

A-Engrossed
Senate Bill 719

Ordered by the Senate May 4
Including Senate Amendments dated May 4

Sponsored by COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS 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.

Includes insurance in definition of "real estate, goods or services" for purposes of Unlawful Trade Practices Act.

[Makes violation of law prohibiting unfair claim settlement practices unlawful trade practice. Permits Attorney General to define by rule additional unfair claim settlement practices that are also unlawful trade practices.]

Authorizes Attorney General, with prior review and approval by Director of Department of Consumer and Business Services, to adopt rules for investigating and prosecuting unlawful trade practices involving insurance.

Requires indemnification from costs, damages and attorney fees arising out of violation of unfair claim settlement practice of person who transacts insurance for another.

A BILL FOR AN ACT

1
2 Relating to unlawful insurance practices; creating new provisions; and amending ORS 646.605.

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

4 **SECTION 1.** ORS 646.605, as amended by section 1, chapter 94, Oregon Laws 2010, is amended
5 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.

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 (6)(a) "Real estate, goods or services" means those that are or may be obtained primarily for
2 personal, family or household purposes, or that are or may be obtained for any purposes as a result
3 of a telephone solicitation, and includes loans and extensions of credit, **insurance** and franchises,
4 distributorships and other similar business opportunities[, *but does not include insurance*].

5 (b) Notwithstanding paragraph (a) of this subsection:

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

8 (B) "Loans and extensions of credit" does not include transactions involving a pawnbroker, as
9 defined in ORS 726.010, that is required to be licensed under ORS chapter 726.

10 (C) **"Insurance" does not cover public bodies, as defined in ORS 30.260, to the extent**
11 **public bodies are exempt from application of the Insurance Code under ORS 731.036.**

12 (D) **"Insurance" does not cover cities, counties, school districts, community college dis-**
13 **tricts, community college service districts or districts, as defined in ORS 198.010 and 198.180,**
14 **to the extent those entities are exempt from application of the Insurance Code under ORS**
15 **731.036.**

16 (E) **"Insurance" does not cover workers' compensation insurance under ORS chapter 656.**

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

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

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

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

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

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

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

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

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

45 (i) A person who solicits the services provided by a cable television system licensed or fran-

1 chised pursuant to state, local or federal law, when the solicitation involves cable television ser-
2 vices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 loan; or

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

3 **SECTION 2.** ORS 646.605, as amended by section 12, chapter 658, Oregon Laws 2003, section
4 199, chapter 71, Oregon Laws 2007, section 32, chapter 319, Oregon Laws 2007, section 2, chapter
5 215, Oregon Laws 2009, and section 2, chapter 94, Oregon Laws 2010, 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)(a) "Real estate, goods or services" means those that are or may be obtained primarily for
25 personal, family or household purposes, or that are or may be obtained for any purposes as a result
26 of a telephone solicitation, and includes loans and extensions of credit, **insurance** and franchises,
27 distributorships and other similar business opportunities[, *but does not include insurance*].

28 (b) Notwithstanding paragraph (a) of this subsection:

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

30 (B) "Loans and extensions of credit" does not include transactions involving a pawnbroker, as
31 defined in ORS 726.010, that is required to be licensed under ORS chapter 726.

32 (C) **"Insurance" does not cover public bodies, as defined in ORS 30.260, to the extent
33 public bodies are exempt from application of the Insurance Code under ORS 731.036.**

34 (D) **"Insurance" does not cover cities, counties, school districts, community college dis-
35 tricts, community college service districts or districts, as defined in ORS 198.010 and 198.180,
36 to the extent those entities are exempt from application of the Insurance Code under ORS
37 731.036.**

38 (E) **"Insurance" does not cover workers' compensation insurance under ORS chapter 656.**

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

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

45 (b) A real estate licensee or a person who is otherwise authorized to engage in professional real

1 estate activity pursuant to ORS chapter 696, when the solicitation involves professional real estate
2 activity.

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

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

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

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

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

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

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

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

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

29 (L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section
30 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration
31 under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 **SECTION 3. Section 4 of this 2011 Act is added to and made a part of ORS 646.605 to**
26 **646.652.**

27 **SECTION 4. (1) As used in this section, "insurance" has the meaning given that term in**
28 **ORS 731.102.**

29 **(2) The Attorney General may not adopt rules with respect to action taken by a prose-**
30 **cuting attorney under ORS 646.618 or 646.632 when the conduct that is the subject of the**
31 **action involves insurance except with the prior review and approval of the proposed rules**
32 **by the Director of the Department of Consumer and Business Services.**

33 **SECTION 5. (1) A person on whose behalf another person, including but not limited to**
34 **an insurance producer, transacts insurance shall indemnify the other person and hold the**
35 **other person harmless from any cost, loss or damages, including attorney fees, that may**
36 **arise out of a claim, action or judgment for violation of ORS 746.230.**

37 **(2) For purposes of this section:**

38 **(a) "Insurance producer" and "transact insurance" have the meanings given those terms**
39 **in ORS 731.104 and 731.146.**

40 **(b) "Person" means an individual, corporation, association, partnership, limited liability**
41 **company, limited liability partnership or any other legal entity except bodies or officers act-**
42 **ing under statutory authority of this state or the United States.**

43 **SECTION 6. Sections 4 and 5 of this 2011 Act and the amendments to ORS 646.605 by**
44 **sections 1 and 2 of this 2011 Act apply to unlawful insurance practices occurring on or after**
45 **the effective date of this 2011 Act.**

