

House Bill 3359

Sponsored by 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**.

Imposes duties and restrictions on distressed home consultants. Requires that distressed home consultation transactions be provided pursuant to written contract. Authorizes enforcement of violation of Act as unfair trade practice.

Provides that violation of distressed home consulting laws is misdemeanor punishable by maximum of one year's imprisonment, \$10,000 fine, or both.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to distressed home sales; creating new provisions; amending ORS 646.608; and declaring an
3 emergency.

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

SECTION 1. As used in sections 1 to 7 of this 2009 Act:

5
6 (1) "Distressed home" means a dwelling that is:

7 (a) **In danger of foreclosure or in the process of being foreclosed due to a default under**
8 **the terms of a mortgage, mortgage deed, deed of trust, security agreement or other instru-**
9 **ment securing a loan and constituting a lien on or security interest in the dwelling; or**

10 (b) **At risk of loss due to nonpayment of taxes.**

11 (2)(a) "Distressed home consultant" means a person who:

12 (A) **Solicits or contacts a distressed homeowner to make a representation or offer to**
13 **perform a service described in subsection (3) of this section; or**

14 (B) **Systematically contacts owners of property that court records, newspaper advertise-**
15 **ments or any other source demonstrate are in foreclosure or are in danger of foreclosure.**

16 (b) "Distressed home consultant" does not mean:

17 (A) **An individual licensed to practice law in this state, if performing services within an**
18 **attorney-client relationship.**

19 (B) **A person that holds or is owed an obligation that is secured by a lien on a residence**
20 **in foreclosure or default, if performing services in connection with the obligation or lien.**

21 (C) **A person doing business under authority of an Oregon or federal law regulating**
22 **banks, trust companies, savings and loan associations, credit unions or insurance companies,**
23 **or as a licensee under ORS chapter 725, if performing business services within the scope of**
24 **that authority or license.**

25 (D) **A subsidiary, affiliate or agent of a person described in subparagraph (C) of this**
26 **paragraph, if performing business services within the scope of the person's authority or li-**
27 **cence as the person's subsidiary, affiliate or agent.**

28 (E) **The judgment creditor of a homeowner, if the creditor's claim accrued before a notice**
29 **of sale was sent to the creditor under ORS 86.740.**

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 (F) A title insurer authorized to conduct business in Oregon or an insurance producer
2 licensed to conduct business in Oregon, if performing title insurance or settlement services
3 within the scope of that authority or license.

4 (G) A mortgage broker or mortgage lender licensed under ORS chapter 59 to conduct
5 business in Oregon, if acting within the scope of that license.

6 (H) A real estate licensee under ORS 696.022 or an escrow agent licensed under ORS
7 696.511, if acting within the scope of that license.

8 (I) A tax-exempt organization that offers counseling or advice to homeowners in fore-
9 closure if the organization:

10 (i) Is not directly or indirectly related to for-profit lenders or foreclosure purchasers;

11 (ii) Does not contract to provide services to, or receive services from, for-profit lenders
12 or foreclosure purchasers; and

13 (iii) Has provided counseling or advice to homeowners for five years or more.

14 (J) A creditors' committee, trustee or debtor in possession participating in a proceeding
15 under the jurisdiction of the United States Bankruptcy Court.

16 (K) An individual whose employment with regard to a residential real property matter
17 under the jurisdiction of the United States Bankruptcy Court is approved by order of the
18 bankruptcy court.

19 (L) A person that is a member of the homeowner's family or is owned or controlled by
20 a member of the homeowner's family.

21 (3) "Distressed home consulting transaction" means an agreement between a distressed
22 homeowner and a distressed home consultant in which the distressed home consultant re-
23 presents or offers to perform a service that the consultant represents will:

24 (a) Stop, enjoin, delay, void, set aside, annul, stay or postpone a foreclosure sale.

25 (b) Obtain forbearance from any servicer, beneficiary or mortgagee.

26 (c) Assist the distressed homeowner to exercise a right of reinstatement provided in loan
27 documents or to refinance a loan that is in foreclosure or is in danger of foreclosure.

28 (d) Obtain an extension of the period within which the distressed homeowner may rein-
29 state the distressed homeowner's obligation or extend the deadline to object to a ratification.

30 (e) Obtain a waiver of an acceleration clause contained in a promissory note or contract
31 secured by a mortgage.

32 (f) Assist the distressed homeowner to obtain a loan or advance of funds.

33 (g) Avoid or ameliorate the impairment of the distressed homeowner's credit resulting
34 from the recording of a notice of trustee sale, the filing of a petition to foreclose or the
35 conduct of a foreclosure sale.

36 (h) Purchase or obtain an option to purchase the distressed homeowner's dwelling within
37 20 days of an advertised or docketed foreclosure sale.

38 (i) Arrange for the distressed homeowner to become a lessee or tenant entitled to con-
39 tinue to reside in the distressed homeowner's dwelling.

40 (j) Arrange for the distressed homeowner to have an option to repurchase the distressed
41 homeowner's dwelling.

42 (k) Engage in any documentation, grant, conveyance, sale, lease, trust or gift by which
43 the distressed homeowner clogs the distressed homeowner's equity of redemption in the
44 distressed homeowner's dwelling.

45 (4) "Distressed home conveyance" means a transaction in which:

1 (a) A distressed homeowner transfers an interest in the distressed home to a distressed
2 home purchaser;

3 (b) The distressed home purchaser allows the distressed homeowner to occupy the dis-
4 tressed home; and

5 (c) The distressed home purchaser or a person acting in participation with the distressed
6 home purchaser:

7 (A) Conveys or promises to convey the distressed home to the distressed homeowner;

8 (B) Provides the distressed homeowner with an option to purchase the distressed home
9 at a later date; or

10 (C) Promises the distressed homeowner an interest in, or portion of, the proceeds of a
11 resale of the distressed home.

12 (5) "Distressed home purchaser" means a person, including a joint venturer, that ac-
13 quires an interest in a distressed home under a distressed home conveyance.

14 (6) "Distressed homeowner" means an owner of a distressed home.

15 (7) "Dwelling" means a single, duplex, triplex or four-unit family residential building that
16 is occupied by the owner as a primary residence.

17 (8) "Homeowner" means an individual who owns a dwelling whether or not the ownership
18 interest is encumbered by a mortgage, deed of trust or other lien or security interest.

19 (9) "In danger of foreclosure" means:

20 (a) The homeowner has defaulted on a mortgage, mortgage deed, deed of trust, security
21 agreement or other instrument securing a mortgage loan and constituting a lien on or se-
22 curity interest in the dwelling, and, under the terms of the instrument, the lien or security
23 holder may accelerate full payment and repossess or sell the dwelling or cause the dwelling
24 to be sold;

25 (b) The homeowner is at least 30 days delinquent on a loan that is secured by the prop-
26 erty; or

27 (c) The homeowner has a good faith belief that the homeowner is likely to default on the
28 mortgage within the upcoming four months due to a lack of funds, and the homeowner has
29 reported this belief to:

30 (A) The lien or security holder;

31 (B) A person described in subsection (2)(b)(G), (H) or (I) of this section;

32 (C) An attorney;

33 (D) A mortgage counselor or other credit counselor licensed or certified by any federal,
34 state or local agency; or

35 (E) Any other party to a distressed home consulting transaction.

36 (10) "Resale" means a bona fide market sale of the distressed home subject to the dis-
37 tressed home conveyance by the distressed home purchaser to an unaffiliated third party.

38 **SECTION 2.** A distressed home consultant has a fiduciary relationship with the dis-
39 tressed homeowner. The distressed home consultant is subject to all requirements for
40 fiduciaries applicable under state law including, but not limited to, an obligation to:

41 (1) Act with good faith in the best interest of the distressed homeowner;

42 (2) Avoid compromising the right or interest of the distressed homeowner in favor of the
43 right or interest of another person, including a right or interest of the foreclosure consult-
44 ant;

45 (3) Disclose to the distressed homeowner all material facts of which the distressed home

1 consultant has knowledge that might reasonably affect the rights or interests of the dis-
2 tressed homeowner or the ability of the distressed homeowner to receive the intended benefit
3 from the distressed homeowner’s residential mortgage loan;

4 (4) Use reasonable care in performing the duties of a foreclosure consultant; and

5 (5) Provide an accounting to the distressed homeowner for money and property received
6 from the homeowner.

7 **SECTION 3. (1) A distressed home consulting transaction must:**

8 (a) Be in writing in at least 12-point font.

9 (b) Be in the same language as principally used by the distressed home consultant to
10 describe the distressed home consultant’s services to the distressed homeowner, and, if the
11 agreement is written in a language other than English, the consultant shall:

12 (A) Cause the agreement to be translated into English and deliver copies of both the or-
13 iginal and English language versions to the distressed homeowner at the time of execution;
14 and

15 (B) Keep copies of both versions on file in accordance with subsection (2) of this section.

16 (c) Fully disclose the exact nature of the services to be performed as part of a distressed
17 home consulting transaction, including any distressed home conveyance that may be involved
18 and the total amount and terms of compensation to be received by the distressed home
19 consultant or anyone working in association with the distressed home consultant.

20 (d) Be dated and signed by the distressed homeowner and the distressed home consultant.

21 (e) Contain the complete legal name, address, telephone number, fax number, electronic
22 mail address and Internet address, if any, of the distressed home consultant.

23 (f) If a distressed home consultant is serving as an agent for another person, contain the
24 complete legal name, address, telephone number, fax number, electronic mail address and
25 Internet address, if any, of the principal.

26 (g) Contain the following notice, which must be initialed by the distressed homeowner,
27 in at least 14-point boldfaced font:

28 _____
29
30 **NOTICE REQUIRED BY OREGON LAW**
31 **THIS IS AN IMPORTANT LEGAL CONTRACT AND**
32 **COULD RESULT IN THE LOSS OF YOUR HOME**
33

34 _____ (Name of distressed home consultant) or a person working with the dis-
35 tressed home consultant CANNOT guarantee you that the person will be able to refinance
36 your home or arrange for you to keep your home. Continue making mortgage payments until
37 refinancing, if applicable, is approved. You should consult with an attorney before signing
38 this contract. If you sign a promissory note, lien, mortgage, deed of trust or deed, you could
39 lose your home and be unable to get it back.
40 _____

41
42 (2) At the time of execution, the distressed home consultant shall provide the distressed
43 homeowner with a copy of the written agreement, and the distressed home consultant shall
44 keep a separate copy of the written agreement on file for at least five years following the
45 completion or other termination of the agreement.

1 **(3) Ambiguities or inconsistencies between the English language and the original lan-**
2 **guage versions of the written agreement must be strictly construed in favor of the distressed**
3 **homeowner.**

4 **SECTION 4. (1) In addition to any other right of rescission, a distressed homeowner has**
5 **the right to cancel a contract with a distressed home purchaser until 12 midnight of the fifth**
6 **business day after the day on which the distressed homeowner signs the contract or until 8**
7 **a.m. on the last day of the period during which the distressed homeowner has a right of re-**
8 **demption, whichever occurs first.**

9 **(2) Cancellation occurs when the distressed homeowner delivers to the distressed home**
10 **purchaser, by any means, a written notice of cancellation to the address specified in the**
11 **contract.**

12 **(3) A notice of cancellation provided by the distressed homeowner is not required to take**
13 **the particular form as provided with the contract.**

14 **(4) Within 10 days following the receipt of a notice of cancellation under this section, the**
15 **distressed home purchaser shall return without condition an original contract and any other**
16 **documents signed by the distressed homeowner.**

17 **SECTION 5. (1) A distressed home consultant shall enter into a distressed home**
18 **reconveyance with a distressed homeowner in the form of a written contract.**

19 **(2) The contract must be:**

20 **(a) Written in at least 12-point boldfaced font in the same language principally used by**
21 **the distressed home purchaser and distressed homeowner to negotiate the sale of the dis-**
22 **tressed home; and**

23 **(b) Completed fully, signed and dated by the distressed homeowner and distressed home**
24 **purchaser before the execution of an instrument of conveyance of the distressed home.**

25 **(3) The contract required in this section must contain the entire agreement of the parties**
26 **and include:**

27 **(a) The name, business address and telephone number of the distressed home purchaser.**

28 **(b) The address of the distressed home.**

29 **(c) The total consideration to be provided by the distressed home purchaser in connection**
30 **with or incident to the sale.**

31 **(d) A complete description of the terms of payment or other consideration including, but**
32 **not limited to, services of any nature that the distressed home purchaser represents that the**
33 **distressed home purchaser will perform for the distressed homeowner before or after the**
34 **sale.**

35 **(e) The time at which possession is to be transferred to the distressed home purchaser.**

36 **(f) A complete description of the terms of any related agreement designed to allow the**
37 **distressed homeowner to remain in the distressed home including, but not limited to:**

38 **(A) A rental agreement;**

39 **(B) A repurchase agreement; or**

40 **(C) A lease with option to buy.**

41 **(g) A complete description of the interest, if any, the distressed homeowner maintains**
42 **in the proceeds of, or consideration to be paid upon, the resale of the distressed home.**

43 **(h) A notice of cancellation as provided in this section.**

44 **(i) The following notice in at least 14-point boldfaced font and completed with the name**
45 **of the distressed home purchaser, immediately above the statement required in subsection**

1 (5) of this section:
2 _____
3

4 **NOTICE REQUIRED BY OREGON LAW**

5
6 **Until your right to cancel this contract has ended, _____ (Distressed Home Consultant)**
7 **or a person working for _____ (Distressed Home Consultant) CANNOT ask you to sign or**
8 **have you sign a deed or any other document.**
9 _____

10
11 **(4) The distressed home reconveyance contract required by this section survives delivery**
12 **of an instrument of conveyance of the distressed home and has no effect on persons other**
13 **than the parties to the contract.**

14 **(5) The contract required by this section must contain, in immediate proximity to the**
15 **space reserved for the distressed homeowner’s signature, the following conspicuous state-**
16 **ment in at least 14-point boldface font:**
17 _____

18
19 **You may cancel this contract for the sale of your house without any penalty or obligation**
20 **at any time before _____ (Date and time of day). See the attached notice of cancellation**
21 **form for an explanation of this right.**
22 _____

23
24 **(6) The distressed home purchaser shall accurately enter the date and time of day on**
25 **which the cancellation right ends.**

26 **(7) The contract must be accompanied by a completed form in duplicate, captioned “NO-**
27 **TICE OF CANCELLATION” in 12-point boldfaced font followed by a space in which the dis-**
28 **tressed home purchaser shall enter the date on which the distressed homeowner executes**
29 **the contract. This form must:**

- 30 **(a) Be attached to the contract;**
- 31 **(b) Be easily detachable; and**
- 32 **(c) Contain in at least 12-point font the following statement written in the same language**
33 **as used in the contract:**
34 _____

35
36 **NOTICE OF CANCELLATION**

37
38 _____ **(Enter date contract signed) You may cancel this contract for the sale of**
39 **your house, without any penalty or obligation, at any time before:**

40
41 _____ **(Enter date and time of day)**
42

43 **To cancel this transaction, personally deliver a signed and dated copy of this cancellation**
44 **notice to: _____ (Name of purchaser) _____ (Street address of pur-**
45 **chaser’s place of business) NOT LATER THAN _____ (Enter date and time of**

1 day).

2
3 I hereby cancel this transaction.

4 _____ (Date)

5 _____ (Seller's signature)

6
7
8 (8) The distressed home purchaser shall provide the distressed homeowner with a copy
9 of the contract and the attached notice of cancellation at the time the contract is executed
10 by all parties.

11 (9) The five-business-day period during which the distressed homeowner may cancel the
12 contract does not begin to run until all parties to the contract have executed the contract
13 and the distressed home purchaser has complied with this section.

14 **SECTION 6. (1) As used in this section:**

15 (a) "Consideration" means a payment or thing of value provided to the distressed home-
16 owner, including:

17 (A) Unpaid rent owed by the distressed homeowner before the date of eviction or volun-
18 tary relinquishment of the distressed home;

19 (B) Reasonable costs paid to independent third parties necessary to complete the dis-
20 tressed home conveyance;

21 (C) Moneys paid to satisfy a debt or legal obligation of the distressed homeowner; and

22 (D) The reasonable cost of repairs for damage to the distressed home caused by the dis-
23 tressed homeowner.

24 (b) "Consideration" does not mean amounts imputed as a down payment or fee to the
25 distressed home purchaser or a person acting in participation with the distressed home
26 purchaser.

27 (2) A distressed home purchaser may not enter into, or attempt to enter into, a dis-
28 tressed home conveyance with a distressed homeowner unless the distressed home purchaser
29 verifies and can demonstrate that the distressed homeowner has a reasonable ability to pay
30 for the subsequent conveyance of an interest back to the distressed homeowner.

31 (3) If the distressed home conveyance described in subsection (2) of this section is a lease
32 with an option to purchase, payment ability includes the reasonable ability to make the lease
33 payments and purchase the property within the term of the option to purchase.

34 (4) An evaluation of a distressed homeowner's ability to pay under subsection (2) of this
35 section includes debt to income ratios, fair market value of the distressed home and the
36 distressed homeowner's payment and credit history.

37 (5) There is a rebuttable presumption that the distressed home purchaser has not verified
38 a distressed homeowner's ability to pay if the distressed home purchaser has not obtained
39 documentation of assets, liabilities and income, other than an undocumented statement, of
40 the distressed homeowner.

41 (6) A distressed home purchaser shall:

42 (a) Ensure that title to the distressed home has been reconveyed to the distressed
43 homeowner.

44 (b) Make payment to the distressed homeowner so that the distressed homeowner has
45 received consideration in an amount of at least 82 percent of the fair market value of the

1 property as of the date of the eviction or voluntary relinquishment of possession of the dis-
2 tressed home by the distressed homeowner.

3 (7) The distressed home purchaser may not:

4 (a) Enter into repurchase or lease terms as part of the distressed home conveyance that
5 are unfair or commercially unreasonable, or engage in any other unfair or deceptive acts or
6 practices.

7 (b) Represent, directly or indirectly, that the distressed home purchaser is:

8 (A) Acting as an advisor or consultant;

9 (B) Acting on behalf of or in the interests of the distressed homeowner; or

10 (C) Assisting the distressed homeowner to save the distressed home, buy time or use
11 other substantially similar language.

12 (c) Misrepresent the distressed home purchaser's status as to licensure or certification.

13 (d) Perform any of the following until after the time during which the distressed home-
14 owner may cancel the transaction has expired:

15 (A) Accept from a distressed homeowner an execution of, or induce a distressed home-
16 owner to execute, an instrument of conveyance of any interest in the distressed home.

17 (B) Present for recordation to the county clerk a document, including an instrument of
18 conveyance, signed by the distressed homeowner.

19 (C) Transfer, encumber or purport to transfer or encumber an interest in the distressed
20 home.

21 (D) Fail to reconvey title to the distressed home when the terms of the distressed home
22 conveyance contract have been fulfilled.

23 (e) Enter into a distressed home conveyance in which a party to the transaction is re-
24 presented by a power of attorney.

25 (f) Fail to extinguish or assume all liens or security interests encumbering the distressed
26 home immediately following the conveyance of the distressed home.

27 (g) Fail to close a distressed home conveyance in person before an independent third
28 party who is authorized to conduct real estate closings within the state.

29 (8) For the purposes of subsection (6)(b) of this section, there is a rebuttable presumption
30 that an appraisal by a person licensed or certified by an agency of the federal government
31 or this state to appraise real estate constitutes the fair market value of the distressed home.

32 **SECTION 7.** (1) A provision in a contract that attempts or purports to require arbitration
33 of a dispute arising under sections 1 to 7 of this 2009 Act is void at the option of the dis-
34 tressed homeowner.

35 (2) A person may not induce or attempt to induce a distressed homeowner to waive the
36 distressed homeowner's rights under sections 1 to 7 of this 2009 Act.

37 (3) A waiver by a distressed homeowner of the provisions of sections 1 to 7 of this 2009
38 Act is void and unenforceable as contrary to public policy.

39 **SECTION 8.** Violation of a provision of sections 1 to 7 of this 2009 Act is a misdemeanor
40 and is punishable by imprisonment for a term of not more than one year or by a fine of not
41 more than \$10,000, or both.

42 **SECTION 9.** ORS 646.608, as amended by section 8, chapter 19, Oregon Laws 2008, and section
43 5, chapter 31, Oregon Laws 2008, is amended to read:

44 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
45 ness, vocation or occupation the person does any of the following:

- 1 (a) Passes off real estate, goods or services as those of another.
- 2 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
3 proval, or certification of real estate, goods or services.
- 4 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
5 ciation with, or certification by, another.
- 6 (d) Uses deceptive representations or designations of geographic origin in connection with real
7 estate, goods or services.
- 8 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
9 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
10 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.
- 11 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,
12 reconditioned, reclaimed, used or secondhand.
- 13 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
14 or that real estate or goods are of a particular style or model, if they are of another.
- 15 (h) Disparages the real estate, goods, services, property or business of a customer or another
16 by false or misleading representations of fact.
- 17 (i) Advertises real estate, goods or services with intent not to provide them as advertised, or
18 with intent not to supply reasonably expectable public demand, unless the advertisement discloses
19 a limitation of quantity.
- 20 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,
21 or amounts of price reductions.
- 22 (k) Makes false or misleading representations concerning credit availability or the nature of the
23 transaction or obligation incurred.
- 24 (L) Makes false or misleading representations relating to commissions or other compensation to
25 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
26 stration purposes or in exchange for submitting names of potential customers.
- 27 (m) Performs service on or dismantles any goods or real estate when not authorized by the
28 owner or apparent owner thereof.
- 29 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
30 vides the information required under ORS 646.611.
- 31 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
32 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
33 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
34 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
35 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
36 tomer enters into the transaction.
- 37 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
38 cize a product, business or service.
- 39 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
40 not to deliver them as promised.
- 41 (r) Organizes or induces or attempts to induce membership in a pyramid club.
- 42 (s) Makes false or misleading representations of fact concerning the offering price of, or the
43 person's cost for real estate, goods or services.
- 44 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
45 known material defect or material nonconformity.

- 1 (u) Engages in any other unfair or deceptive conduct in trade or commerce.
- 2 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
- 3 ORS 698.640, whether in a commercial or noncommercial situation.
- 4 (w) Manufactures mercury fever thermometers.
- 5 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
- 6 law, or is:
 - 7 (A) Prescribed by a person licensed under ORS chapter 677; and
 - 8 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
 - 9 on the proper cleanup of mercury should breakage occur.
- 10 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
- 11 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
- 12 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
- 13 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
- 14 graph, "thermostat" means a device commonly used to sense and, through electrical communication
- 15 with heating, cooling or ventilation equipment, control room temperature.
- 16 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
- 17 mercury light switches.
 - 18 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
 - 19 (bb) Violates ORS 646A.070 (1).
 - 20 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
 - 21 (dd) Violates the provisions of ORS 128.801 to 128.898.
 - 22 (ee) Violates ORS 646.883 or 646.885.
 - 23 (ff) Violates any provision of ORS 646A.020.
 - 24 (gg) Violates ORS 646.569.
 - 25 (hh) Violates the provisions of ORS 646A.142.
 - 26 (ii) Violates ORS 646A.360.
 - 27 (jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
 - 28 (kk) Violates ORS 646.563.
 - 29 (LL) Violates ORS 759.690 or any rule adopted pursuant thereto.
 - 30 (mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
 - 31 thereto.
 - 32 (nn) Violates ORS 646A.210 or 646A.214.
 - 33 (oo) Violates any provision of ORS 646A.124 to 646A.134.
 - 34 (pp) Violates ORS 646A.254.
 - 35 (qq) Violates ORS 646A.095.
 - 36 (rr) Violates ORS 822.046.
 - 37 (ss) Violates ORS 128.001.
 - 38 (tt) Violates ORS 646.649 (2) to (4).
 - 39 (uu) Violates ORS 646A.090 (2) to (4).
 - 40 (vv) Violates ORS 87.686.
 - 41 (ww) Violates ORS 646.651.
 - 42 (xx) Violates ORS 646A.362.
 - 43 (yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
 - 44 (zz) Violates ORS 180.440 (1).
 - 45 (aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

- 1 (bbb) Violates ORS 87.007 (2) or (3).
- 2 (ccc) Violates ORS 92.405 (1), (2) or (3).
- 3 (ddd) Engages in an unlawful practice under ORS 646.648.
- 4 (eee) Violates ORS 646A.365.
- 5 (fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 6 (ggg) Sells a gift card in violation of ORS 646A.276.
- 7 (hhh) Violates ORS 646A.102, 646A.106 or 646A.108.
- 8 (iii) Violates ORS 646A.430 to 646A.450.
- 9 (jjj) Violates a provision of sections 2 to 6, chapter 19, Oregon Laws 2008.
- 10 (kkk) Violates section 2, chapter 31, Oregon Laws 2008, 30 or more days after a recall notice,
- 11 warning or declaration described in section 2, chapter 31, Oregon Laws 2008, is issued for the chil-
- 12 dren's product, as defined in section 1, chapter 31, Oregon Laws 2008, that is the subject of the vi-
- 13 olation.

14 **(LLL) Violates a provision of sections 1 to 7 of this 2009 Act.**

15 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-

16 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

17 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney

18 need not prove competition between the parties or actual confusion or misunderstanding.

19 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-

20 torney General has first established a rule in accordance with the provisions of ORS chapter 183

21 declaring the conduct to be unfair or deceptive in trade or commerce.

22 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought

23 under subsection (1)(zz) of this section by a person other than a prosecuting attorney, relief is lim-

24 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.

25 **SECTION 10. This 2009 Act being necessary for the immediate preservation of the public**

26 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**

27 **on its passage.**

28