

Senate Bill 827

Sponsored by Senator BONAMICI; Senators BATES, BOQUIST

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**.

Provides that failure to include required modification form with notice of sale, failure to comply with provisions governing loan modifications and failure to record required affidavit of compliance with loan modification requirements are unlawful practices subject to enforcement under unlawful trade practices law. Requires trustee to send copy of required affidavit to Department of Justice.

Removes certain exemptions from requirement to comply with law governing mortgage loan modifications.

Permits grantor to record affidavit stating that grantor requested loan modification in accordance with law and by applicable deadline.

Requires trustee to be resident of this state or have registered agent that meets certain qualifications.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to foreclosures of trust deeds; creating new provisions; amending ORS 86.737, 86.750, 86.790 and 646.608 and section 3, chapter 864, Oregon Laws 2009; repealing sections 9 and 10, chapter 864, Oregon Laws 2009; and declaring an emergency.

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

SECTION 1. ORS 86.737 is amended to read:

86.737. (1) If a notice of default is recorded for property that is subject to a residential trust deed, the sender of a notice of sale under ORS 86.740 shall, on or before the date the notice of sale is served or mailed, give notice under this section to the grantor by both first class and certified mail with return receipt requested. Subject to any rules adopted under subsection (2) of this section, the notice must be in substantially the following form and printed in at least 14-point type:

NOTICE:

YOU ARE IN DANGER OF LOSING
YOUR PROPERTY IF YOU DO NOT
TAKE ACTION IMMEDIATELY

This notice is about your mortgage loan on your property at _____ (address).

Your lender has decided to sell this property because the money due on your mortgage loan has not been paid on time or because you have failed to fulfill some other obligation to your lender. This is sometimes called "foreclosure."

The amount you would have had to pay as of _____ (date) to bring your mortgage loan current was \$_____. The amount you must now pay to bring your loan current may have increased since

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 that date.

2
3 By law, your lender has to provide you with details about the amount you owe, if you ask. You may
4 call _____ (telephone number) to find out the exact amount you must pay to bring your
5 mortgage loan current and to get other details about the amount you owe. You may also get these
6 details by sending a request by certified mail to: _____.

7
8 THIS IS WHEN AND WHERE
9 YOUR PROPERTY WILL BE SOLD
10 IF YOU DO NOT TAKE ACTION:

11
12 Date and time: _____, 2_____ at _____

13
14 Place: _____

15
16 THIS IS WHAT YOU CAN DO
17 TO STOP THE SALE:

- 18
19 1. You can pay the amount past due or correct any other default, up to five days before the sale.
20 2. You can refinance or otherwise pay off the loan in full anytime before the sale.
21 3. You can request that your lender give you more time or change the terms of your loan.
22 4. You can sell your home, provided the sale price is enough to pay what you owe.

23
24 There are government agencies and nonprofit organizations that can give you information about
25 foreclosure and help you decide what to do. For the name and telephone number of an organization
26 near you, please call the statewide telephone contact number at _____. You may also
27 wish to talk to a lawyer. If you need help finding a lawyer, you may call the Oregon State Bar's
28 Lawyer Referral Service at _____ or toll-free in Oregon at _____ or you may
29 visit its website at: _____. Legal assistance may be available if you have a low income
30 and meet federal poverty guidelines. For more information and a directory of legal aid programs,
31 go to _____.

32
33 Your lender may be willing to modify your loan to reduce the interest rate, reduce the monthly
34 payments or both. You can get information about possible loan modification programs by contacting
35 your lender at _____. If you can't reach your lender, you may contact the trustee at the
36 telephone number at the bottom of this notice. If you have already entered into a loan modification
37 with your lender, it is possible that you will not be able to modify your loan again unless your cir-
38 cumstances have changed. Your lender is not obligated to modify your loan.

39
40 You may request to meet with your lender to discuss options for modifying your loan. During dis-
41 cussions with your lender, you may have the assistance of a lawyer, a housing counselor or another
42 person of your choosing. To receive a referral to a housing counselor or other assistance available
43 in your community, call this toll-free consumer mortgage foreclosure information
44 number: _____. Many lenders participate in new federal loan modification programs. You
45 can obtain more information about these programs at: _____.

1 IF YOU WANT TO APPLY TO MODIFY YOUR LOAN, YOU MUST FILL OUT AND MAIL BACK
2 THE ENCLOSED "MODIFICATION REQUEST FORM." YOUR LENDER MUST RECEIVE THE
3 FORM BY _____, WHICH IS 30 DAYS AFTER THE DATE SHOWN BELOW.

4
5 WARNING: You may get offers from people who tell you they can help you keep your property. You
6 should be careful about those offers. Make sure you understand any papers you are asked to sign.
7 If you have any questions, talk to a lawyer or one of the organizations mentioned above before
8 signing.

9
10 DATED: _____, 2_____

11
12 Trustee name: _____ (print)

13
14 Trustee signature: _____

15
16 Trustee telephone number: _____

17 _____

18
19 (2) The Department of Consumer and Business Services [*may*] **shall** adopt rules [*prescribing*]
20 **that prescribe** the **content**, format, font size and other physical characteristics of the notice form
21 set forth in subsection (1) of this section. The [*department shall adopt*] rules [*specifying*] **shall specify**
22 the resource telephone contact numbers and website addresses the sender is to insert in completing
23 the notice **and shall require the sender to notify the grantor that the grantor may file a**
24 **declaration under ORS 86.750 (6).**

25 (3) When filling blanks in the notice form set forth in subsection (1) of this section, the sender
26 of the notice shall include, stated in plain language:

27 (a) The amount of payment that was needed to bring the mortgage loan current as of the date
28 stated in the notice; and

29 (b) One or more telephone numbers consisting of:

30 (A) A telephone number that will allow the grantor access during regular business hours to
31 details regarding the grantor's loan delinquency and repayment information; and

32 (B) A telephone number that will allow the grantor access during regular business hours to
33 person-to-person consultation with an individual authorized by the beneficiary to discuss the
34 grantor's payment and loan term negotiation and modification options.

35 (4) Telephone numbers described in subsection (3) of this section must be toll-free numbers un-
36 less the beneficiary:

37 (a) Made the loan with the beneficiary's own money;

38 (b) Made the loan for the beneficiary's own investment; and

39 (c) Is not in the business of making loans secured by an interest in real estate.

40 (5) If the sender giving notice under subsection (1) of this section has actual knowledge that the
41 grantor is not the occupant of the residential real property, the sender shall also give notice to the
42 occupant of the property by both first class and certified mail with return receipt requested.

43 (6) The notice required under subsection (1) of this section must be accompanied by a form to
44 request a loan modification. **The Department of Consumer and Business Services by rule shall**
45 **specify the content and format of the loan modification form.** The form must include the ad-

1 dress to which and state the date by which the grantor must return the form **and must state that**
2 **the grantor may return the form for processing even if the grantor believes that the grantor**
3 **is eligible for a different loan modification program.** The date must be 30 days after the date
4 on which the trustee signs the notice. The form may state that the grantor must disclose current
5 information about the grantor's income and expenses, the grantor's address, phone number and
6 electronic mail address and other facts that may affect the grantor's eligibility for a loan modifica-
7 tion. **Failing to include the form required under this subsection is an unlawful practice under**
8 **ORS 646.608 that is subject to enforcement under ORS 646.632 and 646.638.**

9 **SECTION 2.** Section 3, chapter 864, Oregon Laws 2009, as amended by section 1, chapter 40,
10 Oregon Laws 2010, is amended to read:

11 **Sec. 3.** (1)(a) If a grantor returns the form identified in ORS 86.737 (6) to the lender by the date
12 specified on the form, the beneficiary or an agent of the beneficiary shall review the information the
13 grantor provided in the form and, in good faith, shall process the grantor's request. The beneficiary
14 or the beneficiary's agent, as soon as reasonably practicable but not later than 45 days after re-
15 ceiving the form, shall notify the grantor whether the beneficiary approves or denies the request
16 or requires additional information.

17 (b) If the beneficiary denies a request made under paragraph (a) of this subsection, the benefi-
18 ciary or the beneficiary's agent in the notice shall provide the grantor with an explanation of how
19 the beneficiary or the beneficiary's agent calculated that the grantor was not eligible for a loan
20 modification.

21 (c) A beneficiary or the beneficiary's agent complies with the requirement set forth in paragraph
22 (b) of this subsection if the beneficiary or the beneficiary's agent provides the information specified
23 for a borrower notice in Supplemental Directive 09-08, as in effect on [*the effective date of this 2010*
24 *Act*] **May 27, 2010**, issued by the United States Department of the Treasury under the Helping
25 Families Save Their Homes Act of 2009, P.L. 111-22, as in effect on [*the effective date of this 2010*
26 *Act*] **May 27, 2010**.

27 (d) A trustee's sale for the property subject to the loan may not occur until after the beneficiary
28 or the beneficiary's agent timely responds to the grantor as provided in this subsection. During the
29 45-day period, the beneficiary or the beneficiary's agent may request the grantor to provide addi-
30 tional information required to determine whether the loan can be modified.

31 (2)(a) Except as provided in paragraph (b) of this subsection, if the grantor timely requests a
32 meeting with the beneficiary, the beneficiary or the beneficiary's agent shall meet with the grantor
33 in person or shall speak to the grantor by telephone before the beneficiary or the beneficiary's agent
34 responds to the grantor's request to modify the loan. If the grantor requests the meeting, the bene-
35 ficiary or the beneficiary's agent shall take reasonable steps to schedule the meeting by contacting
36 the grantor at the grantor's last known address or telephone number or at the grantor's electronic
37 mail address, if the grantor indicates on the loan modification form that the beneficiary or the
38 beneficiary's agent can contact the grantor at the electronic mail address.

39 (b) A beneficiary or the beneficiary's agent complies with the provisions of paragraph (a) of this
40 subsection even if the beneficiary or beneficiary's agent does not speak to or meet with the grantor
41 if, within seven business days after the beneficiary or beneficiary's agent attempts to contact the
42 grantor, the grantor does not respond.

43 (c) The beneficiary or the beneficiary's agent that meets with the grantor shall have or be able
44 to obtain authority to modify the loan.

45 (3)(a) The beneficiary or the beneficiary's agent shall provide the trustee with the affidavit de-

1 scribed in ORS 86.750 (5). In the affidavit, the beneficiary or the beneficiary's agent shall describe
 2 how the beneficiary or the beneficiary's agent has complied with subsections (1) and (2) of this sec-
 3 tion. If the beneficiary denies a request made under subsection (1)(a) of this section, as part of the
 4 description, the beneficiary or the beneficiary's agent shall state that the beneficiary or the
 5 beneficiary's agent provided the grantor with the information described in subsection (1)(b) or (c)
 6 of this section.

7 (b) The trustee shall record the affidavit described in paragraph (a) of this subsection.

8 *[(4) Subsections (1) and (2) of this section do not apply to a beneficiary that determines in good*
 9 *faith, after considering the most current financial information the grantor provides, that the grantor is*
 10 *not eligible for a loan modification, provided that the beneficiary or the beneficiary's agent notifies the*
 11 *grantor in writing that the grantor is not eligible. In the notice, the beneficiary or the beneficiary's*
 12 *agent shall describe the basis for the beneficiary's determination and explain the reasons why the*
 13 *grantor was not eligible.]*

14 **(4) Failing to comply with the provisions of this section is an unlawful practice under**
 15 **ORS 646.608 that is subject to enforcement under ORS 646.632 and 646.638.**

16 **SECTION 3.** ORS 86.750, as amended by section 6, chapter 864, Oregon Laws 2009, section 4,
 17 chapter 28, Oregon Laws 2010, and section 3, chapter 40, Oregon Laws 2010, is amended to read:

18 86.750. (1)(a) Except as provided in paragraph (b) of this subsection, the notice prescribed in
 19 ORS 86.745 must be served upon an occupant of the property described in the trust deed in the
 20 manner in which a summons is served pursuant to ORCP 7 D(2) and 7 D(3) at least 120 days before
 21 the day the trustee conducts the sale.

22 (b)(A) If service cannot be effected on an occupant as provided in paragraph (a) of this sub-
 23 section on the first attempt, the person that attempts to effect service shall post a copy of the notice
 24 in a conspicuous place on the property on the date of the first attempt. The person that attempts
 25 to effect service shall make a second attempt to effect service on a day that is at least two days
 26 after the first attempt.

27 (B) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection
 28 on the second attempt, the person that attempts to effect service shall post a copy of the notice in
 29 a conspicuous place on the property on the date of the second attempt. The person that attempts
 30 to effect service shall make a third attempt to effect service on a day that is at least two days after
 31 the second attempt.

32 (C) If service cannot be effected on an occupant as provided in paragraph (a) of this subsection
 33 on the third attempt, the person that attempts to effect service shall send a copy of the notice,
 34 bearing the word "occupant" as the addressee, to the property address by first class mail with
 35 postage prepaid.

36 (c) Service on an occupant is effected on the earlier of the date that notice is served as provided
 37 in paragraph (a) of this subsection or the first date on which notice is posted as described in para-
 38 graph (b)(A) of this subsection.

39 (2)(a) Except as provided in paragraph (b) of this subsection, a copy of the notice of sale must
 40 be published in a newspaper of general circulation in each of the counties in which the property is
 41 situated once a week for four successive weeks. The last publication must be made more than 20
 42 days prior to the date the trustee conducts the sale.

43 (b) The copy of the notice of sale required to be published under paragraph (a) of this subsection
 44 does not need to include the notice to tenants required under ORS 86.745 (9).

45 (3) At or before the time the trustee conducts the sale, the trustee shall file for recording in the

1 official record of the county or counties in which the property described in the deed is situated the
 2 following affidavits with respect to the notice of sale:

- 3 (a) An affidavit of mailing, if any;
- 4 (b) An affidavit of service, if any;
- 5 (c) An affidavit of service attempts and posting, if any; and
- 6 (d) An affidavit of publication.

7 (4) At or before the time the trustee conducts the sale, the trustee shall file for recording in the
 8 official record of the county or counties in which the property described in the deed is situated an
 9 affidavit of mailing with respect to the notice to the grantor required under ORS 86.737.

10 **(5)(a) At least 45 days after the beneficiary or the beneficiary’s agent receives the loan**
 11 **modification form described in ORS 86.737 (6), or as soon as is reasonably practicable after**
 12 **that date, the trustee shall file for recording in the official record of the county or counties**
 13 **in which the property is located an affidavit from the beneficiary or the beneficiary’s agent**
 14 **that states how the beneficiary or the beneficiary’s agent has complied with the provisions**
 15 **of section 3 (1) and (2), chapter 864, Oregon Laws 2009. The trustee shall mail a copy of the**
 16 **affidavit to the Department of Justice.**

17 **(b) The trustee may not publish a notice of sale under ORS 86.750 (2) until the trustee**
 18 **has recorded the affidavit in accordance with paragraph (a) of this subsection.**

19 **(c) The Department of Consumer and Business Services by rule shall prescribe the con-**
 20 **tents and format of the affidavit. The affidavit must identify the grantor and the loan, state**
 21 **which actions the beneficiary or the beneficiary’s agent took to modify the loan, if any, what**
 22 **steps the beneficiary or the beneficiary’s agent took to mitigate loan losses and why the**
 23 **actions or steps failed, if the beneficiary or the beneficiary’s agent did not modify the loan.**

24 **(d) Failing to comply with the provisions of this subsection is an unlawful practice under**
 25 **ORS 646.608 that is subject to enforcement under ORS 646.632 and 646.638.**

26 **(6) The grantor, not later than the date by which the grantor must return the loan**
 27 **modification form described in ORS 86.737 (6), may file for recording in the official record**
 28 **of the county or counties in which the property is located a declaration that states that the**
 29 **grantor requested a loan modification as provided in section 3 (1), chapter 864, Oregon Laws**
 30 **2009, or a meeting with the beneficiary or the beneficiary’s agent as provided in section 3 (2),**
 31 **chapter 864, Oregon Laws 2009.**

32 **SECTION 4.** ORS 86.790 is amended to read:

33 86.790. (1) The trustee of a trust deed under ORS 86.705 to 86.795 [*shall not be*] **is not** required
 34 to comply with the provisions of ORS chapters 707 and 709. [*and shall be:*] **The trustee must be**
 35 **a resident of this state or have a registered agent that meets the qualifications set forth in**
 36 **ORS 60.111 (2)(a) or (b) and must be:**

- 37 (a) [*Any*] **An** attorney who is an active member of the Oregon State Bar;
- 38 (b) A financial institution or trust company, as defined in ORS 706.008, that is authorized to do
 39 business under the laws of Oregon or the United States;
- 40 (c) A title insurance company authorized to insure title to real property in this state, **or a**
 41 **subsidiary, affiliate, insurance producer or branch of the title insurance company** [*its subsid-*
 42 *iaries, affiliates, insurance producers or branches*];
- 43 (d) The United States or [*any*] **an** agency [*thereof*] **of the United States**; or
- 44 (e) **An** escrow [*agents*] **agent** licensed under ORS 696.505 to 696.590.

45 (2) An attorney who is a trustee under subsection (1)(a) of this section may represent the bene-

1 ficiary in addition to performing the duties of trustee.

2 (3) At any time after the trust deed is executed, the beneficiary may appoint in writing another
3 qualified trustee. If the appointment of the successor trustee is recorded in the mortgage records
4 of the county or counties in which the trust deed is recorded, the successor trustee *[shall be]* **is**
5 vested with *[all]* the powers of the original trustee.

6 (4) A trustee or successor trustee is a necessary and proper party to *[any]* **a** proceeding to de-
7 termine the validity of or enjoin *[any]* **a** private or judicial proceeding to foreclose a trust deed, but
8 a trustee or successor trustee is neither a necessary nor a proper party to *[any]* **a** proceeding to
9 determine title to the property subject to the trust deed, or to *[any]* **a** proceeding to impose, enforce
10 or foreclose *[any other]* **another** lien on the subject property.

11 (5) *[Nothing in]* ORS 86.705 to 86.795 *[imposes]* **do not impose** a duty on the trustee or successor
12 trustee to notify any person of *[any]* **a** proceeding with respect to *[such]* **the** person, except a pro-
13 ceeding *[initiated by]* **that** the trustee or successor trustee **initiated**.

14 (6) A trustee or the attorney for the trustee or *[any]* **an** agent *[designated by]* **that** the trustee
15 or the attorney **designated** may announce and accept a bid from the beneficiary whether or not the
16 beneficiary is present at the sale.

17 (7) The trustee or successor trustee *[shall]* **does not** have *[no]* **a** fiduciary duty or fiduciary ob-
18 ligation to the grantor or *[other persons having]* **another person that has** an interest in the prop-
19 erty subject to the trust deed. The trustee or successor trustee *[shall not be]* **is not** relieved of the
20 duty to reconvey the property subject to the trust deed to the grantor *[upon request for reconveyance*
21 *by]* **when** the beneficiary **requests the reconveyance**.

22 **SECTION 5.** ORS 646.608 is amended to read:

23 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
24 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

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

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

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

- 1 (ee) Violates ORS 646.883 or 646.885.
- 2 (ff) Violates ORS 646.569.
- 3 (gg) Violates the provisions of ORS 646A.142.
- 4 (hh) Violates ORS 646A.360.
- 5 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 6 (jj) Violates ORS 646.563.
- 7 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 8 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 9 thereto.
- 10 (mm) Violates ORS 646A.210 or 646A.214.
- 11 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 12 (oo) Violates ORS 646A.095.
- 13 (pp) Violates ORS 822.046.
- 14 (qq) Violates ORS 128.001.
- 15 (rr) Violates ORS 646.649 (2) to (4).
- 16 (ss) Violates ORS 646A.090 (2) to (4).
- 17 (tt) Violates ORS 87.686.
- 18 (uu) Violates ORS 646.651.
- 19 (vv) Violates ORS 646A.362.
- 20 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 21 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 22 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 23 (zz) Violates ORS 87.007 (2) or (3).
- 24 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 25 (bbb) Engages in an unlawful practice under ORS 646.648.
- 26 (ccc) Violates ORS 646A.365.
- 27 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 28 (eee) Sells a gift card in violation of ORS 646A.276.
- 29 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 30 (ggg) Violates ORS 646A.430 to 646A.450.
- 31 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
- 32 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 33 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 34 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 35 subject of the violation.
- 36 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 37 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 38 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 39 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 40 (nnn) Violates ORS 646A.082.
- 41 (ooo) Violates ORS 646.647.
- 42 (ppp) Violates ORS 646A.115.
- 43 (qqq) Violates a provision of ORS 646A.405.
- 44 **(rrr) Violates a provision of ORS 86.737 (6) or 86.750 (5) or section 3, chapter 864, Oregon**
- 45 **Laws 2009.**

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

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

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

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

11 **SECTION 6. Sections 9 and 10, chapter 864, Oregon Laws 2009, are repealed.**

12 **SECTION 7. The amendments to ORS 86.737, 86.750, 86.790 and 646.608 and section 3,**
13 **chapter 864, Oregon Laws 2009, by sections 1 to 5 of this 2011 Act and the repeal of sections**
14 **9 and 10, chapter 864, Oregon Laws 2009, by section 6 of this 2011 Act apply on and after the**
15 **effective date of this 2011 Act to notices and affidavits sent or recorded or required to be**
16 **sent or recorded under ORS 86.737, 86.750, 86.790 and 646.608 and section 3, chapter 864,**
17 **Oregon Laws 2009.**

18 **SECTION 8. This 2011 Act being necessary for the immediate preservation of the public**
19 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
20 **on its passage.**

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