

House Bill 2368

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Consumer Protection)

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**.

Prohibits person from providing or offering to provide debt management service in return for money or other consideration. Exempts certain persons.

Provides that court may enjoin violation of Act. Punishes violation by maximum of one year's imprisonment, \$6,250 fine, or both.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to debt management service; creating new provisions; amending ORS 192.501, 192.502,
3 646.608, 646A.110, 646A.628, 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:**

SECTION 1. As used in sections 1 to 3 of this 2009 Act:

9
10 (1) **"Debt management service" means, in return for a payment of money or other valu-**
11 **able consideration or in the expectation of receiving a payment of money or other valuable**
12 **consideration:**

13 (a) **Accepting or offering to accept funds from a debtor for the purpose of distributing**
14 **all or a portion of the funds among the debtor's creditors in full or partial payment of the**
15 **debtor's debts, whether or not the person accepting the funds from the debtor holds the**
16 **funds;**

17 (b) **Improving or offering to improve, by means of negotiation or otherwise, a debtor's**
18 **credit record, credit history or credit rating;**

19 (c) **Negotiating or offering to negotiate to settle a debtor's debts incurred by reason of**
20 **another person's extension of credit to the debtor; or**

21 (d) **Providing advice, assistance, instruction or instructional materials to a debtor with**
22 **respect to any of the activities described in paragraphs (a) to (c) of this subsection.**

23 (2) **"Debtor" means an individual who owes or is alleged to owe money as a result of**
24 **another person's extension of credit to the individual.**

25 (3) **"Person" means an individual, partnership, corporation, association or other entity.**

26 **SECTION 2. (1) A person may not engage in a business in this state the purpose of which**
27 **is to perform a debt management service.**

28 (2) **Violation of this section is a Class A misdemeanor.**

29 (3) **Subsections (1) and (2) of this section do not apply to:**

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 (a) A public body;

2 (b) An attorney licensed or otherwise authorized to practice law in this state if the at-
3 torney performs a debt management service only incidentally in the practice of law;

4 (c) A person acting within the scope of the person’s employment to provide a debt man-
5 agement service to the person’s employer;

6 (d) A person acting under an order or judgment of a court;

7 (e) A person that is a creditor for a debtor or an agent of a creditor for the debtor, if
8 the person performs a debt management service at no cost to the debtor;

9 (f) A person for which the provision of a debt management service is subject to regu-
10 lation under federal law that preempts the provisions of this section;

11 (g) A person that, at the debtor’s request, extends credit to the debtor and that, with the
12 debtor’s authorization, performs a debt management service in the course of providing the
13 credit without compensation for the debt management service;

14 (h) An accredited educational institution or program that offers or performs a debt
15 management service incidentally in the performance of the institution’s or program’s pri-
16 mary functions and at no cost to the debtor;

17 (i) A nonprofit organization organized for the purpose of providing a debt management
18 service as a community service at no cost to the debtor; or

19 (j) A nonprofit budget and credit counseling agency exempt from taxation under section
20 501(c)(3) of the Internal Revenue Code of 1986 and approved by the United States trustee
21 under 11 U.S.C. 111 that:

22 (A) Provides only instructional courses concerning personal financial management, as
23 described in 11 U.S.C. 111; and

24 (B) Does not receive or offer to receive funds from a debtor for the purpose of distrib-
25 uting the funds among the debtor’s creditors in full or partial payment of the debtor’s debts.

26 **SECTION 3.** (1) A prosecuting attorney who has probable cause to believe that a person
27 has violated, is violating or is about to violate a provision of section 2 of this 2009 Act may
28 bring suit in the name of the State of Oregon in an appropriate court to restrain the person
29 from engaging in the violation and to enforce compliance with section 2 of this 2009 Act.
30 Upon a proper showing, the court shall grant a permanent or temporary injunction or re-
31 straining order and may appoint a receiver for the funds and property employed in a violation
32 of section 2 of this 2009 Act for the purpose of returning to a debtor any money or property
33 that the person received from the debtor in the course of the violation that the person has
34 not paid to the debtor’s creditors.

35 (2) As used in this section, “prosecuting attorney” means the Attorney General or the
36 district attorney of the county in which a violation of section 2 of this 2009 Act is alleged to
37 have occurred.

38 **SECTION 4.** ORS 192.501, as amended by section 1, chapter 48, Oregon Laws 2008, is amended
39 to read:

40 192.501. The following public records are exempt from disclosure under ORS 192.410 to 192.505
41 unless the public interest requires disclosure in the particular instance:

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

1 or deposition statutes to a party to litigation or potential litigation.

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

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

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

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

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

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

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

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

43 (9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and
 44 663.180.

45 *[(10) Records, reports and other information received or compiled by the Director of the Department*

1 of Consumer and Business Services under ORS 697.732.]

2 [(11)] (10) Information concerning the location of archaeological sites or objects as those terms
 3 are defined in ORS 358.905, except if the governing body of an Indian tribe requests the information
 4 and the need for the information is related to that Indian tribe’s cultural or religious activities. This
 5 exemption does not include information relating to a site that is all or part of an existing, commonly
 6 known and publicized tourist facility or attraction.

7 [(12)] (11) A personnel discipline action, or materials or documents supporting that action.

8 [(13)] (12) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192
 9 and 564.100, regarding the habitat, location or population of any threatened species or endangered
 10 species.

11 [(14)] (13) Writings prepared by or under the direction of faculty of public educational insti-
 12 tutions, in connection with research, until publicly released, copyrighted or patented.

13 [(15)] (14) Computer programs developed or purchased by or for any public body for its own use.
 14 As used in this subsection, “computer program” means a series of instructions or statements which
 15 permit the functioning of a computer system in a manner designed to provide storage, retrieval and
 16 manipulation of data from such computer system, and any associated documentation and source
 17 material that explain how to operate the computer program. “Computer program” does not include:

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

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

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

23 [(16)] (15) Data and information provided by participants to mediation under ORS 36.256.

24 [(17)] (16) Investigatory information relating to any complaint or charge filed under ORS chapter
 25 654, until a final administrative determination is made or, if a citation is issued, until an employer
 26 receives notice of any citation.

27 [(18)] (17) Specific operational plans in connection with an anticipated threat to individual or
 28 public safety for deployment and use of personnel and equipment, prepared or used by a public body,
 29 if public disclosure of the plans would endanger an individual’s life or physical safety or jeopardize
 30 a law enforcement activity.

31 [(19)(a)] (18)(a) Audits or audit reports required of a telecommunications carrier. As used in this
 32 paragraph, “audit or audit report” means any external or internal audit or audit report pertaining
 33 to a telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having
 34 an affiliated interest, as defined in ORS 759.390, with a telecommunications carrier that is intended
 35 to make the operations of the entity more efficient, accurate or compliant with applicable rules,
 36 procedures or standards, that may include self-criticism and that has been filed by the telecommu-
 37 nications carrier or affiliate under compulsion of state law. “Audit or audit report” does not mean
 38 an audit of a cost study that would be discoverable in a contested case proceeding and that is not
 39 subject to a protective order; and

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

43 [(20)] (19) The residence address of an elector if authorized under ORS 247.965 and subject to
 44 ORS 247.967.

45 [(21)] (20) The following records, communications and information submitted to a housing au-

1 thority as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010, by
 2 applicants for and recipients of loans, grants and tax credits:

- 3 (a) Personal and corporate financial statements and information, including tax returns;
- 4 (b) Credit reports;
- 5 (c) Project appraisals;
- 6 (d) Market studies and analyses;
- 7 (e) Articles of incorporation, partnership agreements and operating agreements;
- 8 (f) Commitment letters;
- 9 (g) Project pro forma statements;
- 10 (h) Project cost certifications and cost data;
- 11 (i) Audits;
- 12 (j) Project tenant correspondence requested to be confidential;
- 13 (k) Tenant files relating to certification; and
- 14 (L) Housing assistance payment requests.

15 [(22)] **(21)** Records or information that, if disclosed, would allow a person to:

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

22 [(23)] **(22)** Records or information that would reveal or otherwise identify security measures, or
 23 weaknesses or potential weaknesses in security measures, taken or recommended to be taken to
 24 protect:

- 25 (a) An individual;
- 26 (b) Buildings or other property;
- 27 (c) Information processing, communication or telecommunication systems, including the infor-
 28 mation contained in the systems; or
- 29 (d) Those operations of the Oregon State Lottery the security of which are subject to study and
 30 evaluation under ORS 461.180 (6).

31 [(24)] **(23)** Personal information held by or under the direction of officials of the Oregon Health
 32 and Science University or the Oregon University System about a person who has or who is inter-
 33 ested in donating money or property to the university, the system or a state institution of higher
 34 education, if the information is related to the family of the person, personal assets of the person or
 35 is incidental information not related to the donation.

36 [(25)] **(24)** The home address, professional address and telephone number of a person who has
 37 or who is interested in donating money or property to the Oregon University System.

38 [(26)] **(25)** Records of the name and address of a person who files a report with or pays an as-
 39 sessment to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef
 40 Council created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030.

41 [(27)] **(26)** Information provided to, obtained by or used by a public body to authorize, originate,
 42 receive or authenticate a transfer of funds, including but not limited to a credit card number, pay-
 43 ment card expiration date, password, financial institution account number and financial institution
 44 routing number.

45 [(28)] **(27)** Social Security numbers as provided in ORS 107.840.

1 [(29)] **(28)** The electronic mail address of a student who attends a state institution of higher
 2 education listed in ORS 352.002 or Oregon Health and Science University.

3 [(30)] **(29)** The name, home address, professional address or location of a person that is engaged
 4 in, or that provides goods or services for, medical research at Oregon Health and Science University
 5 that is conducted using animals other than rodents. This subsection does not apply to Oregon
 6 Health and Science University press releases, websites or other publications circulated to the gen-
 7 eral public.

8 [(31)(a)] **(30)(a)** If requested by a public safety officer, as defined in ORS 181.610, by a district
 9 attorney, by a deputy district attorney or by an assistant attorney general designated by the At-
 10 torney General, the home address and home telephone number of the public safety officer or attor-
 11 ney contained in the voter registration records for the public safety officer or attorney.

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

15 [(32)] **(31)** If requested by a public safety officer, as defined in ORS 181.610, by a district attor-
 16 ney, by a deputy district attorney or by an assistant attorney general designated by the Attorney
 17 General, the name of the public safety officer or attorney contained in county real property assess-
 18 ment or taxation records. This exemption:

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

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

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

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

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

29 [(33)] **(32)** Land management plans required for voluntary stewardship agreements entered into
 30 under ORS 541.423.

31 **SECTION 5.** ORS 192.501, as amended by section 3, chapter 455, Oregon Laws 2005, section 7,
 32 chapter 608, Oregon Laws 2007, section 2, chapter 687, Oregon Laws 2007, and section 2, chapter
 33 48, Oregon Laws 2008, is amended to read:

34 192.501. The following public records are exempt from disclosure under ORS 192.410 to 192.505
 35 unless the public interest requires disclosure in the particular instance:

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

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

1 do not know or use it.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (9) Investigatory information relating to any complaint or charge filed under ORS 243.676 and
 38 663.180.

39 *[(10) Records, reports and other information received or compiled by the Director of the Department*
 40 *of Consumer and Business Services under ORS 697.732.]*

41 *[(11)]* (10) Information concerning the location of archaeological sites or objects as those terms
 42 are defined in ORS 358.905, except if the governing body of an Indian tribe requests the information
 43 and the need for the information is related to that Indian tribe's cultural or religious activities. This
 44 exemption does not include information relating to a site that is all or part of an existing, commonly
 45 known and publicized tourist facility or attraction.

1 [(12)] (11) A personnel discipline action, or materials or documents supporting that action.

2 [(13)] (12) Information developed pursuant to ORS 496.004, 496.172 and 498.026 or ORS 496.192
3 and 564.100, regarding the habitat, location or population of any threatened species or endangered
4 species.

5 [(14)] (13) Writings prepared by or under the direction of faculty of public educational insti-
6 tutions, in connection with research, until publicly released, copyrighted or patented.

7 [(15)] (14) Computer programs developed or purchased by or for any public body for its own use.
8 As used in this subsection, “computer program” means a series of instructions or statements which
9 permit the functioning of a computer system in a manner designed to provide storage, retrieval and
10 manipulation of data from such computer system, and any associated documentation and source
11 material that explain how to operate the computer program. “Computer program” does not include:

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

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

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

17 [(16)] (15) Data and information provided by participants to mediation under ORS 36.256.

18 [(17)] (16) Investigatory information relating to any complaint or charge filed under ORS chapter
19 654, until a final administrative determination is made or, if a citation is issued, until an employer
20 receives notice of any citation.

21 [(18)] (17) Specific operational plans in connection with an anticipated threat to individual or
22 public safety for deployment and use of personnel and equipment, prepared or used by a public body,
23 if public disclosure of the plans would endanger an individual’s life or physical safety or jeopardize
24 a law enforcement activity.

25 [(19)(a)] (18)(a) Audits or audit reports required of a telecommunications carrier. As used in this
26 paragraph, “audit or audit report” means any external or internal audit or audit report pertaining
27 to a telecommunications carrier, as defined in ORS 133.721, or pertaining to a corporation having
28 an affiliated interest, as defined in ORS 759.390, with a telecommunications carrier that is intended
29 to make the operations of the entity more efficient, accurate or compliant with applicable rules,
30 procedures or standards, that may include self-criticism and that has been filed by the telecommu-
31 nications carrier or affiliate under compulsion of state law. “Audit or audit report” does not mean
32 an audit of a cost study that would be discoverable in a contested case proceeding and that is not
33 subject to a protective order; and

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

37 [(20)] (19) The residence address of an elector if authorized under ORS 247.965 and subject to
38 ORS 247.967.

39 [(21)] (20) The following records, communications and information submitted to a housing au-
40 thority as defined in ORS 456.005, or to an urban renewal agency as defined in ORS 457.010, by
41 applicants for and recipients of loans, grants and tax credits:

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

43 (b) Credit reports;

44 (c) Project appraisals;

45 (d) Market studies and analyses;

- 1 (e) Articles of incorporation, partnership agreements and operating agreements;
 - 2 (f) Commitment letters;
 - 3 (g) Project pro forma statements;
 - 4 (h) Project cost certifications and cost data;
 - 5 (i) Audits;
 - 6 (j) Project tenant correspondence requested to be confidential;
 - 7 (k) Tenant files relating to certification; and
 - 8 (L) Housing assistance payment requests.
- 9 [(22)] **(21)** Records or information that, if disclosed, would allow a person to:
- 10 (a) Gain unauthorized access to buildings or other property;
 - 11 (b) Identify those areas of structural or operational vulnerability that would permit unlawful
 - 12 disruption to, or interference with, services; or
 - 13 (c) Disrupt, interfere with or gain unauthorized access to public funds or to information pro-
 - 14 cessing, communication or telecommunication systems, including the information contained in the
 - 15 systems, that are used or operated by a public body.
- 16 [(23)] **(22)** Records or information that would reveal or otherwise identify security measures, or
- 17 weaknesses or potential weaknesses in security measures, taken or recommended to be taken to
- 18 protect:
- 19 (a) An individual;
 - 20 (b) Buildings or other property;
 - 21 (c) Information processing, communication or telecommunication systems, including the infor-
 - 22 mation contained in the systems; or
 - 23 (d) Those operations of the Oregon State Lottery the security of which are subject to study and
 - 24 evaluation under ORS 461.180 (6).
- 25 [(24)] **(23)** Personal information held by or under the direction of officials of the Oregon Health
- 26 and Science University or the Oregon University System about a person who has or who is inter-
- 27 ested in donating money or property to the university, the system or a state institution of higher
- 28 education, if the information is related to the family of the person, personal assets of the person or
- 29 is incidental information not related to the donation.
- 30 [(25)] **(24)** The home address, professional address and telephone number of a person who has
- 31 or who is interested in donating money or property to the Oregon University System.
- 32 [(26)] **(25)** Records of the name and address of a person who files a report with or pays an as-
- 33 sessment to a commodity commission established under ORS 576.051 to 576.455, the Oregon Beef
- 34 Council created under ORS 577.210 or the Oregon Wheat Commission created under ORS 578.030.
- 35 [(27)] **(26)** Information provided to, obtained by or used by a public body to authorize, originate,
- 36 receive or authenticate a transfer of funds, including but not limited to a credit card number, pay-
- 37 ment card expiration date, password, financial institution account number and financial institution
- 38 routing number.
- 39 [(28)] **(27)** Social Security numbers as provided in ORS 107.840.
- 40 [(29)] **(28)** The electronic mail address of a student who attends a state institution of higher
- 41 education listed in ORS 352.002 or Oregon Health and Science University.
- 42 [(30)(a)] **(29)(a)** If requested by a public safety officer, as defined in ORS 181.610, by a district
- 43 attorney, by a deputy district attorney or by an assistant attorney general designated by the At-
- 44 torney General, the home address and home telephone number of the public safety officer or attor-
- 45 ney contained in the voter registration records for the public safety officer or attorney.

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

4 [(31)] (30) If requested by a public safety officer, as defined in ORS 181.610, by a district attor-
 5 ney, by a deputy district attorney or by an assistant attorney general designated by the Attorney
 6 General, the name of the public safety officer or attorney contained in county real property assess-
 7 ment or taxation records. This exemption:

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

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

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

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

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

18 [(32)] (31) Land management plans required for voluntary stewardship agreements entered into
 19 under ORS 541.423.

20 **SECTION 6.** ORS 192.502 is amended to read:

21 192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

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

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

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

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

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

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

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

45 (4) Information submitted to a public body in confidence and not otherwise required by law to

1 be submitted, where such information should reasonably be considered confidential, the public body
 2 has obliged itself in good faith not to disclose the information, and when the public interest would
 3 suffer by the disclosure.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the
 44 agents of the treasurer or the council relating to active or proposed publicly traded investments
 45 under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or

1 liquidation of the investments. For the purposes of this subsection:

2 (a) The exemption does not apply to:

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

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

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

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

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

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

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

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

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

24 (F) Investment agreements and related documents.

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

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

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

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

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

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

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

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

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

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

44 (15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the
45 Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as

1 exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

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

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

9 (a) Personal financial statements.

10 (b) Financial statements of applicants.

11 (c) Customer lists.

12 (d) Information of an applicant pertaining to litigation to which the applicant is a party if the
13 complaint has been filed, or if the complaint has not been filed, if the applicant 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 paragraph shall limit any right or opportunity granted by discovery
16 or deposition statutes to a party to litigation or potential litigation.

17 (e) Production, sales and cost data.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (b) Credit reports.

15 (c) Project appraisals.

16 (d) Market studies and analyses.

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

18 (f) Commitment letters.

19 (g) Project pro forma statements.

20 (h) Project cost certifications and cost data.

21 (i) Audits.

22 (j) Project tenant correspondence.

23 (k) Personal information about a tenant.

24 (L) Housing assistance payments.

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

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

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

41 (28) Personally identifiable information about customers of a municipal electric utility or a
 42 people's utility district or the names, dates of birth, driver license numbers, telephone numbers,
 43 electronic mail addresses or Social Security numbers of customers who receive water, sewer or
 44 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-
 45 lease personally identifiable information about a customer, and a public body providing water, sewer

1 or storm drain services may release the name, date of birth, driver license number, telephone num-
 2 ber, electronic mail address or Social Security number of a customer, if the customer consents in
 3 writing or electronically, if the disclosure is necessary for the utility, district or other public body
 4 to render services to the customer, if the disclosure is required pursuant to a court order or if the
 5 disclosure is otherwise required by federal or state law. The utility, district or other public body
 6 may charge as appropriate for the costs of providing such information. The utility, district or other
 7 public body may make customer records available to third party credit agencies on a regular basis
 8 in connection with the establishment and management of customer accounts or in the event such
 9 accounts are delinquent.

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

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

14 (31) Documents, materials or other information submitted to the Director of the Department of
 15 Consumer and Business Services in confidence by a state, federal, foreign or international regulatory
 16 or law enforcement agency or by the National Association of Insurance Commissioners[, *its*] or af-
 17 filiates or subsidiaries **of the National Association of Insurance Commissioners** under ORS
 18 [646A.250 to 646A.270,] 697.005 to 697.095, [697.602 to 697.842,] 705.137, 717.200 to 717.320, 717.900
 19 or 717.905, ORS chapter 59, 722, 723, 725 or 726, the Bank Act or the Insurance Code when:

20 (a) The document, material or other information is received upon notice or with an under-
 21 standing that [*it*] **the document** is confidential or privileged under the laws of the jurisdiction that
 22 is the source of the document, material or other information; and

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

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

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

27 (a) Generation, storage or conveyance of:

28 (A) Electricity;

29 (B) Gas in liquefied or gaseous form;

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

31 (D) Petroleum products;

32 (E) Sewage; or

33 (F) Water.

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

35 (c) Data transmissions by whatever means provided.

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

38 **SECTION 7.** ORS 646.608, as amended by section 8, chapter 19, Oregon Laws 2008, and section
 39 5, chapter 31, Oregon Laws 2008, is amended to read:

40 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
 41 ness, vocation or occupation the person does any of the following:

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

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

45 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-

1 ciation with, or certification by, another.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (w) Manufactures mercury fever thermometers.

- 1 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
 2 law, or is:
- 3 (A) Prescribed by a person licensed under ORS chapter 677; and
- 4 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
 5 on the proper cleanup of mercury should breakage occur.
- 6 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
 7 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
 8 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
 9 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
 10 graph, “thermostat” means a device commonly used to sense and, through electrical communication
 11 with heating, cooling or ventilation equipment, control room temperature.
- 12 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
 13 mercury light switches.
- 14 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 15 (bb) Violates ORS 646A.070 (1).
- 16 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 17 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 18 (ee) Violates ORS 646.883 or 646.885.
- 19 (ff) Violates any provision of ORS 646A.020.
- 20 (gg) Violates ORS 646.569.
- 21 (hh) Violates the provisions of ORS 646A.142.
- 22 (ii) Violates ORS 646A.360.
- 23 (jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 24 (kk) Violates ORS 646.563.
- 25 (LL) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 26 (mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
 27 thereto.
- 28 (nn) Violates ORS 646A.210 or 646A.214.
- 29 (oo) Violates any provision of ORS 646A.124 to 646A.134.
- 30 [(pp) Violates ORS 646A.254.]
- 31 [(qq) **(pp)** Violates ORS 646A.095.
- 32 [(rr) **(qq)** Violates ORS 822.046.
- 33 [(ss) **(rr)** Violates ORS 128.001.
- 34 [(tt) **(ss)** Violates ORS 646.649 (2) to (4).
- 35 [(uu) **(tt)** Violates ORS 646A.090 (2) to (4).
- 36 [(vv) **(uu)** Violates ORS 87.686.
- 37 [(ww) **(vv)** Violates ORS 646.651.
- 38 [(xx) **(ww)** Violates ORS 646A.362.
- 39 [(yy) **(xx)** Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 40 [(zz) **(yy)** Violates ORS 180.440 (1).
- 41 [(aaa) **(zz)** Commits the offense of acting as a vehicle dealer without a certificate under ORS
 42 822.005.
- 43 [(bbb) **(aaa)** Violates ORS 87.007 (2) or (3).
- 44 [(ccc) **(bbb)** Violates ORS 92.405 (1), (2) or (3).
- 45 [(ddd) **(ccc)** Engages in an unlawful practice under ORS 646.648.

1 [(eee)] (ddd) Violates ORS 646A.365.
 2 [(fff)] (eee) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
 3 [(ggg)] (fff) Sells a gift card in violation of ORS 646A.276.
 4 [(hhh)] (ggg) Violates ORS 646A.102, 646A.106 or 646A.108.
 5 [(iii)] (hhh) Violates ORS 646A.430 to 646A.450.
 6 [(jjj)] (iii) Violates a provision of sections 2 to 6, chapter 19, Oregon Laws 2008.
 7 [(kkk)] (jjj) Violates section 2, chapter 31, Oregon Laws 2008, 30 or more days after a recall
 8 notice, warning or declaration described in section 2, chapter 31, Oregon Laws 2008, is issued for
 9 the children’s product, as defined in section 1, chapter 31, Oregon Laws 2008, that is the subject of
 10 the violation.
 11 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
 12 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
 13 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
 14 need not prove competition between the parties or actual confusion or misunderstanding.
 15 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
 16 torney General has first established a rule in accordance with the provisions of ORS chapter 183
 17 declaring the conduct to be unfair or deceptive in trade or commerce.
 18 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
 19 under subsection [(1)(zz)] (1)(yy) of this section by a person other than a prosecuting attorney, relief
 20 is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.
 21 **SECTION 8.** ORS 646A.110 is amended to read:
 22 646A.110. (1) ORS 646.608 [(1)(fff)] (1)(eee), 646A.100 to 646A.110 and 646A.112 apply only to
 23 [persons] a person who [engage] engages in the retail sale of merchandise in the regular course of
 24 [their] the person’s business.
 25 (2) ORS 646.608 [(1)(fff)] (1)(eee), 646A.100 to 646A.110 and 646A.112 do not apply to a public
 26 [officials] official acting within the scope of [their] the public official’s duties [as public officials].
 27 **SECTION 9.** ORS 646A.628 is amended to read:
 28 646A.628. Notwithstanding ORS 705.145 (2), (3) and (5), the Director of the Department of Con-
 29 sumer and Business Services can allocate as deemed appropriate the moneys derived pursuant to
 30 ORS [646A.252 to 646A.270,] 650.005 to 650.100, 697.005 to 697.095, [697.602 to 697.842,] 705.350 and
 31 717.200 to 717.320 and 731.804 and ORS chapters 59, 645, 706 to 716, 722, 723, 725 and 726 to im-
 32 plement ORS 646A.600 to 646A.628.
 33 **SECTION 10.** ORS 697.990 is amended to read:
 34 697.990. (1) Violation of ORS 697.015 or 697.058 by an individual is a Class A violation.
 35 (2) Violation of ORS 697.015 or 697.058 by a corporation or association is a Class A violation.
 36 [Any] An officer or agent of a corporation or association who personally participates in [any] a vi-
 37 olation of ORS 697.015 or 697.058 by the corporation or association is subject to the penalty pre-
 38 scribed in subsection (1) of this section.
 39 [(3) Violation of ORS 697.612 or 697.642 to 697.702 is punishable, upon conviction, as a Class A
 40 misdemeanor.]
 41 **SECTION 11.** ORS 697.992 is amended to read:
 42 697.992. Justice courts have concurrent jurisdiction with circuit courts in all criminal prose-
 43 cutions for violation of ORS 697.015[,] and 697.058[, 697.612 and 697.642 to 697.702].
 44 **SECTION 12.** ORS 705.137 is amended to read:
 45 705.137. (1) Except as provided in subsection (3) of this section, [any] a document, material or

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

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

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

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

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

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

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

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

43 **SECTION 13. ORS 646A.250, 646A.252, 646A.254, 646A.256, 646A.258, 646A.260, 646A.262,**
 44 **646A.264, 646A.266, 646A.268, 646A.270, 697.602, 697.612, 697.622, 697.632, 697.642, 697.652,**
 45 **697.662, 697.672, 697.682, 697.692, 697.702, 697.707, 697.712, 697.722, 697.732, 697.742, 697.752,**

1 697.762, 697.772, 697.782, 697.792, 697.802, 697.812, 697.822, 697.825, 697.832 and 697.842 are re-
2 pealed.

3 **SECTION 14.** Sections 1 to 3 of this 2009 Act, the amendments to ORS 192.501, 192.502,
4 646.608, 646A.110, 646A.628, 697.990, 697.992 and 705.137 by sections 4 to 12 of this 2009 Act and
5 the repeal of ORS 646A.250, 646A.252, 646A.254, 646A.256, 646A.258, 646A.260, 646A.262,
6 646A.264, 646A.266, 646A.268, 646A.270, 697.602, 697.612, 697.622, 697.632, 697.642, 697.652,
7 697.662, 697.672, 697.682, 697.692, 697.702, 697.707, 697.712, 697.722, 697.732, 697.742, 697.752,
8 697.762, 697.772, 697.782, 697.792, 697.802, 697.812, 697.822, 697.825, 697.832 and 697.842 by section
9 13 of this 2009 Act apply to a provision of or an offer to provide a debt management service
10 that occurs on or after the effective date of this 2009 Act.

11 **SECTION 15.** This 2009 Act being necessary for the immediate preservation of the public
12 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
13 on its passage.

14 _____