

SENATE AMENDMENTS TO SENATE BILL 826

By COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS
PROTECTION

April 27

1 In line 2 of the printed bill, before the period insert “; creating new provisions; amending ORS
2 646.608; and declaring an emergency”.

3 Delete lines 4 through 19 and insert:

4 **“SECTION 1. As used in sections 1 to 13 of this 2011 Act:**

5 **“(1) ‘Authorized representative’ means a person that a borrower designates in a signed
6 writing as the borrower’s representative.**

7 **“(2) ‘Borrower’ means an individual who is obligated to repay a mortgage loan under a
8 residential mortgage loan agreement.**

9 **“(3) ‘Computation year’ means a recurring 12-month period that begins on the date or
10 anniversary date of the borrower’s first payment under the terms of a mortgage loan
11 agreement.**

12 **“(4) ‘Home Affordable Modification Program’ means the program that the United States
13 Department of the Treasury established under the authority of 12 U.S.C. 5211 and 5219.**

14 **“(5) ‘Lender’ means a person that extends a mortgage loan or credit to a borrower under
15 the terms of a mortgage loan agreement or is entitled to all or a portion of the principal,
16 interest and fees due from the borrower under the terms of the mortgage loan agreement.**

17 **“(6) ‘Mortgage loan’ means a loan or extension of credit that a borrower agrees to secure
18 by giving a mortgage, trust deed or an equivalent lien interest in residential real property.**

19 **“(7) ‘Mortgage loan agreement’ means a contract or other arrangement under the terms
20 of which a borrower obtains and agrees to repay the principal of a mortgage loan, along with
21 interest and fees, by a certain maturity date.**

22 **“(8) ‘Mortgage loan modification’ means a consent, waiver, forbearance or other amend-
23 ment of a material term of a mortgage loan agreement for a specific period of time or for
24 the remaining term of the mortgage loan agreement to:**

25 **“(a) Change the interest rate applicable to a mortgage loan;**

26 **“(b) Reduce or waive a principal payment or interest due on a mortgage loan;**

27 **“(c) Extend the maturity date for a mortgage loan; or**

28 **“(d) Otherwise agree not to enforce a provision of the mortgage loan agreement.**

29 **“(9)(a) ‘Qualified correspondence’ means a writing that a borrower sends to a servicer
30 and that:**

31 **“(A) Relates to the borrower’s mortgage loan;**

32 **“(B) Identifies or enables the servicer to identify the borrower’s name and mortgage loan
33 account; and**

34 **“(C) States reasons that the borrower believes the account is in error or asks for infor-
35 mation or action related to the account.**

1 “(b) ‘Qualified correspondence’ does not include correspondence that the servicer re-
2 ceives from the borrower more than one year after the servicer no longer services the
3 mortgage loan.

4 “(10) ‘Residential real property’ means real property located in this state upon which four
5 or fewer improvements designed for residential occupancy are situated.

6 “(11) ‘Servicer’ means a person that a lender authorizes, with respect to a mortgage loan,
7 to:

8 “(a) Collect payments, fees or penalties from the borrower;

9 “(b) Create, keep and maintain records;

10 “(c) Pay insurance premiums, property taxes or other fees or expenses related to the
11 residential real property that are necessary to protect the lender’s security interest in the
12 residential real property;

13 “(d) Receive and respond to communications from the borrower related to the mortgage
14 loan; or

15 “(e) Perform other duties or functions that are set forth in the authorization the lender
16 gives to the person.

17 “SECTION 2. (1)(a) Except as provided in paragraph (b) of this subsection, a person may
18 not conduct business as a servicer in this state unless the person registers with the De-
19 partment of Consumer and Business Services under this section.

20 “(b) A person may conduct business as a servicer in this state without registering with
21 the department only if:

22 “(A) The person conducts business as a servicer substantially in compliance with the
23 provisions of sections 1 to 13 of this 2011 Act;

24 “(B) The person proves to the Director of the Department of Consumer and Business
25 Services by clear and convincing evidence that the person did not know that this section
26 requires the person to register with the department; and

27 “(C) The person registers with the department under this section within 90 days after
28 becoming aware of or receiving actual notice of the requirement to register under this sec-
29 tion.

30 “(2) An applicant for registration as a servicer shall apply to the director in writing. The
31 director by rule shall prescribe the form and contents of the application and the manner in
32 which the applicant must apply. An application for registration at a minimum must:

33 “(a) List the applicant’s name, principal business address in Oregon and principal busi-
34 ness address outside Oregon, if any;

35 “(b) Name and list the residence addresses and business addresses for the applicant’s
36 officers and directors, if the applicant is a corporation, or the applicant’s members, if the
37 applicant is a partnership, limited liability company or other association;

38 “(c) Identify the applicant’s registered agent in Oregon and provide the registered agent’s
39 address, telephone number or other contact information; and

40 “(d) Provide other information the director specifies by rule.

41 “(3) At the time the applicant submits an application under this section, and each year
42 thereafter, the applicant shall pay a fee in an amount the director prescribes by rule. The
43 director shall set the fee at an amount that will enable the director to pay the annual ex-
44 penses of administering sections 1 to 13 of this 2011 Act from the aggregated amount of fees
45 the director collects under this section.

1 “(4) Within 30 days after receiving an application under this section, the director shall
2 issue and deliver to the applicant a certificate of registration that enables the registrant to
3 conduct business as a servicer in this state if the director finds that the applicant has com-
4 plied with the provisions of subsection (2) of this section and has paid the fee required under
5 subsection (3) of this section.

6 “(5) Each year a registrant shall apply to renew a certificate of registration under this
7 section. In the application, the registrant shall update, supplement or otherwise correct the
8 information the registrant provided in the previous application for registration. Unless the
9 director finds that a registrant has failed to comply with the provisions of sections 1 to 13
10 of this 2011 Act, or has failed to pay a fee required under subsection (3) of this 2011 Act, the
11 director shall renew the registrant’s certificate of registration.

12 “SECTION 3. (1) Notwithstanding the terms set forth in a lender’s authorization to ser-
13 vice a mortgage loan, a servicer engaged in business in this state has a duty of good faith
14 and fair dealing toward a borrower. The duty arises in the servicer’s communications,
15 transactions and other dealings with the borrower and includes, but is not limited to:

16 “(a) Safeguarding and accounting for money the servicer receives from or handles on
17 behalf of the borrower;

18 “(b) Following the borrower’s reasonable and lawful instructions;

19 “(c) Providing adequate trained personnel, telephone facilities and other resources nec-
20 essary to respond promptly to the borrower’s inquiries about the mortgage loan or mortgage
21 loan agreement;

22 “(d) Acting with reasonable skill, care and diligence;

23 “(e) Providing an accurate statement of account in accordance with section 7 of this 2011
24 Act;

25 “(f) Providing a description of options available from the servicer for mortgage loan
26 modification or other alternatives that enable a borrower who has defaulted on a payment
27 to avoid foreclosure and otherwise continue with the mortgage loan agreement; and

28 “(g) Evaluating, subject to the provisions of section 9 of this 2011 Act, options for a
29 mortgage loan modification or other assistance to a borrower who has defaulted on a pay-
30 ment due if the mortgage loan modification or other assistance would enable a borrower to
31 avoid foreclosure and otherwise continue with the mortgage loan agreement.

32 “(2) In addition to the duties specified in subsection (1) of this section, a servicer has a
33 duty to comply with the provisions of 15 U.S.C. 1601 et seq., 12 C.F.R. part 226 and the pro-
34 visions of ORS 86.705 to 86.795, 86A.095 to 86A.198, ORS chapter 88 and the Bank Act that
35 relate to mortgage loan servicing or that govern duties or functions of a lender, mortgagee
36 or beneficiary or trustee under a trust deed that the lender, mortgagee, beneficiary or
37 trustee has authorized or delegated to a servicer to perform.

38 “SECTION 4. (1) Within 20 business days after receiving qualified correspondence from
39 a borrower, a servicer shall acknowledge in writing that the servicer received the qualified
40 correspondence, unless the servicer takes action related to the qualified correspondence and
41 communicates the results of the action to the borrower within the 20-day period.

42 “(2) Within 60 business days after receiving qualified correspondence from a borrower
43 and before taking action related to the qualified correspondence, a servicer shall, if appro-
44 priate:

45 “(a) Correct errors in the borrower’s account, credit the account for late charges or

1 penalties and notify the borrower in writing of the corrections and credits; or

2 “(b) Investigate the matter identified in the qualified correspondence and:

3 “(A) Notify the borrower of the servicer’s reasons for believing the account is correct
4 and provide the borrower with the name of and contact information for an employee, office
5 or department of the servicer that can assist the borrower;

6 “(B) Provide the borrower with the information the borrower requests in the qualified
7 correspondence; or

8 “(C) Explain to the borrower why the servicer cannot provide the information the bor-
9 rower requests in the qualified correspondence and provide the borrower with the name and
10 contact information of an employee, office or department of the servicer that can assist the
11 borrower.

12 “(3)(a) During the 60-day period described in subsection (2) of this section, the servicer
13 may not provide adverse information about a payment that is the subject of qualified corre-
14 spondence to a consumer reporting agency, as defined in 15 U.S.C. 1681a.

15 “(b) The prohibition set forth in paragraph (a) of this subsection does not affect the
16 servicer’s ability to pursue a remedy that the lender or the mortgage loan agreement au-
17 thORIZES the servicer to pursue.

18 “(4)(a) In addition to the requirements set forth in subsections (1) to (3) of this section,
19 a servicer shall develop, implement and maintain policies and procedures for responding to
20 a borrower’s qualified correspondence, inquiries and complaints promptly and appropriately.

21 “(b) In order to meet the requirement set forth in paragraph (a) of this subsection, the
22 servicer shall provide at a minimum:

23 “(A) Trained personnel sufficient to respond to a reasonable and expected amount of
24 correspondence from borrowers;

25 “(B) A designated employee to whom a borrower may direct correspondence, an inquiry
26 or a complaint;

27 “(C) A designated telephone number that a borrower can call toll-free or collect to make
28 inquiries or communicate a complaint related to the borrower’s mortgage loan to the em-
29 ployee specified in subparagraph (B) of this paragraph during regular business hours at the
30 servicer’s location; and

31 “(D) A designated electronic method, or means other than a telephone, by which a bor-
32 rower may make an inquiry or communicate a complaint related to the borrower’s mortgage
33 loan.

34 “(5) A servicer shall provide on each statement of account the servicer sends to the
35 borrower at the borrower’s request or in accordance with section 7 of this 2011 Act:

36 “(a) An address to which the borrower can direct qualified correspondence;

37 “(b) The name of the employee, the telephone number and a description of the electronic
38 method or means for communicating with the servicer that is required under subsection
39 (4)(b) of this section; and

40 “(c) Contact information for the Department of Consumer and Business Services by
41 means of which the borrower may file a complaint about the servicer, together with the
42 servicer’s license number or other identification, if any, of an authorization from an agency
43 of this state under which the servicer may service mortgage loans in this state.

44 “(6) Within 15 days after receiving a written request from the borrower or the authorized
45 representative, a servicer shall provide the borrower or the authorized representative with

1 the name, address and contact information for the person that, as of the date on which the
2 borrower or the authorized representative made the request, is the mortgagee, the benefici-
3 ary under the trust deed, the lender or another person to which all or a portion of the pay-
4 ment is due under the mortgage loan agreement.

5 **“SECTION 5. (1) A servicer that receives money from a borrower for the servicer to hold**
6 **in escrow to pay insurance premiums, property taxes or other fees or expenses that are**
7 **necessary to protect the lender’s security interest in the residential real property that se-**
8 **cures the mortgage loan shall make the payments in accordance with 24 C.F.R. 3500.17. The**
9 **servicer’s failure to make a payment as required under this subsection, in addition to any**
10 **liability or penalty provided under 24 C.F.R. 3500.17, is an unlawful practice under ORS**
11 **646.608 that is subject to enforcement under ORS 646.638.**

12 **“(2) A servicer shall disclose payments the servicer made under subsection (1) of this**
13 **section clearly and conspicuously on the next periodic statement of account the servicer**
14 **provides to the borrower.**

15 **“(3) If a servicer advances the servicer’s own funds to pay an insurance premium, tax**
16 **or other fee or expense described in subsection (1) of this section because of a deficiency in**
17 **the borrower’s escrow account that does not result from a default on a payment for the**
18 **mortgage loan, the servicer shall analyze the escrow account to determine the reason for**
19 **and extent of the deficiency in the escrow account before seeking repayment from the bor-**
20 **rower of the amount the servicer advanced.**

21 **“SECTION 6. (1)(a) Except as provided in subsection (5) of this section, a servicer shall**
22 **accept all payments the servicer receives for a mortgage loan from the borrower at the ad-**
23 **dress to which the servicer instructed the borrower to send payments. The servicer shall**
24 **credit the payments to the borrower’s account, or treat the payments as credited, on the**
25 **business day on which the servicer received the payment if the borrower provides sufficient**
26 **information to credit the account.**

27 **“(b) Except as provided in paragraph (c) of this subsection, the servicer shall credit a**
28 **payment the servicer receives toward the interest and principal due on the mortgage loan**
29 **before crediting the payment toward insurance premiums, taxes or fees.**

30 **“(c) If failing to credit a payment or a portion of a payment toward property taxes may**
31 **result in an imposition or foreclosure of a tax lien on the residential real property that se-**
32 **cures the mortgage loan, the servicer shall credit the payment or a portion of the payment**
33 **toward the property taxes in an amount sufficient to avoid the lien or the foreclosure. The**
34 **servicer shall notify the borrower of the servicer’s action within five days after taking the**
35 **action and shall request that the borrower pay an additional amount sufficient to keep the**
36 **borrower’s mortgage loan account current.**

37 **“(2) If a servicer specifies in writing requirements for the borrower to follow in making**
38 **a payment but the servicer accepts a payment that does not conform to the servicer’s re-**
39 **quirements, the servicer shall credit the payment to the borrower’s account as soon as is**
40 **commercially practicable, but not later than five days after the servicer receives the pay-**
41 **ment.**

42 **“(3) If a regular periodic payment remains unpaid after the date on which the payment**
43 **is due under the terms of the mortgage loan agreement, the servicer shall send, not later**
44 **than 17 days after the date on which the payment is due, a written reminder to the borrower**
45 **that the payment is due.**

1 “(4)(a) A servicer may not impose a late fee for a payment a borrower makes after the
2 date on which the payment is due if the servicer receives the payment within 15 calendar
3 days after the payment is due. If the 15-day period ends on a Saturday, Sunday or holiday,
4 the servicer shall extend the period until the next regular business day.

5 “(b) A servicer shall credit a payment that a borrower makes after the date on which the
6 payment is due to the borrower’s account before the servicer charges a late fee for the
7 payment.

8 “(c) A servicer may not charge a late fee that exceeds the lesser of:

9 “(A) The amount set forth for a late fee in the mortgage loan agreement; or

10 “(B) Two percent of the amount that is due in a single, regular periodic payment under
11 the terms of the mortgage loan agreement.

12 “(d) The servicer may not deduct a late fee:

13 “(A) From the borrower’s escrow account or a surplus deposit to an escrow account,
14 unless the borrower authorizes the servicer to do so; or

15 “(B) From a regular periodic payment the borrower makes under the terms of the
16 mortgage loan agreement.

17 “(e) A servicer may not impose a late fee for a borrower’s failure to pay a previous late
18 fee by the due date set for the previous late fee if the borrower pays the full amount of a
19 regular periodic payment due under the terms of the mortgage loan agreement. The servicer
20 may not charge more than one late fee for any single periodic payment that a borrower
21 makes after the due date.

22 “(5) If a servicer credits payments that the servicer receives to a borrower’s account
23 only on a specific date within each month or other period, the servicer shall credit a payment
24 the servicer receives earlier to the borrower’s account not later than the due date for the
25 payment or 30 days after receiving the payment, whichever date is earlier.

26 “(6) If the servicer receives a payment that the servicer does not credit to the borrower’s
27 account or treat as credited to the borrower’s account, the servicer shall notify the borrower
28 in writing within 10 days after receiving the payment of the reasons why the servicer did not
29 credit the payment or treat the payment as credited and the actions the borrower must take
30 to make the mortgage loan current. The sender shall send the notice by mail to the
31 borrower’s last known address.

32 “(7) A servicer shall establish written policies and procedures to guide how the servicer
33 processes payments that exceed or are less than the amount due for a regular periodic pay-
34 ment on the mortgage loan.

35 “SECTION 7. (1)(a) At least once each year and not later than 30 days after the end of
36 the computation year, a servicer shall provide a plain language statement of account to the
37 borrower that shows, at a minimum:

38 “(A) The balance of the unpaid principal on the mortgage loan as of the date of the
39 statement of account;

40 “(B) The amount of interest the borrower paid during the preceding 12 months; and

41 “(C) The amounts the borrower deposited into the escrow account created under the
42 terms of the mortgage loan agreement, if any, and the amounts the servicer disbursed from
43 the escrow account.

44 “(b) The portions of the statement of account that describe transactions related to the
45 escrow account must comply with the provisions of 24 C.F.R. 3500.17(i).

1 “(2) A servicer shall provide a borrower or the authorized representative with an accu-
2 rate statement of account within 30 days after receiving a written request for a statement
3 of account from the borrower or the authorized representative. In addition to the informa-
4 tion required under subsection (1) of this section, the statement of account must show the
5 date and amount of each payment made on the mortgage loan account for the previous 36
6 months or for a different period if the borrower or authorized representative specifies a dif-
7 ferent period.

8 “(3) Not more than five days after receiving a request from a borrower or the authorized
9 representative, a servicer shall provide the borrower or the authorized representative with
10 a clear and accurate statement of the amount the borrower must pay as of the statement
11 date in order to repay the entire outstanding balance of the mortgage loan.

12 “(4) A servicer may not charge a borrower or the authorized representative a fee for
13 providing a statement under this section, except that the servicer may charge a reasonable
14 fee for providing more than one statement of account under subsection (2) of this section
15 or more than five statements under subsection (3) of this section during a 12-month period.

16 “(5) A servicer shall comply with the provisions of 24 C.F.R. 3500.17(f) if the servicer finds
17 a surplus or deficiency in the borrower’s escrow account. The servicer may apply a surplus
18 in the escrow account to the principal balance if the borrow authorizes the servicer to do
19 so.

20 “SECTION 8. (1) A servicer shall establish, maintain and update at least every six months
21 a schedule of common fees that the servicer charges or may charge in connection with a
22 borrower’s mortgage loan. The servicer shall provide a copy of the schedule of fees to the
23 borrower or the authorized representative upon request.

24 “(2) Fees that the servicer collects must be:

25 “(a) Reasonable;

26 “(b) For bona fide services that the servicer renders or for costs the servicer incurs;

27 “(c) Expressly authorized in the mortgage loan agreement; and

28 “(d) In accordance with applicable law.

29 “SECTION 9. (1) A servicer’s obligations under this section are subject to the servicer’s
30 duty as set forth in section 3 of this 2011 Act, to the servicer’s obligations to the lender
31 under any authorization the lender gave to service the mortgage loan and to practices and
32 procedures required by law or common among mortgage loan servicers.

33 “(2)(a) If a borrower has failed to make a regular periodic payment on a mortgage loan
34 for 60 days or longer or if a borrower requests a mortgage loan modification or other as-
35 sistance with a mortgage loan, the servicer shall, within 10 days after the 60-day period has
36 expired or the servicer receives the request from the borrower:

37 “(A) Provide the borrower with a statement of the amount due on the mortgage loan as
38 of the statement date;

39 “(B) Describe the servicer’s program for mortgage loan modification or other assistance
40 the servicer offers that would enable the borrower to avoid foreclosure and otherwise con-
41 tinue with the mortgage loan agreement;

42 “(C) Describe the procedures the borrower must follow to apply for the program or the
43 assistance; and

44 “(D) Offer to negotiate in good faith with the borrower under the terms of the program
45 or assistance in an attempt to avoid foreclosure.

1 “(b) A description under paragraph (a)(B) or (C) of this subsection must:

2 “(A) List the information the servicer will require the borrower to provide and specify
3 that the borrower must provide the information within 30 days after the date of the
4 servicer’s communication under this subsection;

5 “(B) List the consents, waivers, forbearances or approvals from third parties that the
6 servicer must obtain before proceeding with the program or other assistance;

7 “(C) State the average length of time the servicer takes to decide whether a borrower is
8 eligible for the program or assistance; and

9 “(D) List the actions the servicer, lender, trustee or mortgagee may take during the pe-
10 riod in which the servicer is evaluating whether the borrower is eligible for the program or
11 assistance, such as whether the borrower will continue to receive collection letters or fore-
12 closure notices and whether collection efforts or the foreclosure process will continue or be
13 suspended.

14 “(3)(a) A servicer shall offer the borrower a mortgage loan modification if the servicer
15 determines that:

16 “(A) The borrower’s financial condition does not permit the borrower to continue to
17 make regular periodic payments in the amount specified in the mortgage loan agreement or
18 to make up the amount of a deficiency in the payments due for the mortgage loan; and

19 “(B) The net present value of the income stream that the servicer can expect from
20 agreeing to a mortgage loan modification is more than the net present value of the income
21 stream the servicer could expect if the servicer foreclosed the mortgage loan and sold the
22 residential real property that secures the mortgage loan.

23 “(b) The servicer shall retain in the servicer’s records for the mortgage loan the policies
24 and standards, formulae and calculations the servicer used to make a determination under
25 paragraph (a) of this subsection. The information the servicer must retain under this para-
26 graph is subject to the provisions of section 11 of this 2011 Act. To the extent that the in-
27 formation may be considered a public record under ORS 192.410, the information is
28 confidential and is exempt from public disclosure under ORS 192.502.

29 “(c) A servicer that agrees to a mortgage loan modification shall attempt in good faith
30 to structure the terms of the modified mortgage loan so that the borrower can afford to
31 make regular periodic payments for a specified period or for the remaining term of the
32 mortgage loan.

33 “(4)(a) A servicer shall decide, within 45 days after receiving information the servicer
34 needs from the borrower and the consents, waivers, forbearances or approvals the servicer
35 needs from third parties, whether a borrower is eligible for a mortgage loan modification or
36 other assistance that would avoid foreclosure.

37 “(b) The servicer shall notify the borrower or the authorized representative in writing
38 of the servicer’s decision under paragraph (a) of this subsection. If the servicer agrees to a
39 mortgage loan modification or other assistance, the notice shall describe in clear and plain
40 language the material terms, costs and risks of the mortgage loan modification or other as-
41 sistance. If the servicer does not agree to a mortgage loan modification or other assistance,
42 the notice must:

43 “(A) Describe the servicer’s reasons and basis for the decision;

44 “(B) Explain how the servicer calculated that the borrower was not eligible; and

45 “(C) Specify other options, if any, that the servicer may consider to avoid foreclosure.

1 “(c) A servicer complies with the requirement set forth in paragraph (b) of this sub-
2 section if the servicer provides the information specified for a borrower notice in Supple-
3 mental Directive 09-08, as in effect on the effective date of this 2011 Act, that the United
4 States Department of the Treasury issued under the Helping Families Save Their Homes Act
5 of 2009, P.L. 111-22, as in effect on the effective date of this 2011 Act.

6 “(5) A servicer may not, as a condition of agreeing to a mortgage loan modification or
7 other assistance with a mortgage loan, require a borrower to waive a legal claim or defense
8 to which the borrower is entitled.

9 “(6)(a) A servicer shall take reasonable steps to train the servicer’s staff to provide in-
10 formation about the servicer’s programs for mortgage loan modification or other assistance
11 and about other programs that may enable a borrower to avoid foreclosure.

12 “(b) The servicer shall provide a borrower who has failed to make a regular periodic
13 payment on a mortgage loan for 60 days or longer, or a borrower who requests a mortgage
14 loan modification or other assistance, with a list of not-for-profit housing counselors ap-
15 proved by the United States Department of Housing and Urban Development or an agency
16 of this state.

17 “(c)(A) The servicer shall provide the borrower or the authorized representative with:

18 “(i) A current list of the servicer’s employees who are authorized to discuss a program
19 of mortgage loan modification or other assistance with the borrower or the authorized rep-
20 resentative; and

21 “(ii) A current list of supervisory employees whom a legal service provider or a repre-
22 sentative of a state or federal agency may contact to review a servicer’s performance or to
23 intervene in a servicer’s decision-making process under subsection (4)(a) of this section.

24 “(B) The servicer shall provide toll-free telephone numbers, facsimile numbers and elec-
25 tronic mail addresses for direct communication with the listed employees.

26 “(7) A servicer shall develop and implement policies and procedures to identify as soon
27 as possible borrowers and mortgage loans that are at risk of foreclosure. The policies and
28 procedures must include:

29 “(a) An accounting system that alerts an employee, office or department of the servicer
30 that is responsible for initiating foreclosure proceedings when:

31 “(A) The interest rate for a mortgage loan will reset, or a material term of a mortgage
32 loan agreement will change, in the next 60 days; or

33 “(B) A borrower fails to make a regular periodic payment on a mortgage loan;

34 “(b) A procedure for sending delinquency notices, assessing late fees, processing partial
35 payments, maintaining collection histories and reporting the borrower’s failure to make a
36 payment to a consumer reporting agency;

37 “(c) A policy and procedure for analyzing why the borrower failed to make a regular pe-
38 riodic payment on a mortgage loan; and

39 “(d) A procedure by means of which the servicer’s management can review and evaluate
40 the servicer’s decisions to offer a mortgage loan modification or other assistance or to pro-
41 ceed with foreclosure.

42 “(8) This section does not preclude a servicer from offering or accepting other options
43 for avoiding a foreclosure, such as a short sale of the residential real property that secures
44 the mortgage loan, a deed in lieu of foreclosure, a forbearance with respect to a payment due
45 under the terms of the mortgage loan agreement or other assistance the servicer can pro-

1 vide.

2 “(9) A servicer shall use reasonable efforts to obtain consents, waivers, forbearances or
3 approvals from third parties that are required under contract provisions or under law before
4 the servicer can agree to a mortgage loan modification or other assistance with a mortgage
5 loan.

6 “(10) If a servicer complies with the regulations and guidelines set forth for the Home
7 Affordable Modification Program, the servicer is presumed to have complied with the
8 servicer’s duties under section 3 (1)(f) and (g) of this 2011 Act.

9 “SECTION 10. (1) A servicer shall compile and submit an annual report to the Director
10 of the Department of Consumer and Business Services that contains the information the
11 director specifies by rule. The servicer shall submit the report in a format and by a date that
12 the director specifies by rule.

13 “(2) An officer or director of the servicer shall attest under penalty of perjury to the
14 accuracy of a report the servicer submits under this section.

15 “SECTION 11. (1) A servicer shall keep books, records and other materials that enable
16 the Director of the Department of Consumer and Business Services to determine during an
17 investigation or examination whether the servicer is complying with the requirements set
18 forth in sections 1 to 13 of this 2011 Act. The books, records and other materials must re-
19 cord, at a minimum:

20 “(a) Payments the servicer received, disbursements the servicer made and the date of
21 each transaction connected with each mortgage loan account;

22 “(b) The principal balance of each mortgage loan account;

23 “(c) The amount of the regular periodic payment and the date on which the regular pe-
24 riodic payment is due for each mortgage loan account;

25 “(d) The service history for each mortgage loan the servicer is authorized to service,
26 including mortgage loans the servicer acquired from another person; and

27 “(e) The service history for mortgage loans for which a borrower has failed to make a
28 regular periodic payment, including mortgage loans that are undergoing foreclosure.

29 “(2) A servicer shall maintain a file for each mortgage loan that contains:

30 “(a) Written correspondence the servicer sends to and receives from the borrower or the
31 authorized representative, including qualified correspondence and correspondence sent by
32 electronic mail or facsimile;

33 “(b) Telephone logs and notes from telephone conversations between the servicer and the
34 borrower or the authorized representative; and

35 “(c) Written correspondence and notes of other communication concerning the mortgage
36 loan between the servicer and:

37 “(A) Another or previous servicer of the mortgage loan;

38 “(B) The lender, the mortgagee, the beneficiary under a trust deed or the trustee for the
39 residential real property that secures the mortgage loan; or

40 “(C) A governmental body.

41 “(3) The servicer shall periodically assess how well the servicer is performing the duties
42 required under sections 1 to 13 of this 2011 Act. The assessment must include an audit con-
43 ducted at least once each year that examines the servicer’s payment processing functions
44 to ensure that the servicer properly credits payments to mortgage loan accounts. The
45 servicer shall keep a record of the results of the assessment and the audit and make the

1 record available to the director at the director's request.

2 “(4) The servicer shall collect, maintain and analyze information that enables the
3 servicer to evaluate the effectiveness of the servicer's collection operations and the overall
4 performance of the servicer's portfolio of mortgage loans. The information must include
5 data on the rate of delinquent payments and foreclosures within the servicer's portfolio and
6 an evaluation of whether the servicer's operations discriminate against a borrower or class
7 of borrowers. The servicer shall compare the rates of delinquency and foreclosure within the
8 servicer's portfolio to similar data available from other servicers or the general mortgage
9 loan servicing market. To the extent that the servicer's rates of delinquency or foreclosure
10 vary from the general rates prevalent in the mortgage loan servicing market, the servicer
11 shall identify and implement actions to correct operations of the servicer that vary signif-
12 icantly from operations common among other servicers with delinquency and foreclosure
13 rates closer to the prevalent rates.

14 “(5) The servicer shall submit to the director within 45 days after the end of each of the
15 servicer's fiscal quarters a quarterly financial report and certification of net worth in a
16 format prescribed by the director. Within 90 days after the servicer's fiscal year ends, the
17 servicer shall submit a financial statement that is prepared in accordance with generally
18 accepted accounting principles and is audited by an independent certified public accountant
19 in accordance with generally accepted auditing standards.

20 “(6) The servicer shall file other reports as the director prescribes by rule.

21 “(7) At the director's request, an officer or director of the servicer shall attest under
22 penalty of perjury to the accuracy of the materials the servicer maintains under this section.

23 “SECTION 12. (1) A servicer may not:

24 “(a) Fail to take timely action to respond to a borrower's qualified correspondence in
25 accordance with section 4 of this 2011 Act.

26 “(b) Fail to accept and credit a payment as provided in section 6 of this 2011 Act or to
27 correct an error related to an allocation of a payment, a statement of account or other re-
28 cords related to a borrower's mortgage loan.

29 “(c) Fail to respond to a request the servicer receives under section 4 (6) of this 2011 Act.

30 “(d) Impose or collect a fee that violates the provisions of section 8 (2) of this 2011 Act.

31 “(e) Misrepresent or omit material information in communications with a borrower, such
32 as the amount, reason for or terms of a payment or fee due under the mortgage loan
33 agreement or as a result of a policy or practice of the servicer, the terms and conditions of
34 the servicer's authorization to service the loan or the terms of the borrower's obligations
35 under the mortgage loan agreement.

36 “(f) Misrepresent or omit data or material information required under section 10 or 11
37 of this 2011 Act.

38 “(g) Fail to notify a borrower if the servicer purchases insurance for residential real
39 property that secures the borrower's mortgage loan.

40 “(h) Purchase insurance for residential real property that secures a mortgage loan if the
41 servicer has reason to know that the borrower has an effective homeowner's, hazard or flood
42 insurance policy for the residential real property.

43 “(i) Purchase or require a borrower to purchase insurance for residential real property
44 that pays a total claim in an amount that exceeds the replacement cost for the residential
45 real property.

1 “(j) Fail to refund to the borrower an amount the servicer charged the borrower for an
2 insurance premium the servicer purchased for residential real property that secures the
3 borrower’s mortgage loan after the borrower proves that the borrower had an effective in-
4 surance policy in place for the residential real property for the period of time covered by the
5 policy the servicer purchased.

6 “(k) Require a borrower to make a payment in a manner that costs the borrower more
7 than the cost of a cashier’s or certified check or a check from an attorney’s trust account.

8 “(L) Refuse to communicate with an authorized representative that provides the servicer
9 with written authorization to act as the authorized representative. This paragraph does not
10 preclude a servicer from verifying that the authorized representative is acting on the
11 borrower’s behalf.

12 “(2)(a) The Director of the Department of Consumer and Business Services may investi-
13 gate a violation of this section and may impose a penalty or otherwise enforce the provisions
14 of this section to the same extent as provided for a mortgage banker’s violations of the
15 provisions of ORS 86A.095 to 86A.198.

16 “(b) The director may issue a subpoena or other process to the servicer to compel the
17 servicer to produce books, records and other materials the servicer maintains under section
18 11 of this 2011 Act or to compel the attendance of a witness or other person from whom the
19 director requires testimony necessary to conduct an investigation or examination. The di-
20 rector may examine the witness or other person under oath.

21 “(c) If the director investigates or examines a servicer under this section, the servicer
22 shall pay the director for the actual cost of the investigation or examination. The director
23 may bring an action to recover the cost in a circuit court of this state.

24 “(3) A violation of a provision of this section is an unlawful practice under ORS 646.608
25 that is enforceable under ORS 646.638.

26 “**SECTION 13.** The Director of the Department of Consumer and Business Services may
27 adopt rules that are necessary to implement the provisions of sections 1 to 13 of this 2011
28 Act.

29 “**SECTION 14.** ORS 646.608 is amended to read:

30 “646.608. (1) A person engages in an unlawful practice when in the course of the person’s busi-
31 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

8 “(k) Makes false or misleading representations concerning credit availability or the nature of
9 the transaction or obligation incurred.

10 “(L) Makes false or misleading representations relating to commissions or other compensation
11 to be paid in exchange for permitting real estate, goods or services to be used for model or demon-
12 stration purposes or in exchange for submitting names of potential customers.

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

15 “(n) Solicits potential customers by telephone or door to door as a seller unless the person
16 provides the information required under ORS 646.611.

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

23 “(p) Makes any false or misleading statement about a prize, contest or promotion used to pub-
24 licize a product, business or service.

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

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

28 “(s) Makes false or misleading representations of fact concerning the offering price of, or the
29 person’s cost for real estate, goods or services.

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

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

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

35 “(w) Manufactures mercury fever thermometers.

36 “(x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
37 law, or is:

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

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

41 “(y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
42 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
43 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
44 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
45 graph, ‘thermostat’ means a device commonly used to sense and, through electrical communication

1 with heating, cooling or ventilation equipment, control room temperature.

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

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

5 “(bb) Violates ORS 646A.070 (1).

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

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

8 “(ee) Violates ORS 646.883 or 646.885.

9 “(ff) Violates ORS 646.569.

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

11 “(hh) Violates ORS 646A.360.

12 “(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

13 “(jj) Violates ORS 646.563.

14 “(kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

15 “(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
16 thereto.

17 “(mm) Violates ORS 646A.210 or 646A.214.

18 “(nn) Violates any provision of ORS 646A.124 to 646A.134.

19 “(oo) Violates ORS 646A.095.

20 “(pp) Violates ORS 822.046.

21 “(qq) Violates ORS 128.001.

22 “(rr) Violates ORS 646.649 (2) to (4).

23 “(ss) Violates ORS 646A.090 (2) to (4).

24 “(tt) Violates ORS 87.686.

25 “(uu) Violates ORS 646.651.

26 “(vv) Violates ORS 646A.362.

27 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

28 “(xx) Violates ORS 180.440 (1) or 180.486 (1).

29 “(yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

30 “(zz) Violates ORS 87.007 (2) or (3).

31 “(aaa) Violates ORS 92.405 (1), (2) or (3).

32 “(bbb) Engages in an unlawful practice under ORS 646.648.

33 “(ccc) Violates ORS 646A.365.

34 “(ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

35 “(eee) Sells a gift card in violation of ORS 646A.276.

36 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.

37 “(ggg) Violates ORS 646A.430 to 646A.450.

38 “(hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.

39 “(iii) Violates a provision of ORS 646A.702 to 646A.720.

40 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
41 scribed in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the
42 subject of the violation.

43 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.

44 “(LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
45 U.S.C. App. 501 et seq., as in effect on January 1, 2010.

1 “(mmm) Violates a provision of ORS 646A.480 to 646A.495.

2 “(nnn) Violates ORS 646A.082.

3 “(ooo) Violates ORS 646.647.

4 “(ppp) Violates ORS 646A.115.

5 “(qqq) Violates a provision of ORS 646A.405.

6 **“(rrr) Violates a provision of section 5 or 12 of this 2011 Act.**

7 “(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifes-
8 tation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.

9 “(3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
10 need not prove competition between the parties or actual confusion or misunderstanding.

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

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

17 **“SECTION 15. (1) Sections 1 to 13 of this 2011 Act and the amendments to ORS 646.608**
18 **by section 14 of this 2011 Act become operative on January 1, 2012.**

19 **“(2) The Director of the Department of Consumer and Business Services may take any**
20 **action before the operative date set forth in subsection (1) of this section that is necessary**
21 **to enable the director to exercise, on and after the operative date set forth in subsection (1)**
22 **of this section, all of the duties, functions and powers conferred on the director by sections**
23 **1 to 13 of this 2011 Act and the amendments to ORS 646.608 by section 14 of this 2011 Act.**

24 **“SECTION 16. This 2011 Act being necessary for the immediate preservation of the public**
25 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
26 **on its passage.”.**

27
