existing, commonly
 21 known and publicized tourist facility or attraction.

22 (12) A personnel discipline action, or materials or documents supporting that action.

23 (13) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and
 24 564.100, regarding the habitat, location or population of any threatened species or endangered spe-
 25 cies.

26 (14) Writings prepared by or under the direction of faculty of public educational institutions, in
 27 connection with research, until publicly released, copyrighted or patented.

28 (15) Computer programs developed or purchased by or for any public body for its own use. As
 29 used in this subsection, "computer program" means a series of instructions or statements which
 30 permit the functioning of a computer system in a manner designed to provide storage, retrieval and
 31 manipulation of data from such computer system, and any associated documentation and source
 32 material that explain how to operate the computer program. "Computer program" does not include:

33 (a) The original data, including but not limited to numbers, text, voice, graphics and images;

34 (b) Analyses, compilations and other manipulated forms of the original data produced by use of
 35 the program; or

36 (c) The mathematical and statistical formulas which would be used if the manipulated forms of
 37 the original data were to be produced manually.

38 (16) Data and information provided by participants to mediation under ORS 36.256.

39 (17) Investigatory information relating to any complaint or charge filed under ORS chapter 654,
 40 until a final administrative determination is made or, if a citation is issued, until an employer re-
 41 ceives notice of any citation.

42 (18) Specific operational plans in connection with an anticipated threat to individual or public
 43 safety for deployment and use of personnel and equipment, prepared or used by a public body, if
 44 public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a
 45 law enforcement activity.

1 (19)(a) Audits or audit reports required of a telecommunications carrier. As used in this para-
 2 graph, “audit or audit report” means any external or internal audit or audit report pertaining to a
 3 telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having an af-
 4 filiated interest, as defined in ORS 759.390, with a telecommunications carrier that is intended to
 5 make the operations of the entity more efficient, accurate or compliant with applicable rules, pro-
 6 cedures or standards, that may include self-criticism and that has been filed by the telecommuni-
 7 cations carrier or affiliate under compulsion of state law. “Audit or audit report” does not mean an
 8 audit of a cost study that would be discoverable in a contested case proceeding and that is not
 9 subject to a protective order; and

10 (b) Financial statements. As used in this paragraph, “financial statement” means a financial
 11 statement of a nonregulated corporation having an affiliated interest, as defined in ORS 759.390,
 12 with a telecommunications carrier, as defined in ORS 133.721.

13 (20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS
 14 247.967.

15 (21) The following records, communications and information submitted to a housing authority
 16 as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010, by applicants
 17 for and recipients of loans, grants and tax credits:

- 18 (a) Personal and corporate financial statements and information, including tax returns;
- 19 (b) Credit reports;
- 20 (c) Project appraisals;
- 21 (d) Market studies and analyses;
- 22 (e) Articles of incorporation, partnership agreements and operating agreements;
- 23 (f) Commitment letters;
- 24 (g) Project pro forma statements;
- 25 (h) Project cost certifications and cost data;
- 26 (i) Audits;
- 27 (j) Project tenant correspondence requested to be confidential;
- 28 (k) Tenant files relating to certification; and
- 29 (L) Housing assistance payment requests.

30 (22) Records or information that, if disclosed, would allow a person to:

- 31 (a) Gain unauthorized access to buildings or other property;
- 32 (b) Identify those areas of structural or operational vulnerability that would permit unlawful
 33 disruption to, or interference with, services; or
- 34 (c) Disrupt, interfere with or gain unauthorized access to public funds or to information pro-
 35 cessing, communication or telecommunication systems, including the information contained in the
 36 systems, that are used or operated by a public body.

37 (23) Records or information that would reveal or otherwise identify security measures, or
 38 weaknesses or potential weaknesses in security measures, taken or recommended to be taken to
 39 protect:

- 40 (a) An individual;
- 41 (b) Buildings or other property;
- 42 (c) Information processing, communication or telecommunication systems, including the infor-
 43 mation contained in the systems; or
- 44 (d) Those operations of the Oregon State Lottery the security of which are subject to study and
 45 evaluation under ORS 461.180 (6).

1 (24) Personal information held by or under the direction of officials of the Oregon Health and
2 Science University or the Oregon University System about a person who has or who is interested
3 in donating money or property to the university, the system or a state institution of higher educa-
4 tion, if the information is related to the family of the person, personal assets of the person or is
5 incidental information not related to the donation.

6 (25) The home address, professional address and telephone number of a person who has or who
7 is interested in donating money or property to the Oregon University System.

8 (26) Records of the name and address of a person who files a report with or pays an assessment
9 to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council
10 created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030.

11 (27) Information provided to, obtained by or used by a public body to authorize, originate, re-
12 ceive or authenticate a transfer of funds, including but not limited to a credit card number, payment
13 card expiration date, password, financial institution account number and financial institution routing
14 number.

15 (28) Social Security numbers as provided in ORS 107.840.

16 (29) The electronic mail address of a student who attends a state institution of higher education
17 listed in ORS 352.002 or Oregon Health and Science University.

18 (30) The name, home address, professional address or location of a person that is engaged in,
19 or that provides goods or services for, medical research at Oregon Health and Science University
20 that is conducted using animals other than rodents. This subsection does not apply to Oregon Health
21 and Science University press releases, websites or other publications circulated to the general pub-
22 lic.

23 (31)(a) If requested by a public safety officer, as defined in ORS 181.610, by a district attorney,
24 by a deputy district attorney or by an assistant attorney general designated by the Attorney Gen-
25 eral, the home address and home telephone number of the public safety officer or attorney contained
26 in the voter registration records for the public safety officer or attorney.

27 (b) If requested by a public safety officer, as defined in ORS 181.610, the home address and home
28 telephone number of the public safety officer contained in records of the Department of Public
29 Safety Standards and Training.

30 (32) If requested by a public safety officer, as defined in ORS 181.610, by a district attorney, by
31 a deputy district attorney or by an assistant attorney general designated by the Attorney General,
32 the name of the public safety officer or attorney contained in county real property assessment or
33 taxation records. This exemption:

34 (a) Applies only to the name of the public safety officer or attorney and any other owner of the
35 property in connection with a specific property identified by the officer or attorney in a request for
36 exemption from disclosure;

37 (b) Applies only to records that may be made immediately available to the public upon request
38 in person, by telephone or using the Internet;

39 (c) Applies until the public safety officer or attorney requests termination of the exemption;

40 (d) Does not apply to disclosure of records among public bodies as defined in ORS 174.109 for
41 governmental purposes; and

42 (e) May not result in liability for a county if the name of a public safety officer or attorney is
43 disclosed after a request for exemption from disclosure is made under this subsection.

44 (33) Land management plans required for voluntary stewardship agreements entered into under
45 ORS 541.423.

1 **SECTION 14.** ORS 192.501, as amended by section 3, chapter 455, Oregon Laws 2005, section
 2 7, chapter 608, Oregon Laws 2007, section 2, chapter 687, Oregon Laws 2007, and section 2, chapter
 3 48, Oregon Laws 2008, is amended to read:

4 192.501. The following public records are exempt from disclosure under ORS 192.410 to 192.505
 5 unless the public interest requires disclosure in the particular instance:

6 (1) Records of a public body pertaining to litigation to which the public body is a party if the
 7 complaint has been filed, or if the complaint has not been filed, if the public body shows that such
 8 litigation is reasonably likely to occur. This exemption does not apply to litigation which has been
 9 concluded, and nothing in this subsection shall limit any right or opportunity granted by discovery
 10 or deposition statutes to a party to litigation or potential litigation.

11 (2) Trade secrets. "Trade secrets," as used in this section, may include, but are not limited to,
 12 any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or
 13 compilation of information which is not patented, which is known only to certain individuals within
 14 an organization and which is used in a business it conducts, having actual or potential commercial
 15 value, and which gives its user an opportunity to obtain a business advantage over competitors who
 16 do not know or use it.

17 (3) Investigatory information compiled for criminal law purposes. The record of an arrest or the
 18 report of a crime shall be disclosed unless and only for so long as there is a clear need to delay
 19 disclosure in the course of a specific investigation, including the need to protect the complaining
 20 party or the victim. Nothing in this subsection shall limit any right constitutionally guaranteed, or
 21 granted by statute, to disclosure or discovery in criminal cases. For purposes of this subsection, the
 22 record of an arrest or the report of a crime includes, but is not limited to:

- 23 (a) The arrested person's name, age, residence, employment, marital status and similar bi-
 24 ographical information;
- 25 (b) The offense with which the arrested person is charged;
- 26 (c) The conditions of release pursuant to ORS 135.230 to 135.290;
- 27 (d) The identity of and biographical information concerning both complaining party and victim;
- 28 (e) The identity of the investigating and arresting agency and the length of the investigation;
- 29 (f) The circumstances of arrest, including time, place, resistance, pursuit and weapons used; and
- 30 (g) Such information as may be necessary to enlist public assistance in apprehending fugitives
 31 from justice.

32 (4) Test questions, scoring keys, and other data used to administer a licensing examination,
 33 employment, academic or other examination or testing procedure before the examination is given
 34 and if the examination is to be used again. Records establishing procedures for and instructing
 35 persons administering, grading or evaluating an examination or testing procedure are included in
 36 this exemption, to the extent that disclosure would create a risk that the result might be affected.

37 (5) Information consisting of production records, sale or purchase records or catch records, or
 38 similar business records of a private concern or enterprise, required by law to be submitted to or
 39 inspected by a governmental body to allow it to determine fees or assessments payable or to estab-
 40 lish production quotas, and the amounts of such fees or assessments payable or paid, to the extent
 41 that such information is in a form which would permit identification of the individual concern or
 42 enterprise. This exemption does not include records submitted by long term care facilities as defined
 43 in ORS 442.015 to the state for purposes of reimbursement of expenses or determining fees for pa-
 44 tient care. Nothing in this subsection shall limit the use which can be made of such information for
 45 regulatory purposes or its admissibility in any enforcement proceeding.

- 1 (6) Information relating to the appraisal of real estate prior to its acquisition.
- 2 (7) The names and signatures of employees who sign authorization cards or petitions for the
3 purpose of requesting representation or decertification elections.
- 4 (8) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825,
5 until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under
6 ORS 659A.850.
- 7 (9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and
8 663.180.
- 9 (10) Records, reports and other information received or compiled by the Director of the De-
10 partment of Consumer and Business Services under [ORS 697.732] **section 5 of this 2009 Act.**
- 11 (11) Information concerning the location of archaeological sites or objects as those terms are
12 defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and
13 the need for the information is related to that Indian tribe's cultural or religious activities. This
14 exemption does not include information relating to a site that is all or part of an existing, commonly
15 known and publicized tourist facility or attraction.
- 16 (12) A personnel discipline action, or materials or documents supporting that action.
- 17 (13) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192 and
18 564.100, regarding the habitat, location or population of any threatened species or endangered spe-
19 cies.
- 20 (14) Writings prepared by or under the direction of faculty of public educational institutions, in
21 connection with research, until publicly released, copyrighted or patented.
- 22 (15) Computer programs developed or purchased by or for any public body for its own use. As
23 used in this subsection, "computer program" means a series of instructions or statements which
24 permit the functioning of a computer system in a manner designed to provide storage, retrieval and
25 manipulation of data from such computer system, and any associated documentation and source
26 material that explain how to operate the computer program. "Computer program" does not include:
27 (a) The original data, including but not limited to numbers, text, voice, graphics and images;
28 (b) Analyses, compilations and other manipulated forms of the original data produced by use of
29 the program; or
30 (c) The mathematical and statistical formulas which would be used if the manipulated forms of
31 the original data were to be produced manually.
- 32 (16) Data and information provided by participants to mediation under ORS 36.256.
- 33 (17) Investigatory information relating to any complaint or charge filed under ORS chapter 654,
34 until a final administrative determination is made or, if a citation is issued, until an employer re-
35 ceives notice of any citation.
- 36 (18) Specific operational plans in connection with an anticipated threat to individual or public
37 safety for deployment and use of personnel and equipment, prepared or used by a public body, if
38 public disclosure of the plans would endanger an individual's life or physical safety or jeopardize a
39 law enforcement activity.
- 40 (19)(a) Audits or audit reports required of a telecommunications carrier. As used in this para-
41 graph, "audit or audit report" means any external or internal audit or audit report pertaining to a
42 telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having an af-
43 filiated interest, as defined in ORS 759.390, with a telecommunications carrier that is intended to
44 make the operations of the entity more efficient, accurate or compliant with applicable rules, pro-
45 cedures or standards, that may include self-criticism and that has been filed by the telecommuni-

1 cations carrier or affiliate under compulsion of state law. “Audit or audit report” does not mean an
 2 audit of a cost study that would be discoverable in a contested case proceeding and that is not
 3 subject to a protective order; and

4 (b) Financial statements. As used in this paragraph, “financial statement” means a financial
 5 statement of a nonregulated corporation having an affiliated interest, as defined in ORS 759.390,
 6 with a telecommunications carrier, as defined in ORS 133.721.

7 (20) The residence address of an elector if authorized under ORS 247.965 and subject to ORS
 8 247.967.

9 (21) The following records, communications and information submitted to a housing authority
 10 as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010, by applicants
 11 for and recipients of loans, grants and tax credits:

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

13 (b) Credit reports;

14 (c) Project appraisals;

15 (d) Market studies and analyses;

16 (e) Articles of incorporation, partnership agreements and operating agreements;

17 (f) Commitment letters;

18 (g) Project pro forma statements;

19 (h) Project cost certifications and cost data;

20 (i) Audits;

21 (j) Project tenant correspondence requested to be confidential;

22 (k) Tenant files relating to certification; and

23 (L) Housing assistance payment requests.

24 (22) Records or information that, if disclosed, would allow a person to:

25 (a) Gain unauthorized access to buildings or other property;

26 (b) Identify those areas of structural or operational vulnerability that would permit unlawful
 27 disruption to, or interference with, services; or

28 (c) Disrupt, interfere with or gain unauthorized access to public funds or to information pro-
 29 cessing, communication or telecommunication systems, including the information contained in the
 30 systems, that are used or operated by a public body.

31 (23) Records or information that would reveal or otherwise identify security measures, or
 32 weaknesses or potential weaknesses in security measures, taken or recommended to be taken to
 33 protect:

34 (a) An individual;

35 (b) Buildings or other property;

36 (c) Information processing, communication or telecommunication systems, including the infor-
 37 mation contained in the systems; or

38 (d) Those operations of the Oregon State Lottery the security of which are subject to study and
 39 evaluation under ORS 461.180 (6).

40 (24) Personal information held by or under the direction of officials of the Oregon Health and
 41 Science University or the Oregon University System about a person who has or who is interested
 42 in donating money or property to the university, the system or a state institution of higher educa-
 43 tion, if the information is related to the family of the person, personal assets of the person or is
 44 incidental information not related to the donation.

45 (25) The home address, professional address and telephone number of a person who has or who

1 is interested in donating money or property to the Oregon University System.

2 (26) Records of the name and address of a person who files a report with or pays an assessment
 3 to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef Council
 4 created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030.

5 (27) Information provided to, obtained by or used by a public body to authorize, originate, re-
 6 ceive or authenticate a transfer of funds, including but not limited to a credit card number, payment
 7 card expiration date, password, financial institution account number and financial institution routing
 8 number.

9 (28) Social Security numbers as provided in ORS 107.840.

10 (29) The electronic mail address of a student who attends a state institution of higher education
 11 listed in ORS 352.002 or Oregon Health and Science University.

12 (30)(a) If requested by a public safety officer, as defined in ORS 181.610, by a district attorney,
 13 by a deputy district attorney or by an assistant attorney general designated by the Attorney Gen-
 14 eral, the home address and home telephone number of the public safety officer or attorney contained
 15 in the voter registration records for the public safety officer or attorney.

16 (b) If requested by a public safety officer, as defined in ORS 181.610, the home address and home
 17 telephone number of the public safety officer contained in records of the Department of Public
 18 Safety Standards and Training.

19 (31) If requested by a public safety officer, as defined in ORS 181.610, by a district attorney, by
 20 a deputy district attorney or by an assistant attorney general designated by the Attorney General,
 21 the name of the public safety officer or attorney contained in county real property assessment or
 22 taxation records. This exemption:

23 (a) Applies only to the name of the public safety officer or attorney and any other owner of the
 24 property in connection with a specific property identified by the officer or attorney in a request for
 25 exemption from disclosure;

26 (b) Applies only to records that may be made immediately available to the public upon request
 27 in person, by telephone or using the Internet;

28 (c) Applies until the public safety officer or attorney requests termination of the exemption;

29 (d) Does not apply to disclosure of records among public bodies as defined in ORS 174.109 for
 30 governmental purposes; and

31 (e) May not result in liability for a county if the name of a public safety officer or attorney is
 32 disclosed after a request for exemption from disclosure is made under this subsection.

33 (32) Land management plans required for voluntary stewardship agreements entered into under
 34 ORS 541.423.

35 **SECTION 15.** ORS 192.502 is amended to read:

36 192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

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

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

1 tute an unreasonable invasion of privacy.

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

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

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

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

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

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

19 (5) Information or records of the Department of Corrections, including the State Board of Parole
 20 and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of
 21 a person in custody of the department or substantially prejudice or prevent the carrying out of the
 22 functions of the department, if the public interest in confidentiality clearly outweighs the public in-
 23 terest in disclosure.

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

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

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

32 (9)(a) Public records or information the disclosure of which is prohibited or restricted or other-
 33 wise made confidential or privileged under Oregon law.

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

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

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

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

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

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

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

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

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

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

17 (a) The exemption does not apply to:

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

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

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

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

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

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

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

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

37 (E) Capital call and distribution notices of an investment fund, an asset ownership or their re-
38 spective investment vehicles.

39 (F) Investment agreements and related documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (a) Personal financial statements.

25 (b) Financial statements of applicants.

26 (c) Customer lists.

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

32 (e) Production, sales and cost data.

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (23) The records of a library, including:

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

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

24 (c) The electronic mail address of a patron.

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

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

29 (b) Credit reports.

30 (c) Project appraisals.

31 (d) Market studies and analyses.

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

33 (f) Commitment letters.

34 (g) Project pro forma statements.

35 (h) Project cost certifications and cost data.

36 (i) Audits.

37 (j) Project tenant correspondence.

38 (k) Personal information about a tenant.

39 (L) Housing assistance payments.

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

43 (26) Sensitive business, commercial or financial information furnished to or developed by a
44 public body engaged in the business of providing electricity or electricity services, if the information
45 is directly related to a transaction described in ORS 261.348, or if the information is directly related

1 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and
 2 disclosure of the information would cause a competitive disadvantage for the public body or its re-
 3 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-
 4 velopment or review of generally applicable rate schedules.

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

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

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

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

29 (31) Documents, materials or other information submitted to the Director of the Department of
 30 Consumer and Business Services in confidence by a state, federal, foreign or international regulatory
 31 or law enforcement agency or by the National Association of Insurance Commissioners[, *its*] **or** af-
 32 filiates or subsidiaries **of the National Association of Insurance Commissioners** under ORS
 33 [646A.250 to 646A.270,] 697.005 to 697.095, [697.602 to 697.842,] 705.137, 717.200 to 717.320, 717.900
 34 or 717.905, ORS chapter 59, 722, 723, 725 or 726, the Bank Act or the Insurance Code **or sections**
 35 **1 to 12 of this 2009 Act** when:

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

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

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

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

43 (a) Generation, storage or conveyance of:

44 (A) Electricity;

45 (B) Gas in liquefied or gaseous form;

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

2 (D) Petroleum products;

3 (E) Sewage; or

4 (F) Water.

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

6 (c) Data transmissions by whatever means provided.

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

9 **SECTION 16.** ORS 646.608, as amended by section 8, chapter 19, Oregon Laws 2008, and section
10 5, chapter 31, Oregon Laws 2008, is amended to read:

11 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
12 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

29 (i) Advertises real estate, goods or services with intent not to provide them as advertised, or
30 with intent not to supply reasonably expectable public demand, unless the advertisement discloses
31 a limitation of quantity.

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

34 (k) Makes false or misleading representations concerning credit availability or the nature of the
35 transaction or obligation incurred.

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

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

41 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
42 vides the information required under ORS 646.611.

43 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
44 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
45 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or

1 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
 2 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
 3 tomer enters into the transaction.

4 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
 5 cize a product, business or service.

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

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

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

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

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

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

16 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

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

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

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

34 (ee) Violates ORS 646.883 or 646.885.

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

36 (gg) Violates ORS 646.569.

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

38 (ii) Violates ORS 646A.360.

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

40 (kk) Violates ORS 646.563.

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

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

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

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

- 1 (pp) Violates [ORS 646A.254] **section 7 or 9 of this 2009 Act.**
- 2 (qq) Violates ORS 646A.095.
- 3 (rr) Violates ORS 822.046.
- 4 (ss) Violates ORS 128.001.
- 5 (tt) Violates ORS 646.649 (2) to (4).
- 6 (uu) Violates ORS 646A.090 (2) to (4).
- 7 (vv) Violates ORS 87.686.
- 8 (ww) Violates ORS 646.651.
- 9 (xx) Violates ORS 646A.362.
- 10 (yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 11 (zz) Violates ORS 180.440 (1).
- 12 (aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 13 (bbb) Violates ORS 87.007 (2) or (3).
- 14 (ccc) Violates ORS 92.405 (1), (2) or (3).
- 15 (ddd) Engages in an unlawful practice under ORS 646.648.
- 16 (eee) Violates ORS 646A.365.
- 17 (fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 18 (ggg) Sells a gift card in violation of ORS 646A.276.
- 19 (hhh) Violates ORS 646A.102, 646A.106 or 646A.108.
- 20 (iii) Violates ORS 646A.430 to 646A.450.
- 21 (jjj) Violates a provision of sections 2 to 6, chapter 19, Oregon Laws 2008.
- 22 (kkk) Violates section 2, chapter 31, Oregon Laws 2008, 30 or more days after a recall notice,
- 23 warning or declaration described in section 2, chapter 31, Oregon Laws 2008, is issued for the chil-
- 24 dren’s product, as defined in section 1, chapter 31, Oregon Laws 2008, that is the subject of the vi-
- 25 olation.
- 26 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
- 27 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- 28 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
- 29 need not prove competition between the parties or actual confusion or misunderstanding.
- 30 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
- 31 torney General has first established a rule in accordance with the provisions of ORS chapter 183
- 32 declaring the conduct to be unfair or deceptive in trade or commerce.
- 33 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
- 34 under subsection (1)(zz) of this section by a person other than a prosecuting attorney, relief is lim-
- 35 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.
- 36 **SECTION 17.** ORS 646A.628 is amended to read:
- 37 646A.628. Notwithstanding ORS 705.145 (2), (3) and (5), the Director of the Department of Con-
- 38 sumer and Business Services [*can*] **may** allocate as deemed appropriate the moneys derived pursuant
- 39 to ORS [646A.252 to 646A.270,] 650.005 to 650.100, 697.005 to 697.095, [697.602 to 697.842,] 705.350
- 40 and 717.200 to 717.320 and 731.804 and ORS chapters 59, 645, 706 to 716, 722, 723, 725 and 726 **and**
- 41 **sections 1 to 12 of this 2009 Act** to implement ORS 646A.600 to 646A.628.
- 42 **SECTION 18.** ORS 697.005 is amended to read:
- 43 697.005. As used in ORS 697.005 to 697.095:
- 44 (1)(a) “Collection agency” means:
- 45 (A) Any person directly or indirectly engaged in soliciting claims for collection, or collecting

1 or attempting to collect claims owed, due or asserted to be owed or due to another person or to a
 2 public body;

3 (B) Any person who directly or indirectly furnishes, attempts to furnish, sells or offers to sell
 4 forms represented to be a collection system even though the forms direct the debtor to make pay-
 5 ment to the creditor and even though the forms may be or are actually used by the creditor in the
 6 creditor's own name;

7 (C) Any person who in attempting to collect or in collecting the person's own claim uses a fic-
 8 titious name or any name other than the person's own that indicates to the debtor that a third
 9 person is collecting or attempting to collect the claim;

10 (D) Any person in the business of engaging in the solicitation of the right to repossess or in the
 11 repossession of collateral security due or asserted to be due to another person; or

12 (E) Any person who in the collection of claims from another person:

13 (i) Uses any name other than the name regularly used in the conduct of the business out of
 14 which the claim arose; and

15 (ii) Engages in any action or conduct that tends to convey the impression that a third party has
 16 been employed or engaged to collect the claim.

17 (b) "Collection agency" does not include:

18 (A) Any individual engaged in soliciting claims for collection, or collecting or attempting to
 19 collect claims on behalf of a registrant under ORS 697.005 to 697.095, if the individual is an em-
 20 ployee of the registrant;

21 (B) Any individual collecting or attempting to collect claims for not more than three employers,
 22 if all collection efforts are carried on in the name of the employer and the individual is an employee
 23 of the employer;

24 (C) Any person who prepares or mails monthly or periodic statements of accounts due on behalf
 25 of another person if all payments are made to that other person and no other collection efforts are
 26 made by the person preparing the statements of accounts;

27 (D) Any attorney-at-law rendering services in the performance of the duties of an attorney-at-
 28 law;

29 (E) Any licensed certified public accountant or public accountant rendering services in the
 30 performance of the duties of a licensed certified public accountant or public accountant;

31 (F) Any bank, mutual savings bank, consumer finance company, trust company, savings and loan
 32 association, credit union or *[debt consolidation agency]* **debt management service organization,**
 33 **as defined in section 1 of this 2009 Act;**

34 (G) Any real estate licensee or escrow agent licensed under the provisions of ORS chapter 696,
 35 as to any collection or billing activity involving a real estate transaction or collection escrow
 36 transaction of the licensee or escrow agent;

37 (H) Any individual regularly employed as a credit person or in a similar capacity by one person,
 38 firm or corporation that is not a collection agency as defined in this section;

39 (I) Any public officer or any person acting under order of any court;

40 (J) Any person acting as a property manager in collecting or billing for rent, fees, deposits or
 41 other sums due landlords of managed units;

42 (K) Any person while the person is providing billing services. A person is providing billing ser-
 43 vices for the purposes of this subparagraph if the person engages, directly or indirectly, in the
 44 business or pursuit of collection of claims for other persons, whether in the other person's name or
 45 any other name, by any means that:

1 (i) Is an accounting procedure, preparation of mail billing or any other means intended to ac-
2 celerate cash flow to the other person's bank account or to any separate trust account; and

3 (ii) Does not include any personal contact or contact by telephone with the person from whom
4 the claim is sought to be collected;

5 (L) Any person while the person is providing factoring services. A person is providing factoring
6 services for the purposes of this subparagraph if the person engages, directly or indirectly, in the
7 business or pursuit of:

8 (i) Lending or advancing money to commercial clients on the security of merchandise or ac-
9 counts receivable and then enforcing collection actions or procedures on such accounts; or

10 (ii) Soliciting or collecting on accounts that have been purchased from commercial clients under
11 an agreement whether or not the agreement:

12 (I) Allows recourse against the commercial client;

13 (II) Requires the commercial client to provide any form of guarantee of payment of the pur-
14 chased account; or

15 (III) Requires the commercial client to establish or maintain a reserve account in any form;

16 (M) Any individual employed by another person who operates as a collection agency if the per-
17 son does not operate as a collection agency independent of that employment;

18 (N) Any mortgage banker as defined in ORS 59.840;

19 (O) Any public utility, as defined in ORS 757.005, any telecommunications utility, as defined in
20 ORS 759.005, any people's utility district, as defined in ORS 261.010, and any cooperative corporation
21 engaged in furnishing electric or communication service to consumers;

22 (P) Any public body or any individual collecting or attempting to collect claims owed, due or
23 asserted to be owed or due to any public body, if the individual is an employee of the public body;
24 or

25 (Q) Any person for whom the Director of the Department of Consumer and Business Services
26 determines by order or by rule that the protection of the public health, safety and welfare does not
27 require registration with the department as a collection agency.

28 (2) "Collection system" means a scheme intended or calculated to be used to collect claims sent,
29 prepared or delivered by:

30 (a) A person who in collecting or attempting to collect the person's own claim uses a fictitious
31 name or any name other than the person's own that indicates to the debtor that a third person is
32 collecting or attempting to collect the claim; or

33 (b) A person directly or indirectly engaged in soliciting claims for collection, or collecting or
34 attempting to collect claims owed or due or asserted to be owed or due another person.

35 (3) "Claim" means any obligation for the payment of money or thing of value arising out of any
36 agreement or contract, express or implied.

37 (4) "Client" or "customer" means any person authorizing or employing a collection agency to
38 collect a claim.

39 (5) "Debtor" means any person owing or alleged to owe a claim.

40 (6) "Debts incurred outside this state" means any action or proceeding that:

41 (a) Arises out of a promise, made anywhere to the plaintiff or a third party for the plaintiff's
42 benefit, by the defendant to perform services outside of this state or to pay for services to be per-
43 formed outside of this state by the plaintiff;

44 (b) Arises out of services actually performed for the plaintiff by the defendant outside of this
45 state or services actually performed for the defendant by the plaintiff outside of this state, if the

1 performance outside of this state was authorized or ratified by the defendant;

2 (c) Arises out of a promise, made anywhere to the plaintiff or a third party for the plaintiff's
 3 benefit, by the defendant to deliver or receive outside of this state or to send from outside of this
 4 state goods, documents of title or other things of value;

5 (d) Relates to goods, documents of title or other things of value sent from outside of this state
 6 by the defendant to the plaintiff or a third person on the plaintiff's order or direction;

7 (e) Relates to goods, documents of title or other things of value actually received outside of this
 8 state by the plaintiff from the defendant or by the defendant from the plaintiff, without regard to
 9 where delivery to carrier occurred; or

10 (f) Where jurisdiction at the time the debt was incurred was outside of this state.

11 (7) "Department" means the Department of Consumer and Business Services.

12 (8) "Director" means the Director of the Department of Consumer and Business Services.

13 (9) "Out-of-state collection agency" means a collection agency located outside of this state
 14 whose activities within this state are limited to collecting debts incurred outside of this state from
 15 debtors located in this state. As used in this subsection, "collecting debts" means collecting by
 16 means of interstate communications, including telephone, mail or facsimile transmission from the
 17 collection agency location in another state on behalf of clients located outside of this state.

18 (10) "Person" includes an individual, firm, partnership, trust, joint venture, association, limited
 19 liability company or corporation.

20 (11) "Public body" means:

21 (a) The state and any branch, department, agency, board or commission of the state;

22 (b) Any city, county, district or other political subdivision or municipal or public corporation
 23 and any instrumentality thereof; and

24 (c) Any intergovernmental agency, department, council, joint board of control created under
 25 ORS 190.125 or other like entity, which is created under ORS 190.003 to 190.130 and which does not
 26 act under the direction and control of any single member government.

27 (12) "Registered" or "registrant" means any person registered under ORS 697.005 to 697.095 or
 28 registered or licensed as a collection agency under the laws of another state.

29 (13) "Statement of account" means a report setting forth amounts billed, invoices, credits al-
 30 lowed or aged balance due.

31 **SECTION 19.** ORS 697.990 is amended to read:

32 697.990. (1) Violation of ORS 697.015 or 697.058 by an individual is a Class A violation.

33 (2) Violation of ORS 697.015 or 697.058 by a corporation or association is a Class A violation.
 34 Any officer or agent of a corporation or association who personally participates in any violation of
 35 ORS 697.015 or 697.058 by the corporation or association is subject to the penalty prescribed in
 36 subsection (1) of this section.

37 *[(3) Violation of ORS 697.612 or 697.642 to 697.702 is punishable, upon conviction, as a Class A*
 38 *misdemeanor.]*

39 **SECTION 20.** ORS 697.992 is amended to read:

40 697.992. Justice courts have concurrent jurisdiction with circuit courts in all criminal prose-
 41 cutions for violation of ORS 697.015[,] **and** 697.058[,] *697.612 and 697.642 to 697.702.]*

42 **SECTION 21.** ORS 705.137 is amended to read:

43 705.137. (1) Except as provided in subsection (3) of this section, any document, material or other
 44 information that is in the possession or control of the Department of Consumer and Business Ser-
 45 vices for the purpose of administering ORS *[646A.250 to 646A.270,]* 697.005 to 697.095, *[697.602 to*

1 697.842,] 717.200 to 717.320, 717.900 and 717.905, ORS chapters 59, 722, 723, 725 and 726, the Bank
 2 Act and the Insurance Code **and sections 1 to 12 of this 2009 Act** and that is described in statute
 3 as confidential or as not subject to disclosure is not subject to disclosure under ORS 192.410 to
 4 192.505, is not subject to subpoena and is not subject to discovery or admissible in evidence in any
 5 private civil action. The Director of the Department of Consumer and Business Services may use
 6 such confidential documents, materials or other information in administering ORS [646A.250 to
 7 646A.270,] 697.005 to 697.095, [697.602 to 697.842,] 717.200 to 717.320, 717.900 and 717.905, ORS
 8 chapters 59, 722, 723, 725 and 726, the Bank Act and the Insurance Code **and sections 1 to 12 of**
 9 **this 2009 Act**, and in the furtherance of any other regulatory or legal action brought as a part of
 10 the director's duties.

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

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

14 (a) May authorize the sharing of confidential documents, materials and other information subject
 15 to subsection (1) of this section as appropriate among the administrative divisions and staff offices
 16 of the department created under ORS 705.115 for the purpose of administering and enforcing the
 17 statutes referred to in subsection (1) of this section, in order to enable the administrative divisions
 18 and staff offices to carry out their functions and responsibilities.

19 (b) May share documents, materials and other information, including the confidential documents,
 20 materials and other information that is subject to subsection (1) of this section or that is otherwise
 21 confidential under ORS 192.501 or 192.502, with other state, federal, foreign and international regu-
 22 latory and law enforcement agencies and with the National Association of Insurance Commissioners
 23 and its affiliates or subsidiaries, if the recipient agrees to maintain the confidentiality of the docu-
 24 ments, materials and other information.

25 (c) May receive documents, materials and other information, including otherwise confidential
 26 documents, materials and other information, from state, federal, foreign and international regulatory
 27 and law enforcement agencies and from the National Association of Insurance Commissioners and
 28 its affiliates or subsidiaries. The director shall maintain as confidential as provided in this section
 29 any such document, material or other information received upon notice or with an understanding
 30 that it is confidential or privileged under the laws of the jurisdiction that is the source of the docu-
 31 ment, material or other information.

32 (4) Neither disclosure of documents, materials or other information to the director under this
 33 section nor the sharing of documents, materials or other information as authorized in subsection (3)
 34 of this section waives any applicable privilege or claim of confidentiality in the documents, materials
 35 or other information.

36 (5) This section does not prohibit the director from releasing final, adjudicated actions, including
 37 suspensions or revocations of certificates of authority or licenses, when the actions are otherwise
 38 open to public inspection, to a database or other clearinghouse service maintained by the National
 39 Association of Insurance Commissioners or its affiliates or subsidiaries.

40 **SECTION 22. ORS 646A.250, 646A.252, 646A.254, 646A.256, 646A.258, 646A.260, 646A.262,**
 41 **646A.264, 646A.266, 646A.268, 646A.270, 697.602, 697.612, 697.622, 697.632, 697.642, 697.652,**
 42 **697.662, 697.672, 697.682, 697.692, 697.702, 697.707, 697.712, 697.722, 697.732, 697.742, 697.752,**
 43 **697.762, 697.772, 697.782, 697.792, 697.802, 697.812, 697.822, 697.825, 697.832 and 697.842 are re-**
 44 **pealed.**

45 **SECTION 23. Sections 1 to 12 of this 2009 Act, the amendments to ORS 192.501, 192.502,**

1 646.608, 646A.628, 697.005, 697.990, 697.992 and 705.137 by sections 13 to 21 of this 2009 Act and
 2 the repeal of ORS 646A.250, 646A.252, 646A.254, 646A.256, 646A.258, 646A.260, 646A.262,
 3 646A.264, 646A.266, 646A.268, 646A.270, 697.602, 697.612, 697.622, 697.632, 697.642, 697.652,
 4 697.662, 697.672, 697.682, 697.692, 697.702, 697.707, 697.712, 697.722, 697.732, 697.742, 697.752,
 5 697.762, 697.772, 697.782, 697.792, 697.802, 697.812, 697.822, 697.825, 697.832 and 697.842 by section
 6 22 of this 2009 Act apply to:

7 (1) A person that engages in or offers to engage in, represents to the public in any
 8 manner that the person is engaged in or charges fees related to debt management services
 9 on or after the operative date specified in section 24 (1) of this 2009 Act; and

10 (2) A contract for debt management services entered into on or after the operative date
 11 specified in section 24 (1) of this 2009 Act.

12 **SECTION 24.** (1) Sections 1 to 12 of this 2009 Act, the amendments to ORS 192.501,
 13 192.502, 646.608, 646A.628, 697.005, 697.990, 697.992 and 705.137 by sections 13 to 21 of this 2009
 14 Act and the repeal of ORS 646A.250, 646A.252, 646A.254, 646A.256, 646A.258, 646A.260, 646A.262,
 15 646A.264, 646A.266, 646A.268, 646A.270, 697.602, 697.612, 697.622, 697.632, 697.642, 697.652,
 16 697.662, 697.672, 697.682, 697.692, 697.702, 697.707, 697.712, 697.722, 697.732, 697.742, 697.752,
 17 697.762, 697.772, 697.782, 697.792, 697.802, 697.812, 697.822, 697.825, 697.832 and 697.842 by section
 18 22 of this 2009 Act become operative January 2, 2010.

19 (2) The Director of the Department of Consumer and Business Services may take any
 20 action before the operative date set forth in subsection (1) of this section that is necessary
 21 to enable the director to exercise, on and after the operative date, all the duties, functions
 22 and powers conferred on the director by sections 1 to 12 of this 2009 Act, the amendments
 23 to ORS 192.501, 192.502, 646.608, 646A.628, 697.005, 697.990, 697.992 and 705.137 by sections 13
 24 to 21 of this 2009 Act and the repeal of ORS 646A.250, 646A.252, 646A.254, 646A.256, 646A.258,
 25 646A.260, 646A.262, 646A.264, 646A.266, 646A.268, 646A.270, 697.602, 697.612, 697.622, 697.632,
 26 697.642, 697.652, 697.662, 697.672, 697.682, 697.692, 697.702, 697.707, 697.712, 697.722, 697.732,
 27 697.742, 697.752, 697.762, 697.772, 697.782, 697.792, 697.802, 697.812, 697.822, 697.825, 697.832 and
 28 697.842 by section 22 of this 2009 Act.

29 (3) The director by rule or order may provide a procedure by which a person registered
 30 under ORS 646A.252 to 646A.270 or 697.602 to 697.842 may become registered under sections
 31 1 to 12 of this 2009 Act.

32 **SECTION 25.** This 2009 Act being necessary for the immediate preservation of the public
 33 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
 34 on its passage.