

**Minority Report**  
**B-Engrossed**  
**House Bill 3706**

Ordered by the Senate February 22  
Including House Amendments dated February 16 and Senate Minority  
Report Amendments dated February 22

Sponsored by nonconcurring members of the Senate Committee on Rules: Senators FERRIOLI, ATKINSON

**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. **Modifies definition to specify that loans and extensions of credit do not include transactions involving mortgage broker.**

**Exempts method, act or practice involving real estate, goods or services from civil action that person may bring when person suffers loss of money or property because of conduct prohibited by 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, 646.632 and 646.638; 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

**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 in which a violation of ORS 646.605 to 646.652 is alleged to have occurred.

2 (6)(a) "Real estate, goods or services" means those that are or may be obtained primarily for  
3 personal, family or household purposes, or that are or may be obtained for any purposes as a result  
4 of a telephone solicitation, and includes **loans and extensions of credit, and** franchises,  
5 distributorships and other similar business opportunities, but does not include insurance. [*Except*  
6 *as provided in section 2, chapter 658, Oregon Laws 2003, real estate does not cover conduct covered*  
7 *by ORS chapter 90.*]

8 **(b) Notwithstanding paragraph (a) of this subsection:**

9 **(A) "Real estate" does not cover conduct covered by ORS chapter 90, except as provided**  
10 **in section 2, chapter 658, Oregon Laws 2003.**

11 **(B) "Loans and extensions of credit" does not include transactions involving a mortgage**  
12 **broker, as defined in ORS 86A.100.**

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

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

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

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

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

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

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

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

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

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

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

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

3 (L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section  
4 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration  
5 under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 **SECTION 2.** ORS 646.605, as amended by section 12, chapter 658, Oregon Laws 2003, section  
45 199, chapter 71, Oregon Laws 2007, section 32, chapter 319, Oregon Laws 2007, and section 2,

1 chapter 215, Oregon Laws 2009, is amended to read:

2 646.605. As used in ORS 646.605 to 646.652:

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

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

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

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

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

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

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

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

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

20 (6)(a) "Real estate, goods or services" means those that are or may be obtained primarily for  
21 personal, family or household purposes, or that are or may be obtained for any purposes as a result  
22 of a telephone solicitation, and includes **loans and extensions of credit, and** franchises,  
23 distributorships and other similar business opportunities, but does not include insurance. [*Real es-*  
24 *tate does not cover conduct covered by ORS chapter 90.*]

25 **(b) Notwithstanding paragraph (a) of this subsection:**

26 **(A) "Real estate" does not cover conduct covered by ORS chapter 90.**

27 **(B) "Loans and extensions of credit" does not include transactions involving a mortgage**  
28 **broker, as defined in ORS 86A.100.**

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

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

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

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

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

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

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

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

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

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

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

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

19 (L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section  
20 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration  
21 under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 646.618. (1) **Except as provided in section 7 of this 2010 Act**, when it appears to the prose-  
17 cuting attorney that a person has engaged in, is engaging in, or is about to engage in any act or  
18 practice declared to be unlawful by ORS 646.607 or 646.608, the prosecuting attorney may execute  
19 in writing and cause to be served an investigative demand upon any person who is believed to have  
20 information, documentary material or physical evidence relevant to the alleged or suspected vio-  
21 lation. The investigative demand shall require such person, under oath or otherwise, to appear and  
22 testify, to answer written interrogatories, or to produce relevant documentary material or physical  
23 evidence for examination, at such reasonable time and place as may be stated in the investigative  
24 demand, or to do any of the foregoing, concerning conduct of any trade or commerce which is the  
25 subject matter of the investigation.

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

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

31 646.632. (1) **Except as provided in section 7 of this 2010 Act**, a prosecuting attorney who has  
32 probable cause to believe that a person is engaging in, has engaged in, or is about to engage in an  
33 unlawful trade practice may bring suit in the name of the State of Oregon in the appropriate court  
34 to restrain such person from engaging in the alleged unlawful trade practice.

35 (2) Except as provided in subsections (5) and (6) of this section, before filing a suit under sub-  
36 section (1) of this section, the prosecuting attorney shall in writing notify the person charged of the  
37 alleged unlawful trade practice and the relief to be sought. Such notice shall be served in the man-  
38 ner set forth in ORS 646.622 for the service of investigative demands. The person charged thereupon  
39 shall have 10 days within which to execute and deliver to the prosecuting attorney an assurance  
40 of voluntary compliance. Such assurance shall set forth what actions, if any, the person charged  
41 intends to take with respect to the alleged unlawful trade practice. The assurance of voluntary  
42 compliance shall not be considered an admission of a violation for any purpose. If the prosecuting  
43 attorney is satisfied with the assurance of voluntary compliance, it may be submitted to an appro-  
44 priate court for approval and if approved shall thereafter be filed with the clerk of the court. If an  
45 approved assurance of voluntary compliance provides for the payment of an amount of money, as

1 restitution or otherwise, and if the amount is not paid within 90 days of the date the court approves  
2 the assurance, or, if the assurance of voluntary compliance requires periodic payments and if any  
3 periodic payment is not paid within 30 days of the date specified in the assurance of voluntary  
4 compliance for any periodic payment, then the prosecuting attorney may submit that portion of the  
5 assurance of voluntary compliance which provides for the payment of money to the court with a  
6 certificate stating the unpaid balance in a form which fully complies with the requirements of ORS  
7 18.038 and 18.042. Upon submission of an assurance of voluntary compliance under this subsection,  
8 the court shall sign the assurance of voluntary compliance and it shall be entered in the register  
9 of the court and the clerk of the court shall note in the register that it creates a lien. The assurance  
10 of voluntary compliance shall thereupon constitute a judgment in favor of the State of Oregon and  
11 may be enforced as provided in ORS chapter 18. The notice of the prosecuting attorney under this  
12 subsection shall not be deemed a public record until the expiration of 10 days from the service of  
13 the notice.

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

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

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

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

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

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

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

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

45 **SECTION 5.** ORS 646.638 is amended to read:

1       646.638. (1) Except as provided in subsections (8) [and], (9) **and (10)** of this section, any person  
2 who suffers any ascertainable loss of money or property, real or personal, as a result of willful use  
3 or employment by another person of a method, act or practice declared unlawful by ORS 646.608,  
4 may bring an individual action in an appropriate court to recover actual damages or statutory  
5 damages of \$200, whichever is greater. The court or the jury, as the case may be, may award puni-  
6 tive damages and the court may provide the equitable relief the court considers necessary or proper.

7       (2) Upon commencement of any action brought under subsection (1) of this section the party  
8 bringing the action shall mail a copy of the complaint or other initial pleading to the Attorney  
9 General and, upon entry of any judgment in the action, shall mail a copy of the judgment to the  
10 Attorney General. Failure to mail a copy of the complaint shall not be a jurisdictional defect, but  
11 a court may not enter judgment for the plaintiff until proof of mailing is filed with the court. Proof  
12 of mailing may be by affidavit or by return receipt of mailing.

13       (3) The court may award reasonable attorney fees and costs at trial and on appeal to a pre-  
14 vailing plaintiff in an action under this section. The court may award reasonable attorney fees and  
15 costs at trial and on appeal to a prevailing defendant only if the court finds there was no objectively  
16 reasonable basis for bringing the action or asserting the ground for appeal.

17       (4) The court may not award attorney fees to a prevailing defendant under the provisions of  
18 subsection (3) of this section if the action under this section is maintained as a class action pursuant  
19 to ORCP 32.

20       (5) Any permanent injunction or final judgment or order of the court made under ORS 646.632  
21 or 646.636 is prima facie evidence in an action brought under this section that the respondent used  
22 or employed a method, act or practice declared unlawful by ORS 646.608, but an assurance of vol-  
23 untary compliance, whether or not approved by the court, shall not be evidence of the violation.

24       (6) Actions brought under this section shall be commenced within one year from the discovery  
25 of the unlawful method, act or practice. However, whenever any complaint is filed by a prosecuting  
26 attorney to prevent, restrain or punish violations of ORS 646.608, running of the statute of limita-  
27 tions with respect to every private right of action under this section and based in whole or in part  
28 on any matter complained of in said proceeding shall be suspended during the pendency thereof.

29       (7) Notwithstanding subsection (6) of this section, in any action brought by a seller or lessor  
30 against a purchaser or lessee of real estate, goods or services, the purchaser or lessee may assert  
31 any counterclaim the purchaser or lessee has arising out of a violation of ORS 646.605 to 646.652.

32       (8) A class action may be maintained under this section. In any class action under this section:

33       (a) Statutory damages under subsection (1) of this section may be recovered on behalf of class  
34 members only if the plaintiffs in the action establish that the members have sustained an  
35 ascertainable loss of money or property as a result of a reckless or knowing use or employment by  
36 the defendant of a method, act or practice declared unlawful by ORS 646.608;

37       (b) The trier of fact may award punitive damages; and

38       (c) The court may award appropriate equitable relief.

39       (9) This section does not apply to any method, act or practice described in ORS 646.608 (1)(aa).  
40 Actions for violation of laws relating to odometers are provided under ORS 815.410 and 815.415.

41       **(10) This section does not apply to any method, act or practice involving real estate,**  
42 **goods or services that arises out of a loan or extension of credit.**

43       **SECTION 6.** **Section 7 of this 2010 Act is added to and made a part of ORS 646.605 to**  
44 **646.652.**

45       **SECTION 7.** **(1) For purposes of this section, “state regulated lender” means:**



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

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

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

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

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

8 (2) A prosecuting attorney may not take action under ORS 646.618 or 646.632 with respect  
9 to an alleged unlawful practice under ORS 646.607 or 646.608 when the conduct involves loans  
10 or extensions of credit and was engaged in by a state regulated lender unless requested to  
11 do so by the Director of the Department of Consumer and Business Services. In any action  
12 requested to be taken by the director under this subsection, the director may elect to be  
13 named as a party to the proceeding or suit.

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

20 (4) As soon as practicable upon receipt, the Attorney General shall provide the director  
21 with copies of any complaint or other initial pleading or any judgment received under ORS  
22 646.638 when the action involves the conduct of a state regulated lender.

23 **SECTION 8.** This 2010 Act being necessary for the immediate preservation of the public  
24 peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect  
25 on its passage.