

**A-Engrossed**  
**House Bill 3706**

Ordered by the House February 16  
Including House Amendments dated February 16

Sponsored by COMMITTEE ON REVENUE

**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.

Includes loans and extensions of credit in definition of "real estate, goods or services" for purposes of Unlawful Trade Practices Act.

Limits enforcement actions and rulemaking authority of Attorney General with respect to **specified** unlawful practices of state regulated lenders.

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to application of Unlawful Trade Practices Act; creating new provisions; amending ORS  
3 646.605, 646.618 and 646.632; and declaring an emergency.

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

5 **SECTION 1.** ORS 646.605 is amended to read:

6 646.605. As used in ORS 646.605 to 646.652:

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

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

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

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

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

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

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

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

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

24 (6) "Real estate, goods or services" means those that are or may be obtained primarily for per-  
25 sonal, family or household purposes, or that are or may be obtained for any purposes as a result of  
26 a telephone solicitation, and includes **loans and extensions of credit, and franchises,**

**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 distributorships and other similar business opportunities, but does not include insurance. Except  
2 as provided in section 2, chapter 658, Oregon Laws 2003, real estate does not cover conduct covered  
3 by ORS chapter 90.

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

7 (a) A person who is a broker-dealer or salesperson licensed under ORS 59.175, or a mortgage  
8 banker or mortgage broker licensed under ORS 86A.106 when the solicitation is for a security  
9 qualified for sale pursuant to ORS 59.055.

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

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

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

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

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

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

29 (h) A person who is authorized to conduct prearrangement or preconstruction funeral or ceme-  
30 tery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or precon-  
31 struction funeral or cemetery plans.

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

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

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

39 (L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section  
40 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration  
41 under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

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

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

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

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

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

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

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

11 (d) Knowingly takes advantage of a customer who is a disabled veteran, a disabled  
12 servicemember or a servicemember in active service, or the spouse of a disabled veteran, disabled  
13 servicemember or servicemember in active service. For purposes of this paragraph:

14 (A) "Disabled veteran" has the meaning given that term in ORS 408.225.

15 (B) "Disabled servicemember" means a servicemember, as defined in 50 U.S.C. App. 511 as in  
16 effect on January 1, 2010, who may be entitled to disability compensation under laws administered  
17 by the United States Department of Veterans Affairs.

18 (C) "Servicemember in active service" means:

19 (i) A servicemember called into active service under Title 10 or Title 32 of the United States  
20 Code as in effect on January 1, 2010; or

21 (ii) A servicemember on active state duty, as defined in ORS 398.002.

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

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

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

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

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

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

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

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

35 **SECTION 2.** ORS 646.605, as amended by section 12, chapter 658, Oregon Laws 2003, section  
36 199, chapter 71, Oregon Laws 2007, section 32, chapter 319, Oregon Laws 2007, and section 2,  
37 chapter 215, Oregon Laws 2009, is amended to read:

38 646.605. As used in ORS 646.605 to 646.652:

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

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

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

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

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

45 (2) "Documentary material" means the original or a copy of any book, record, report, memo-

1 random, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or  
2 other tangible document or recording, wherever situate.

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

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

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

11 (6) "Real estate, goods or services" means those that are or may be obtained primarily for per-  
12 sonal, family or household purposes, or that are or may be obtained for any purposes as a result of  
13 a telephone solicitation, and includes **loans and extensions of credit, and** franchises,  
14 distributorships and other similar business opportunities, but does not include insurance. Real es-  
15 tate does not cover conduct covered by ORS chapter 90.

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

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21 qualified for sale pursuant to ORS 59.055.

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

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

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

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

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

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

41 (h) A person who is authorized to conduct prearrangement or preconstruction funeral or ceme-  
42 tery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or precon-  
43 struction funeral or cemetery plans.

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

1 vices.

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

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

6 (L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section  
7 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration  
8 under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

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

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

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

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

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

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

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

23 (d) Knowingly takes advantage of a customer who is a disabled veteran, a disabled  
24 servicemember or a servicemember in active service, or the spouse of a disabled veteran, disabled  
25 servicemember or servicemember in active service. For purposes of this paragraph:

26 (A) "Disabled veteran" has the meaning given that term in ORS 408.225.

27 (B) "Disabled servicemember" means a servicemember, as defined in 50 U.S.C. App. 511 as in  
28 effect on January 1, 2010, who may be entitled to disability compensation under laws administered  
29 by the United States Department of Veterans Affairs.

30 (C) "Servicemember in active service" means:

31 (i) A servicemember called into active service under Title 10 or Title 32 of the United States  
32 Code as in effect on January 1, 2010; or

33 (ii) A servicemember on active state duty, as defined in ORS 398.002.

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

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

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

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

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

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

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

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

2 **SECTION 3.** ORS 646.618 is amended to read:

3 646.618. (1) **Except as provided in section 6 of this 2010 Act**, when it appears to the prose-  
4 cuting attorney that a person has engaged in, is engaging in, or is about to engage in any act or  
5 practice declared to be unlawful by ORS 646.607 or 646.608, the prosecuting attorney may execute  
6 in writing and cause to be served an investigative demand upon any person who is believed to have  
7 information, documentary material or physical evidence relevant to the alleged or suspected vio-  
8 lation. The investigative demand shall require such person, under oath or otherwise, to appear and  
9 testify, to answer written interrogatories, or to produce relevant documentary material or physical  
10 evidence for examination, at such reasonable time and place as may be stated in the investigative  
11 demand, or to do any of the foregoing, concerning conduct of any trade or commerce which is the  
12 subject matter of the investigation.

13 (2) At any time before the return date specified in an investigative demand, or within 20 days  
14 after the demand has been served, whichever period is shorter, a petition to extend the return date,  
15 or to modify or set aside the demand, stating good cause including privileged material, may be filed  
16 in the appropriate court.

17 **SECTION 4.** ORS 646.632 is amended to read:

18 646.632. (1) **Except as provided in section 6 of this 2010 Act**, a prosecuting attorney who has  
19 probable cause to believe that a person is engaging in, has engaged in, or is about to engage in an  
20 unlawful trade practice may bring suit in the name of the State of Oregon in the appropriate court  
21 to restrain such person from engaging in the alleged unlawful trade practice.

22 (2) Except as provided in subsections (5) and (6) of this section, before filing a suit under sub-  
23 section (1) of this section, the prosecuting attorney shall in writing notify the person charged of the  
24 alleged unlawful trade practice and the relief to be sought. Such notice shall be served in the man-  
25 ner set forth in ORS 646.622 for the service of investigative demands. The person charged thereupon  
26 shall have 10 days within which to execute and deliver to the prosecuting attorney an assurance  
27 of voluntary compliance. Such assurance shall set forth what actions, if any, the person charged  
28 intends to take with respect to the alleged unlawful trade practice. The assurance of voluntary  
29 compliance shall not be considered an admission of a violation for any purpose. If the prosecuting  
30 attorney is satisfied with the assurance of voluntary compliance, it may be submitted to an appro-  
31 priate court for approval and if approved shall thereafter be filed with the clerk of the court. If an  
32 approved assurance of voluntary compliance provides for the payment of an amount of money, as  
33 restitution or otherwise, and if the amount is not paid within 90 days of the date the court approves  
34 the assurance, or, if the assurance of voluntary compliance requires periodic payments and if any  
35 periodic payment is not paid within 30 days of the date specified in the assurance of voluntary  
36 compliance for any periodic payment, then the prosecuting attorney may submit that portion of the  
37 assurance of voluntary compliance which provides for the payment of money to the court with a  
38 certificate stating the unpaid balance in a form which fully complies with the requirements of ORS  
39 18.038 and 18.042. Upon submission of an assurance of voluntary compliance under this subsection,  
40 the court shall sign the assurance of voluntary compliance and it shall be entered in the register  
41 of the court and the clerk of the court shall note in the register that it creates a lien. The assurance  
42 of voluntary compliance shall thereupon constitute a judgment in favor of the State of Oregon and  
43 may be enforced as provided in ORS chapter 18. The notice of the prosecuting attorney under this  
44 subsection shall not be deemed a public record until the expiration of 10 days from the service of  
45 the notice.

1 (3) The prosecuting attorney may reject as unsatisfactory any assurance:

2 (a) Which does not contain a promise to make restitution in specific amounts or through arbi-  
3 tration for persons who suffered any ascertainable loss of money or property as a result of the al-  
4 leged unlawful trade practice; or

5 (b) Which does not contain any provision, including but not limited to the keeping of records,  
6 which the prosecuting attorney reasonably believes to be necessary to ensure the continued cessa-  
7 tion of the alleged unlawful trade practice, if such provision was included in a proposed assurance  
8 attached to the notice served pursuant to this section.

9 (4) Violation of any of the terms of an assurance of voluntary compliance which has been ap-  
10 proved by and filed with the court shall constitute a contempt of court.

11 (5) The prosecuting attorney need not serve notice pursuant to subsection (2) of this section  
12 before filing a suit if, within two years of the filing of such suit, the person charged with the alleged  
13 unfair trade practice submitted to any prosecuting attorney an assurance of voluntary compliance  
14 which was accepted by and filed with an appropriate court. The prosecuting attorney shall in such  
15 case serve notice on the defendant in the manner set forth in ORS 646.622 for the service of inves-  
16 tigative demands, on the 10th or earlier day previous to the filing of suit.

17 (6) If the prosecuting attorney alleges that the prosecuting attorney has reason to believe that  
18 the delay caused by complying with the provisions of subsection (2) or (5) of this section would cause  
19 immediate harm to the public health, safety or welfare, the prosecuting attorney may immediately  
20 institute a suit under subsection (1) of this section.

21 (7) A temporary restraining order may be granted without prior notice to the person if the court  
22 finds there is a threat of immediate harm to the public health, safety or welfare. Such a temporary  
23 restraining order shall expire by its terms within such time after entry, not to exceed 10 days, as  
24 the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a  
25 like period or unless the person restrained consents that it may be extended for a longer period.

26 (8) The court may award reasonable attorney fees to the prevailing party in an action under this  
27 section. If the defendant prevails in such suit and the court finds that the defendant had in good  
28 faith submitted to the prosecuting attorney a satisfactory assurance of voluntary compliance prior  
29 to the institution of the suit or that the prosecuting attorney, in a suit brought under subsections  
30 (5) and (6) of this section, did not have reasonable grounds to proceed under those subsections, the  
31 court shall award reasonable attorney fees at trial and on appeal to the defendant.

32 **SECTION 5. Section 6 of this 2010 Act is added to and made a part of ORS 646.605 to**  
33 **646.652.**

34 **SECTION 6. (1) For purposes of this section, "state regulated lender" means:**

35 **(a) A banking institution as defined in ORS 706.008;**

36 **(b) A credit union as defined in ORS 723.006;**

37 **(c) A person that is required to be licensed under ORS 725.045;**

38 **(d) A pawnbroker, as defined in ORS 726.010, that is required to be licensed under ORS**  
39 **chapter 726; or**

40 **(e) A mortgage banker, mortgage broker or loan originator, as those terms are defined**  
41 **in ORS 86A.100, that is required to be licensed under ORS 86A.095 to 86A.198.**

42 **(2) A prosecuting attorney may not take action under ORS 646.618 or 646.632 with respect**  
43 **to an alleged unlawful practice under ORS 646.607 or 646.608 when the conduct involves loans**  
44 **or extensions of credit and was engaged in by a state regulated lender unless requested to**  
45 **do so by the Director of the Department of Consumer and Business Services. In any action**

1 requested to be taken by the director under this subsection, the director may elect to be  
2 named as a party to the proceeding or suit.

3 (3) The Attorney General may not adopt rules under ORS 646.608 (4) with respect to  
4 conduct involving loans or extensions of credit that is engaged in by a state regulated lender  
5 except with the prior review and approval of the proposed rules by the director. The Attorney  
6 General may not adopt rules under ORS 646.608 (4) with respect to conduct involving loans  
7 or extensions of credit that is engaged in by a state regulated lender except as provided in  
8 this subsection.

9 (4) As soon as practicable upon receipt, the Attorney General shall provide the director  
10 with copies of any complaint or other initial pleading or any judgment received under ORS  
11 646.638 when the action involves the conduct of a state regulated lender.

12 SECTION 7. This 2010 Act being necessary for the immediate preservation of the public  
13 peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect  
14 on its passage.