

House Bill 3242

Sponsored by Representative HOLVEY, Senator WALKER

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**.

Requires persons selling contracts or insurance relating to prearrangement of death care to register with State Mortuary and Cemetery Board and provide purchasers with disclosure statement. Imposes certain requirements on sellers of insurance covering costs of death care.

A BILL FOR AN ACT

1
2 Relating to prearrangement of death care; creating new provisions; and amending ORS 97.923,
3 97.925, 97.926, 97.927, 97.931, 97.933, 97.939, 97.946 and 646.605.

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

5 **SECTION 1.** ORS 97.923 is amended to read:

6 97.923. As used in ORS 97.923 to 97.949 and 97.994 unless the context requires otherwise:

7 (1) "Beneficiary" means the person, if known, who is to receive the funeral and cemetery mer-
8 chandise, funeral and cemetery services or completed interment spaces.

9 (2) "Certified provider" means *[any]* a person certified under ORS 97.933 to sell or offer for sale
10 prearrangement sales contracts, *[or]* preconstruction sales contracts **or prearrangement**
11 **insurance**.

12 (3) "Delivery" occurs when:

13 (a) Physical possession of the funeral or cemetery merchandise is transferred to the purchaser;

14 or

15 (b) If authorized by a purchaser under a purchase agreement:

16 (A) The title to the funeral or cemetery merchandise has been transferred to the purchaser, has
17 been paid for, and is in the possession of the seller, who has documented the sale in the purchaser's
18 records through use of a serial or other identifying number and placed the merchandise, until
19 needed, for storage on the seller's premises; or

20 (B) The merchandise has been identified for the purchaser or the beneficiary as documented by
21 the manufacturer's receipt placed by the seller in the purchaser's records and held by the man-
22 ufacturer for future delivery.

23 (4) "Depository" means a financial institution or trust company, as those terms are defined ORS
24 706.008, that is authorized to accept deposits in this state or to transact trust business in this state.

25 (5) "Director" means the Director of the Department of Consumer and Business Services.

26 (6) "Guaranteed contract" means a written preconstruction sales contract or prearrangement
27 sales contract that guarantees the beneficiary the specific undeveloped space or spaces or funeral
28 and cemetery merchandise or funeral and cemetery services contained in the contract and under
29 which no charges other than the sales price contained in the contract shall be required upon de-
30 livery or performance of the funeral or cemetery merchandise or services.

31 (7) "Master trustee" means an entity that is not a certified provider under ORS 97.923 to 97.949

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 and that has fiduciary responsibility for the uniform administration of funds including, but not lim-
 2 ited to, acceptance, custodianship, investment and accounting, delivered to it by a certified provider
 3 for the benefit of purchasers of preconstruction sales contracts or prearrangement sales contracts.
 4 “Master trustee” does not include a financial institution, as defined in ORS 706.008, that acts solely
 5 as a depository under ORS 97.923 to 97.949.

6 (8) “Nonguaranteed contract” means a written preconstruction sales contract or prearrangement
 7 sales contract that guarantees the beneficiary the specific undeveloped space or spaces or funeral
 8 or cemetery merchandise or services contained in the contract, when the price of the merchandise
 9 and services selected has not been fixed and will be determined by existing prices at the time the
 10 merchandise and services are delivered or provided.

11 **(9) “Prearrangement insurance” means insurance purchased before an individual’s death**
 12 **relating to the prearrangement of death care, including but not limited to the purchase or**
 13 **provision of specific funeral or cemetery merchandise or services in connection with the final**
 14 **disposition or commemoration of the memory of the individual after the individual’s death.**

15 [(9)] (10) “Prearrangement sales” or “prearrangement sales contract” means any sale, excluding
 16 the sale and contemporaneous or subsequent assignment of a life insurance policy or an annuity
 17 contract, made to a purchaser, that has as its purpose the furnishing of funeral or cemetery mer-
 18 chandise or services in connection with the final disposition or commemoration of the memory of a
 19 dead human body, for use at a time determinable by the death of the person or persons whose body
 20 or bodies are to be disposed and where the sale terms require payment or payments to be made at
 21 a currently determinable time.

22 [(10)] (11) “Preconstruction sale” or “preconstruction sales contract” means a sale made to a
 23 purchaser, for the purpose of furnishing undeveloped interment spaces and when the sale terms re-
 24 quire payment or payments to be made at a currently determinable time.

25 [(11)] (12) “Provider” means any entity that sells and offers for sale funeral or cemetery mer-
 26 chandise or services.

27 [(12)] (13) “Purchaser” means a beneficiary or a person acting on behalf of a beneficiary who
 28 enters into a prearrangement sales contract or a preconstruction sales contract with a certified
 29 provider under which any payment or payments made under the contract are required to be depos-
 30 ited in trust under ORS 97.941 **or a person who purchases prearrangement insurance.**

31 [(13)] (14) “Salesperson” means an individual registered under ORS 97.931 and employed by a
 32 certified provider to engage in the sale of prearrangement [or] **sales contracts**, preconstruction
 33 sales contracts **or prearrangement insurance** on behalf of the certified provider.

34 [(14)] (15) “Sales price” means the gross amount paid by a purchaser for a prearrangement sales
 35 contract or preconstruction sales contract, excluding sales taxes, credit life insurance premiums and
 36 finance charges.

37 [(15)] (16) “Trust” means an express trust created under ORS 97.941 whereby a trustee has the
 38 duty to administer the amounts specified under ORS 97.941 received under a prearrangement sales
 39 contract or a preconstruction sales contract for the benefit of the purchaser of a prearrangement
 40 sales contract or preconstruction sales contract.

41 [(16)] (17) “Undeveloped interment spaces” or “undeveloped spaces” means any space to be used
 42 for the reception of human remains that is not completely constructed or developed at the time of
 43 initial payment.

44 **SECTION 2. Section 3 of this 2009 Act is added to and made a part of ORS 97.923 to 97.949.**

45 **SECTION 3. (1) A certified provider shall provide a prearrangement disclosure statement**

1 to a purchaser before the purchaser enters into or renews a prearrangement insurance
 2 contract. The disclosure statement must disclose:

3 (a) Whether a life insurance policy is involved or is being used to fund prearrangement
 4 of death care;

5 (b) The nature of the relationship between the insurer, the insurance producer and the
 6 certified provider;

7 (c) The role of the life insurance policy in funding the prearrangement of death care and
 8 the nature and existence of any guarantees relating to the prearrangement of death care;

9 (d) The impact on the prearrangement of death care of:

10 (A) Changes to the life insurance policy, including but not limited to changes in the as-
 11 signment of proceeds, beneficiary designation or use of the proceeds;

12 (B) The purchaser's failure to make premium payments;

13 (C) Cancellation or surrender of the life insurance policy; and

14 (D) If the prearrangement insurance is replacing a trust created under ORS 97.941, the
 15 differences in operation and accessibility between a trust and insurance; and

16 (e) Other information required by the State Mortuary and Cemetery Board by rule.

17 (2)(a) If the certified provider is an insurance producer as defined in ORS 731.104 or an
 18 insurer as defined in ORS 731.106, the disclosure statement must, in addition to the disclo-
 19 sures required under subsection (1) of this section, include the following prominent disclo-
 20 sures:

21 (A) If the policy has a face amount of \$15,000 or less and over the term of the policy the
 22 cumulative policy premiums paid may exceed the face amount of the policy, the projected
 23 date on which the cumulative policy premiums paid may exceed the face amount of the pol-
 24 icy.

25 (B) Available premium payment plans and product alternatives offered by the insurer. If
 26 no alternatives exist, the insurer shall prominently disclose that there are no such alterna-
 27 tives.

28 (C) The cancellation period required under section 6 of this 2009 Act to the purchaser.

29 (b) As used in this subsection, "cumulative policy premiums" includes premiums paid for
 30 riders. However, the face amount of the policy may not include the benefit attributable to
 31 the riders.

32 **SECTION 4.** ORS 97.925 is amended to read:

33 97.925. It is the purpose of ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 to assure funds for
 34 performance to those purchasers who contract through prearrangement sales contracts for the pur-
 35 chase of funeral or cemetery merchandise or services, and through preconstruction sales contracts
 36 for undeveloped interment spaces. It is also the purpose of ORS 97.923 to 97.949, 97.992, 97.994 and
 37 692.180 to provide for the certification or registration of persons selling or offering for sale prear-
 38 rangement sales contracts, [and] preconstruction sales contracts **and prearrangement insurance**,
 39 the creation and administration of prearrangement sales contract and preconstruction sales contract
 40 trust funds, the disbursement and allocation of trust funds upon the certified provider's performance
 41 of its contractual obligations and to provide protection for the purchaser upon the certified provid-
 42 er's default.

43 **SECTION 5.** Sections 6 and 7 of this 2009 Act are added to and made a part of the In-
 44 surance Code.

45 **SECTION 6.** A life insurance policy that is issued to fund a prearrangement sales con-

1 **tract as defined in ORS 97.923 must contain a provision that allows the purchaser to cancel**
 2 **the policy within:**

3 (1) **Ten days following the delivery of the policy, with full premium refund to the pur-**
 4 **chaser and with no charge or penalty; or**

5 (2) **If the life insurance policy replaces a trust created under ORS 97.941, 30 days follow-**
 6 **ing the delivery of the policy, with full premium refund to the purchaser and with no charge**
 7 **or penalty.**

8 **SECTION 7. An individual may not sell, solicit or negotiate prearrangement insurance**
 9 **as defined in ORS 97.923 unless the individual is licensed as an insurance producer for life**
 10 **insurance under ORS chapter 744, is registered with the State Mortuary and Cemetery Board**
 11 **under ORS 97.931 and is certified under ORS 97.933.**

12 **SECTION 8.** ORS 97.926 is amended to read:

13 97.926. The Director of the Department of Consumer and Business Services may adopt rules that
 14 are necessary or appropriate to:

15 (1) Protect purchasers of prearrangement sales contracts, [*and*] preconstruction sales contracts
 16 **and prearrangement insurance** and the public; and

17 (2) Administer ORS 97.923 to 97.949.

18 **SECTION 9.** ORS 97.927 is amended to read:

19 97.927. (1) Except as provided in this section, ORS 97.923 to 97.949, 97.992, 97.994 and 692.180
 20 apply to all certified providers, master trustees and salespersons who sell or offer for sale prear-
 21 rangement sales contracts, [*or*] preconstruction sales contracts **or prearrangement insurance.**

22 (2) ORS 97.923 to 97.949, 97.992, 97.994 and 692.180 do not apply to:

23 (a) Agreements to sell or sales made by endowment care cemeteries under ORS 97.929; or

24 (b) Any nonprofit memorial society charging less than a \$100 membership fee.

25 (3) Notwithstanding subsection (2) of this section, ORS 97.937 applies to:

26 (a) Agreements to sell or sales made by endowment care cemeteries under ORS 97.929; or

27 (b) Any nonprofit memorial society charging less than a \$100 membership fee.

28 **SECTION 10.** ORS 97.931 is amended to read:

29 97.931. (1) A salesperson may not engage in prearrangement sales made by endowment care
 30 cemeteries under ORS 97.929 or in preconstruction sales, [*or*] prearrangement sales **or sales of**
 31 **prearrangement insurance** unless the salesperson is registered with the State Mortuary and
 32 Cemetery Board or holds a current funeral service practitioner license, embalmer license, funeral
 33 service practitioner apprentice registration or embalmer apprentice registration. The board by rule
 34 shall:

35 (a) Establish procedures for issuing salesperson registrations under this subsection;

36 (b) Establish standards for determining whether a salesperson registration should be issued;

37 (c) Set renewal and salesperson registration fees; and

38 (d) Require biennial renewal of salesperson registrations.

39 (2) The board may conduct a background check of any salesperson applying for registration
 40 under subsection (1) of this section. The background check may include information solicited from
 41 the Department of State Police. After consideration of information obtained from any background
 42 check and any other information in its possession, the board shall determine whether to register the
 43 salesperson.

44 (3)(a) The board may impose a civil penalty of up to \$1,000 per violation or suspend, revoke or
 45 refuse to issue or renew the registration of a salesperson described in subsection (1) of this section

1 upon a determination that the applicant or holder has not complied with the provisions of ORS
 2 97.923 to 97.949 or ORS chapter 692, or any rules adopted thereunder. When the board proposes to
 3 take such action, the person affected by the action shall be accorded notice and an opportunity for
 4 hearing as provided by ORS chapter 183. The board shall notify the Director of the Department of
 5 Consumer and Business Services of its intent to take action against a salesperson or person acting
 6 as a salesperson.

7 (b) The board shall suspend, revoke or refuse to issue or renew the registration of a salesperson
 8 if the director requests the board to take such action.

9 **(4) The board shall notify the Director of the Department of Consumer and Business**
 10 **Services of complaints received by the board or of action the board takes against an insur-**
 11 **ance producer as defined in ORS 731.104 related to the activities of the insurance producer**
 12 **under ORS 97.923 to 97.949 or ORS chapter 692 related to prearrangement insurance. The**
 13 **director may investigate and take action against the insurance producer as provided in the**
 14 **Insurance Code.**

15 [(4)] (5) Fees and other moneys received by the board under this section shall be deposited into
 16 the State Mortuary and Cemetery Board Account established in ORS 692.375.

17 **SECTION 11.** ORS 97.933 is amended to read:

18 97.933. (1) A provider may not engage in prearrangement sales, [or] preconstruction sales **or**
 19 **sales of prearrangement insurance** unless the provider is certified by the Director of the De-
 20 partment of Consumer and Business Services. The director shall:

21 (a) Establish procedures for issuing certificates required by this section.

22 (b) Establish standards for determining whether a certificate should be issued.

23 (c) Set certification and renewal fees.

24 (d) Require annual renewal of certification.

25 (e) Establish standards for rules of conduct of certified providers.

26 (2) The fees described in this section shall be reasonable and shall defray the costs associated
 27 with the administration of ORS 97.923 to 97.949.

28 (3)(a) Every certified provider shall file an annual report with the director on forms provided
 29 by the director. The annual report shall contain any information reasonably considered necessary
 30 by the director, including but not limited to:

31 (A) A disclosure of changes in trust deposits;

32 (B) The number of consecutively numbered prearrangement **sales contracts**, [or] precon-
 33 struction sales contracts **or prearrangement insurance sales contracts** sold during the reporting
 34 period;

35 (C) A complete inventory of the funeral merchandise, cemetery merchandise or a combination
 36 thereof delivered in lieu of trust fund requirements under ORS 97.941, including:

37 (i) The location of the merchandise;

38 (ii) Merchandise serial numbers or warehouse receipt numbers identified by the name of the
 39 purchaser or the beneficiary; and

40 (iii) The statement of the certified provider that each item of merchandise is in the seller's
 41 possession at the specified location; and

42 (D) The number of withdrawals from or terminations of any trusts.

43 (b) If the annual report is not filed or is filed and shows any material discrepancy, the director
 44 may take appropriate action and send notification of the matter to the State Mortuary and Cemetery
 45 Board.

1 (c) The director may relieve a certified provider of the duty to file the annual report upon a
 2 determination that the certified provider has performed all obligations under the prearrangement
 3 sales contract, [or] preconstruction sales contract **or prearrangement insurance contract**, or that
 4 such obligations lawfully have been assumed by another or have been discharged or canceled.

5 (4) The director may audit the records of a certified provider that relate to prearrangement
 6 sales, [or] preconstruction sales **or prearrangement insurance**, as the director may consider ap-
 7 propriate. The director may refer any matter outside of normal auditing procedures to the office of
 8 the Attorney General for investigation and send notification of the referral to the State Mortuary
 9 and Cemetery Board.

10 (5) The conduct of individuals, including salespersons as defined in ORS 97.923, employed by a
 11 certified provider is the direct responsibility of the certified provider.

12 (6) A certificate issued to a provider is not transferable. A person that seeks to purchase or
 13 otherwise acquire control of a cemetery or funeral establishment that is a certified provider shall
 14 first apply to the director and obtain approval of the purchase or change in control.

15 (7) A certificate issued to a provider becomes inactive when the certificate is surrendered to the
 16 director. The director retains jurisdiction over the provider as long as trust funds remain on deposit
 17 for prearrangement sales contracts or preconstruction sales contracts. While the certificate is in-
 18 active, the provider shall:

19 (a) Cease all prearrangement sales to the public;

20 (b) Collect and deposit into trust all installment funds paid toward contracts sold prior to be-
 21 coming inactive;

22 (c) Seek disbursement of trust funds only in accordance with the requirements of the written con-
 23 tracts and ORS 97.923 to 97.949 until the funds have been exhausted; and

24 (d) Continue to submit required annual reports and renewal fees until no trust funds remain on
 25 deposit.

26 **SECTION 12.** ORS 97.939 is amended to read:

27 97.939. (1) Three copies of a written sales contract shall be executed for each prearrangement
 28 sales contract, [or] preconstruction sales contract **or prearrangement insurance contract** sold by
 29 a certified provider. The certified provider shall retain one copy of the contract and a copy of the
 30 completed contract shall be given to:

31 (a) The purchaser; and

32 (b) The depository or the master trustee, if applicable.

33 (2) Upon receiving a trust deposit under ORS 97.941, the master trustee shall sign a copy of the
 34 contract received under subsection (1) of this section, retain a copy for its files and return the
 35 contract to the purchaser.

36 (3) Each completed contract shall:

37 (a) Comply with the plain language standards described in ORS 180.545 (1);

38 (b) Be consecutively numbered;

39 (c) Have a corresponding consecutively numbered receipt;

40 (d) Be preprinted or, if the certified provider uses a master trustee, be obtained from the master
 41 trustee;

42 (e) Identify the purchaser and certified provider who sold the contract;

43 (f) Specify whether the contract is a guaranteed contract or a nonguaranteed contract;

44 (g) Specify the specific funeral or cemetery merchandise or services or undeveloped interment
 45 spaces included and not included in the contract; and

1 (h) If a guaranteed contract, disclose that the certified provider may retain 10 percent of the
2 sales price.

3 (4)(a) Notwithstanding ORS 97.943 (8), in the case of a prearrangement sales contract, if at the
4 time of entering into the contract, the beneficiary of the contract is a recipient of public assistance
5 or reasonably anticipates becoming a recipient of public assistance, the contract may provide that
6 the contract is irrevocable.

7 (b) The contract may provide for an election by the beneficiary, or by the purchaser on behalf
8 of the beneficiary, to make the contract thereafter irrevocable if after the contract is entered into,
9 the beneficiary becomes eligible or seeks to become eligible for public assistance.

10 **SECTION 13.** ORS 97.946 is amended to read:

11 97.946. (1) A person may not engage in unsolicited door to door or telephone advertising and
12 marketing of prearrangement sales contracts, [or] preconstruction sales contracts **or prearrange-**
13 **ment insurance.** The costs of advertising and marketing may not be paid from trust funds.

14 (2) Advertising and marketing a prearrangement sales contract, [or] a preconstruction sales
15 contract **or prearrangement insurance** by a funeral service practitioner, embalmer or funeral
16 service establishment licensed under ORS chapter 692 does not constitute a violation of ORS 692.180
17 (1)(c).

18 **SECTION 14.** ORS 646.605 is amended to read:

19 646.605. As used in ORS 646.605 to 646.652:

20 (1) "Appropriate court" means the circuit court of a county:

21 (a) Where one or more of the defendants reside;

22 (b) Where one or more of the defendants maintain a principal place of business;

23 (c) Where one or more of the defendants are alleged to have committed an act prohibited by
24 ORS 646.605 to 646.652; or

25 (d) With the defendant's consent, where the prosecuting attorney maintains an office.

26 (2) "Documentary material" means the original or a copy of any book, record, report, memo-
27 randum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or
28 other tangible document or recording, wherever situate.

29 (3) "Examination" of documentary material shall include inspection, study or copying of any
30 such material, and taking testimony under oath or acknowledgment in respect of any such docu-
31 mentary material or copy thereof.

32 (4) "Person" means natural persons, corporations, trusts, partnerships, incorporated or
33 unincorporated associations and any other legal entity except bodies or officers acting under statu-
34 tory authority of this state or the United States.

35 (5) "Prosecuting attorney" means the Attorney General or the district attorney of any county
36 in which a violation of ORS 646.605 to 646.652 is alleged to have occurred.

37 (6) "Real estate, goods or services" means those that are or may be obtained primarily for per-
38 sonal, family or household purposes, or that are or may be obtained for any purposes as a result of
39 a telephone solicitation, and includes franchises, distributorships and other similar business oppor-
40 tunities, but does not include insurance. Except as provided in section 2, chapter 658, Oregon Laws
41 2003, real estate does not cover conduct covered by ORS chapter 90.

42 (7) "Telephone solicitation" means a solicitation where a person, in the course of the person's
43 business, vocation or occupation, uses a telephone or an automatic dialing-announcing device to in-
44 itiate telephonic contact with a potential customer and the person is not one of the following:

45 (a) A person who is a broker-dealer or salesperson licensed under ORS 59.175, or a mortgage

1 banker or mortgage broker licensed under ORS 59.850 when the solicitation is for a security quali-
 2 fied for sale pursuant to ORS 59.055.

3 (b) A real estate licensee or a person who is otherwise authorized to engage in professional real
 4 estate activity pursuant to ORS chapter 696, when the solicitation involves professional real estate
 5 activity.

6 (c) A person licensed or exempt from licensure as a builder pursuant to ORS chapter 701, when
 7 the solicitation involves the construction, alteration, repair, improvement or demolition of a struc-
 8 ture.

9 (d) A person licensed or otherwise authorized to sell insurance as an insurance producer pur-
 10 suant to ORS chapter 744, when the solicitation involves insurance.

11 (e) A person soliciting the sale of a newspaper of general circulation, a magazine or membership
 12 in a book or record club who complies with ORS 646.611, when the solicitation involves newspapers,
 13 magazines or membership in a book or record club.

14 (f) A person soliciting without the intent to complete and who does not complete the sales
 15 presentation during the telephone solicitation and who only completes the sales presentation at a
 16 later face-to-face meeting between the solicitor and the prospective purchaser.

17 (g) A supervised financial institution or parent, subsidiary or affiliate thereof. As used in this
 18 paragraph, "supervised financial institution" means any financial institution or trust company, as
 19 those terms are defined in ORS 706.008, or any personal property broker, consumer finance lender,
 20 commercial finance lender or insurer that is subject to regulation by an official or agency of this
 21 state or of the United States.

22 (h) A person who is authorized to conduct prearrangement or preconstruction funeral or ceme-
 23 tery sales[,] **or sales of prearrangement insurance** pursuant to ORS chapter 692, when the solici-
 24 tation involves prearrangement or preconstruction funeral or cemetery plans.

25 (i) A person who solicits the services provided by a cable television system licensed or fran-
 26 chised pursuant to state, local or federal law, when the solicitation involves cable television ser-
 27 vices.

28 (j) A person or affiliate of a person whose business is regulated by the Public Utility Commission
 29 of Oregon.

30 (k) A person who sells farm products as defined by ORS 576.006 if the solicitation neither in-
 31 tends to nor actually results in a sale that costs the purchaser in excess of \$100.

32 (L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section
 33 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration
 34 under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

35 (m) A person soliciting exclusively the sale of telephone answering services to be provided by
 36 that person or that person's employer when the solicitation involves answering services.

37 (n) A telecommunications utility with access lines of 15,000 or less or a cooperative telephone
 38 association when the solicitation involves regulated goods or services.

39 (8) "Trade" and "commerce" mean advertising, offering or distributing, whether by sale, rental
 40 or otherwise, any real estate, goods or services, and include any trade or commerce directly or in-
 41 directly affecting the people of this state.

42 (9) "Unconscionable tactics" include, but are not limited to, actions by which a person:

43 (a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or ina-
 44 bility to understand the language of the agreement;

45 (b) Knowingly permits a customer to enter into a transaction from which the customer will

1 derive no material benefit; or

2 (c) Permits a customer to enter into a transaction with knowledge that there is no reasonable
3 probability of payment of the attendant financial obligation in full by the customer when due.

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

6 (11) A loan is made “in close connection with the sale of a manufactured dwelling” if:

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

9 (b) The lender gives a commission, rebate or credit in any form to a seller who refers the bor-
10 rower to the lender, other than payment of the proceeds of the loan jointly to the seller and the
11 borrower;

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

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

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

16 (f) The lender supplies documents to the seller used by the borrower in obtaining the loan.

17 **SECTION 15.** ORS 646.605, as amended by section 12, chapter 658, Oregon Laws 2003, section
18 199, chapter 71, Oregon Laws 2007, and section 32, chapter 319, Oregon Laws 2007, is amended to
19 read:

20 646.605. As used in ORS 646.605 to 646.652:

21 (1) “Appropriate court” means the circuit court of a county:

22 (a) Where one or more of the defendants reside;

23 (b) Where one or more of the defendants maintain a principal place of business;

24 (c) Where one or more of the defendants are alleged to have committed an act prohibited by
25 ORS 646.605 to 646.652; or

26 (d) With the defendant’s consent, where the prosecuting attorney maintains an office.

27 (2) “Documentary material” means the original or a copy of any book, record, report, memo-
28 randum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or
29 other tangible document or recording, wherever situate.

30 (3) “Examination” of documentary material shall include inspection, study or copying of any
31 such material, and taking testimony under oath or acknowledgment in respect of any such docu-
32 mentary material or copy thereof.

33 (4) “Person” means natural persons, corporations, trusts, partnerships, incorporated or
34 unincorporated associations and any other legal entity except bodies or officers acting under statu-
35 tory authority of this state or the United States.

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

38 (6) “Real estate, goods or services” means those that are or may be obtained primarily for per-
39 sonal, family or household purposes, or that are or may be obtained for any purposes as a result of
40 a telephone solicitation, and includes franchises, distributorships and other similar business oppor-
41 tunities, but does not include insurance. Real estate does not cover conduct covered by ORS chapter
42 90.

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

1 (a) A person who is a broker-dealer or salesperson licensed under ORS 59.175, or a mortgage
2 banker or mortgage broker licensed under ORS 59.850 when the solicitation is for a security quali-
3 fied for sale pursuant to ORS 59.055.

4 (b) A real estate licensee or a person who is otherwise authorized to engage in professional real
5 estate activity pursuant to ORS chapter 696, when the solicitation involves professional real estate
6 activity.

7 (c) A person licensed or exempt from licensure as a builder pursuant to ORS chapter 701, when
8 the solicitation involves the construction, alteration, repair, improvement or demolition of a struc-
9 ture.

10 (d) A person licensed or otherwise authorized to sell insurance as an insurance producer pur-
11 suant to ORS chapter 744, when the solicitation involves insurance.

12 (e) A person soliciting the sale of a newspaper of general circulation, a magazine or membership
13 in a book or record club who complies with ORS 646.611, when the solicitation involves newspapers,
14 magazines or membership in a book or record club.

15 (f) A person soliciting without the intent to complete and who does not complete the sales
16 presentation during the telephone solicitation and who only completes the sales presentation at a
17 later face-to-face meeting between the solicitor and the prospective purchaser.

18 (g) A supervised financial institution or parent, subsidiary or affiliate thereof. As used in this
19 paragraph, "supervised financial institution" means any financial institution or trust company, as
20 those terms are defined in ORS 706.008, or any personal property broker, consumer finance lender,
21 commercial finance lender or insurer that is subject to regulation by an official or agency of this
22 state or of the United States.

23 (h) A person who is authorized to conduct prearrangement or preconstruction funeral or ceme-
24 tery sales[,] **or sales of prearrangement insurance** pursuant to ORS chapter 692, when the solic-
25 itation involves prearrangement or preconstruction funeral or cemetery plans.

26 (i) A person who solicits the services provided by a cable television system licensed or fran-
27 chised pursuant to state, local or federal law, when the solicitation involves cable television ser-
28 vices.

29 (j) A person or affiliate of a person whose business is regulated by the Public Utility Commission
30 of Oregon.

31 (k) A person who sells farm products as defined by ORS 576.006 if the solicitation neither in-
32 tends to nor actually results in a sale that costs the purchaser in excess of \$100.

33 (L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section
34 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration
35 under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

36 (m) A person soliciting exclusively the sale of telephone answering services to be provided by
37 that person or that person's employer when the solicitation involves answering services.

38 (n) A telecommunications utility with access lines of 15,000 or less or a cooperative telephone
39 association when the solicitation involves regulated goods or services.

40 (8) "Trade" and "commerce" mean advertising, offering or distributing, whether by sale, rental
41 or otherwise, any real estate, goods or services, and include any trade or commerce directly or in-
42 directly affecting the people of this state.

43 (9) "Unconscionable tactics" include, but are not limited to, actions by which a person:

44 (a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or ina-
45 bility to understand the language of the agreement;

1 (b) Knowingly permits a customer to enter into a transaction from which the customer will
2 derive no material benefit; or

3 (c) Permits a customer to enter into a transaction with knowledge that there is no reasonable
4 probability of payment of the attendant financial obligation in full by the customer when due.

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

7 (11) A loan is made "in close connection with the sale of a manufactured dwelling" if:

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

10 (b) The lender gives a commission, rebate or credit in any form to a seller who refers the bor-
11 rower to the lender, other than payment of the proceeds of the loan jointly to the seller and the
12 borrower;

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

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

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

17 (f) The lender supplies documents to the seller used by the borrower in obtaining the loan.

18 **SECTION 16. Sections 3 and 6 of this 2009 Act and the amendments to ORS 97.927 and**
19 **97.939 by sections 9 and 12 of this 2009 Act apply to contracts entered into or renewed on or**
20 **after the effective date of this 2009 Act.**

21 **SECTION 17. (1) Section 7 of this 2009 Act and the amendments to ORS 97.931, 97.933,**
22 **97.946 and 646.605 by sections 10, 11, 13, 14 and 15 of this 2009 Act become operative on July**
23 **1, 2010.**

24 **(2) The State Mortuary and Cemetery Board may take any action before the operative**
25 **date specified in subsection (1) of this section that is necessary to enable the board to exer-**
26 **cise, on and after the operative date specified in subsection (1) of this section, all the duties,**
27 **functions and powers conferred on the board by section 7 of this 2009 Act and the amend-**
28 **ments to ORS 97.931, 97.933, 97.946 and 646.605 by sections 10, 11, 13, 14 and 15 of this 2009**
29 **Act.**

30 **SECTION 18. Section 7 of this 2009 Act and the amendments to ORS 97.931, 97.933, 97.946**
31 **and 646.605 by sections 10, 11, 13, 14 and 15 of this 2009 Act apply to persons who engage in**
32 **the sale of prearrangement insurance on or after July 1, 2010.**