

# Senate Bill 719

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 **as introduced**.

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.

## A BILL FOR AN ACT

1  
2 Relating to unlawful insurance practices; creating new provisions; and amending ORS 646.605,  
3 646.608 and 746.230.

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

5 **SECTION 1.** ORS 646.605, as amended by section 1, chapter 94, Oregon Laws 2010, is amended  
6 to read:

7 646.605. As used in ORS 646.605 to 646.652:

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

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

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

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

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

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

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

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

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

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

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

30 (A) "Real estate" does not cover conduct covered by ORS chapter 90 except as provided in

**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 section 2, chapter 658, Oregon Laws 2003.

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

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

6 (D) **"Insurance" does not cover cities, counties, school districts, community college dis-**  
7 **tricts, community college service districts or districts, as defined in ORS 198.010 and 198.180,**  
8 **to the extent those entities are exempt from application of the Insurance Code under ORS**  
9 **731.036.**

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section  
2 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration  
3 under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 **SECTION 2.** ORS 646.605, as amended by section 12, chapter 658, Oregon Laws 2003, section  
43 199, chapter 71, Oregon Laws 2007, section 32, chapter 319, Oregon Laws 2007, section 2, chapter  
44 215, Oregon Laws 2009, and section 2, chapter 94, Oregon Laws 2010, is amended to read:

45 646.605. As used in ORS 646.605 to 646.652:

- 1 (1) “Appropriate court” means the circuit court of a county:  
 2 (a) Where one or more of the defendants reside;  
 3 (b) Where one or more of the defendants maintain a principal place of business;  
 4 (c) Where one or more of the defendants are alleged to have committed an act prohibited by  
 5 ORS 646.605 to 646.652; or  
 6 (d) With the defendant’s consent, where the prosecuting attorney maintains an office.
- 7 (2) “Documentary material” means the original or a copy of any book, record, report, memo-  
 8 randum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or  
 9 other tangible document or recording, wherever situate.
- 10 (3) “Examination” of documentary material shall include inspection, study or copying of any  
 11 such material, and taking testimony under oath or acknowledgment in respect of any such docu-  
 12 mentary material or copy thereof.
- 13 (4) “Person” means natural persons, corporations, trusts, partnerships, incorporated or  
 14 unincorporated associations and any other legal entity except bodies or officers acting under statu-  
 15 tory authority of this state or the United States.
- 16 (5) “Prosecuting attorney” means the Attorney General or the district attorney of any county  
 17 in which a violation of ORS 646.605 to 646.652 is alleged to have occurred.
- 18 (6)(a) “Real estate, goods or services” means those that are or may be obtained primarily for  
 19 personal, family or household purposes, or that are or may be obtained for any purposes as a result  
 20 of a telephone solicitation, and includes loans and extensions of credit, **insurance** and franchises,  
 21 distributorships and other similar business opportunities[, *but does not include insurance*].
- 22 (b) Notwithstanding paragraph (a) of this subsection:  
 23 (A) “Real estate” does not cover conduct covered by ORS chapter 90.  
 24 (B) “Loans and extensions of credit” does not include transactions involving a pawnbroker, as  
 25 defined in ORS 726.010, that is required to be licensed under ORS chapter 726.
- 26 (C) **“Insurance” does not cover public bodies, as defined in ORS 30.260, to the extent**  
 27 **public bodies are exempt from application of the Insurance Code under ORS 731.036.**
- 28 (D) **“Insurance” does not cover cities, counties, school districts, community college dis-**  
 29 **tricts, community college service districts or districts, as defined in ORS 198.010 and 198.180,**  
 30 **to the extent those entities are exempt from application of the Insurance Code under ORS**  
 31 **731.036.**
- 32 (E) **“Insurance” does not cover workers’ compensation insurance under ORS chapter 656.**
- 33 (7) “Telephone solicitation” means a solicitation where a person, in the course of the person’s  
 34 business, vocation or occupation, uses a telephone or an automatic dialing-announcing device to in-  
 35 itiate telephonic contact with a potential customer and the person is not one of the following:
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 37 banker or mortgage broker licensed under ORS 86A.106 when the solicitation is for a security  
 38 qualified for sale pursuant to ORS 59.055.
- 39 (b) A real estate licensee or a person who is otherwise authorized to engage in professional real  
 40 estate activity pursuant to ORS chapter 696, when the solicitation involves professional real estate  
 41 activity.
- 42 (c) A person licensed or exempt from licensure as a builder pursuant to ORS chapter 701, when  
 43 the solicitation involves the construction, alteration, repair, improvement or demolition of a struc-  
 44 ture.
- 45 (d) A person licensed or otherwise authorized to sell insurance as an insurance producer pur-

1 suant to ORS chapter 744, when the solicitation involves insurance.

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

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

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

13 (h) A person who is authorized to conduct prearrangement or preconstruction funeral or ceme-  
14 tery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or precon-  
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16 (i) A person who solicits the services provided by a cable television system licensed or fran-  
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19 (j) A person or affiliate of a person whose business is regulated by the Public Utility Commission  
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21 (k) A person who sells farm products as defined by ORS 576.006 if the solicitation neither in-  
22 tends to nor actually results in a sale that costs the purchaser in excess of \$100.

23 (L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section  
24 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration  
25 under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

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

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

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

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

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

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

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

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

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

44 (B) "Disabled servicemember" means a servicemember, as defined in 50 U.S.C. App. 511 as in  
45 effect on January 1, 2010, who may be entitled to disability compensation under laws administered

1 by the United States Department of Veterans Affairs.

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

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

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

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

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

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

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

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

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

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

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

19 **SECTION 3.** ORS 646.608 is amended to read:

20 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-  
21 ness, vocation or occupation the person does any of the following:

22 (a) Passes off real estate, goods or services as those of another.

23 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-  
24 proval, or certification of real estate, goods or services.

25 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-  
26 ciation with, or certification by, another.

27 (d) Uses deceptive representations or designations of geographic origin in connection with real  
28 estate, goods or services.

29 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,  
30 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a  
31 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

32 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,  
33 reconditioned, reclaimed, used or secondhand.

34 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,  
35 or that real estate or goods are of a particular style or model, if they are of another.

36 (h) Disparages the real estate, goods, services, property or business of a customer or another  
37 by false or misleading representations of fact.

38 (i) Advertises real estate, goods or services with intent not to provide them as advertised, or  
39 with intent not to supply reasonably expectable public demand, unless the advertisement discloses  
40 a limitation of quantity.

41 (j) Makes false or misleading representations of fact concerning the reasons for, existence of,  
42 or amounts of price reductions.

43 (k) Makes false or misleading representations concerning credit availability or the nature of the  
44 transaction or obligation incurred.

45 (L) Makes false or misleading representations relating to commissions or other compensation to

1 be paid in exchange for permitting real estate, goods or services to be used for model or demon-  
2 stration purposes or in exchange for submitting names of potential customers.

3 (m) Performs service on or dismantles any goods or real estate when not authorized by the  
4 owner or apparent owner thereof.

5 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-  
6 vides the information required under ORS 646.611.

7 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give  
8 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of  
9 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or  
10 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,  
11 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-  
12 tomer enters into the transaction.

13 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-  
14 cize a product, business or service.

15 (q) Promises to deliver real estate, goods or services within a certain period of time with intent  
16 not to deliver them as promised.

17 (r) Organizes or induces or attempts to induce membership in a pyramid club.

18 (s) Makes false or misleading representations of fact concerning the offering price of, or the  
19 person's cost for real estate, goods or services.

20 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any  
21 known material defect or material nonconformity.

22 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

23 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under  
24 ORS 698.640, whether in a commercial or noncommercial situation.

25 (w) Manufactures mercury fever thermometers.

26 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal  
27 law, or is:

28 (A) Prescribed by a person licensed under ORS chapter 677; and

29 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and  
30 on the proper cleanup of mercury should breakage occur.

31 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to  
32 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be  
33 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the  
34 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-  
35 graph, "thermostat" means a device commonly used to sense and, through electrical communication  
36 with heating, cooling or ventilation equipment, control room temperature.

37 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains  
38 mercury light switches.

39 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

40 (bb) Violates ORS 646A.070 (1).

41 (cc) Violates any requirement of ORS 646A.030 to 646A.040.

42 (dd) Violates the provisions of ORS 128.801 to 128.898.

43 (ee) Violates ORS 646.883 or 646.885.

44 (ff) Violates ORS 646.569.

45 (gg) Violates the provisions of ORS 646A.142.

- 1 (hh) Violates ORS 646A.360.
- 2 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 3 (jj) Violates ORS 646.563.
- 4 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 5 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 6 thereto.
- 7 (mm) Violates ORS 646A.210 or 646A.214.
- 8 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 9 (oo) Violates ORS 646A.095.
- 10 (pp) Violates ORS 822.046.
- 11 (qq) Violates ORS 128.001.
- 12 (rr) Violates ORS 646.649 (2) to (4).
- 13 (ss) Violates ORS 646A.090 (2) to (4).
- 14 (tt) Violates ORS 87.686.
- 15 (uu) Violates ORS 646.651.
- 16 (vv) Violates ORS 646A.362.
- 17 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 18 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 19 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 20 (zz) Violates ORS 87.007 (2) or (3).
- 21 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 22 (bbb) Engages in an unlawful practice under ORS 646.648.
- 23 (ccc) Violates ORS 646A.365.
- 24 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 25 (eee) Sells a gift card in violation of ORS 646A.276.
- 26 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 27 (ggg) Violates ORS 646A.430 to 646A.450.
- 28 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
- 29 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 30 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 31 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 32 subject of the violation.
- 33 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 34 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 35 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 36 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 37 (nnn) Violates ORS 646A.082.
- 38 (ooo) Violates ORS 646.647.
- 39 (ppp) Violates ORS 646A.115.
- 40 (qqq) Violates a provision of ORS 646A.405.
- 41 **(rrr) Violates a provision of ORS 746.230.**
- 42 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
- 43 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- 44 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
- 45 need not prove competition between the parties or actual confusion or misunderstanding.



1 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-  
 2 torney General has first established a rule in accordance with the provisions of ORS chapter 183  
 3 declaring the conduct to be unfair or deceptive in trade or commerce.

4 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought  
 5 under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is lim-  
 6 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.

7 **SECTION 4.** ORS 746.230 is amended to read:

8 746.230. (1) No insurer or other person shall commit or perform any of the following unfair claim  
 9 settlement practices:

10 (a) Misrepresenting facts or policy provisions in settling claims;

11 (b) Failing to acknowledge and act promptly upon communications relating to claims;

12 (c) Failing to adopt and implement reasonable standards for the prompt investigation of claims;

13 (d) Refusing to pay claims without conducting a reasonable investigation based on all available  
 14 information;

15 (e) Failing to affirm or deny coverage of claims within a reasonable time after completed proof  
 16 of loss statements have been submitted;

17 (f) Not attempting, in good faith, to promptly and equitably settle claims in which liability has  
 18 become reasonably clear;

19 (g) Compelling claimants to initiate litigation to recover amounts due by offering substantially  
 20 less than amounts ultimately recovered in actions brought by such claimants;

21 (h) Attempting to settle claims for less than the amount to which a reasonable person would  
 22 believe a reasonable person was entitled after referring to written or printed advertising material  
 23 accompanying or made part of an application;

24 (i) Attempting to settle claims on the basis of an application altered without notice to or consent  
 25 of the applicant;

26 (j) Failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them,  
 27 of the coverage under which payment has been made;

28 (k) Delaying investigation or payment of claims by requiring a claimant or the physician of the  
 29 claimant to submit a preliminary claim report and then requiring subsequent submission of loss  
 30 forms when both require essentially the same information;

31 (L) Failing to promptly settle claims under one coverage of a policy where liability has become  
 32 reasonably clear in order to influence settlements under other coverages of the policy; [or]

33 (m) Failing to promptly provide the proper explanation of the basis relied on in the insurance  
 34 policy in relation to the facts or applicable law for the denial of a claim[.]; **or**

35 **(n) Such other practices as defined in rules adopted by the Attorney General for the**  
 36 **purposes of, and as required by, ORS 646.608 (1)(u) and (4).**

37 (2) No insurer shall refuse, without just cause, to pay or settle claims arising under coverages  
 38 provided by its policies with such frequency as to indicate a general business practice in this state,  
 39 which general business practice is evidenced by:

40 (a) A substantial increase in the number of complaints against the insurer received by the De-  
 41 partment of Consumer and Business Services;

42 (b) A substantial increase in the number of lawsuits filed against the insurer or its insureds by  
 43 claimants; or

44 (c) Other relevant evidence.

45 (3)(a) No health maintenance organization, as defined in ORS 750.005, shall unreasonably with-

1 hold the granting of participating provider status from a class of statutorily authorized health care  
2 providers for services rendered within the lawful scope of practice if the health care providers are  
3 licensed as such and reimbursement is for services mandated by statute.

4 (b) Any health maintenance organization that fails to comply with paragraph (a) of this sub-  
5 section shall be subject to discipline under ORS 746.015.

6 (c) This subsection does not apply to group practice health maintenance organizations that are  
7 federally qualified pursuant to Title XIII of the Health Maintenance Organization Act.

8 **SECTION 5. The amendments to ORS 646.605, 646.608 and 746.230 by sections 1 to 4 of this**  
9 **2011 Act apply to unlawful insurance practices occurring on or after the effective date of this**  
10 **2011 Act.**

11