

# House Bill 4039

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Revenue)

## 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**.

Requires financial institution to notify potential borrower of prohibition against pledging tax-deferred homestead as security for reverse mortgage. Makes failure to comply unlawful trade practice.

Allows taxpayer to elect to credit payments to deferred taxes payable as result of determination of ineligibility.

Specifies classification of homesteads for purposes of determining county median RMV.

Requires Department of Revenue to certify eligibility for deferral not less than once every three years.

Requires department to report to interim committee regarding claim form for homestead property tax deferral program for property tax year beginning on July 1, 2012.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to tax deferral programs; creating new provisions; amending ORS 311.356, 311.666, 311.689  
3 and 646.608; and prescribing an effective date.

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

5 **SECTION 1. Before entering into an agreement with a borrower for a reverse mortgage,**  
6 **a financial institution, as defined in ORS 706.008, shall notify the borrower in writing of the**  
7 **provisions of ORS 311.700 (2).**

8 **SECTION 2.** ORS 646.608 is amended to read:

9 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-  
10 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

25 (h) Disparages the real estate, goods, services, property or business of a customer or another

**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 by false or misleading representations of fact.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (w) Manufactures mercury fever thermometers.

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

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

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

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

- 1 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains  
2 mercury light switches.
- 3 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 4 (bb) Violates ORS 646A.070 (1).
- 5 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 6 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 7 (ee) Violates ORS 646.883 or 646.885.
- 8 (ff) Violates ORS 646.569.
- 9 (gg) Violates the provisions of ORS 646A.142.
- 10 (hh) Violates ORS 646A.360.
- 11 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 12 (jj) Violates ORS 646.563.
- 13 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 14 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant  
15 thereto.
- 16 (mm) Violates ORS 646A.210 or 646A.214.
- 17 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 18 (oo) Violates ORS 646A.095.
- 19 (pp) Violates ORS 822.046.
- 20 (qq) Violates ORS 128.001.
- 21 (rr) Violates ORS 646.649 (2) to (4).
- 22 (ss) Violates ORS 646A.090 (2) to (4).
- 23 (tt) Violates ORS 87.686.
- 24 (uu) Violates ORS 646.651.
- 25 (vv) Violates ORS 646A.362.
- 26 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 27 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 28 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 29 (zz) Violates ORS 87.007 (2) or (3).
- 30 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 31 (bbb) Engages in an unlawful practice under ORS 646.648.
- 32 (ccc) Violates ORS 646A.365.
- 33 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 34 (eee) Sells a gift card in violation of ORS 646A.276.
- 35 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 36 (ggg) Violates ORS 646A.430 to 646A.450.
- 37 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
- 38 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 39 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-  
40 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the  
41 subject of the violation.
- 42 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 43 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50  
44 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 45 (mmm) Violates a provision of ORS 646A.480 to 646A.495.

1 (nnn) Violates ORS 646A.082.

2 (ooo) Violates ORS 646.647.

3 (ppp) Violates ORS 646A.115.

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

5 (rrr) Violates ORS 646A.092.

6 (sss) Violates a provision of ORS 646.644.

7 (ttt) Violates a provision of ORS 646A.295.

8 **(uuu) Violates a provision of section 1 of this 2012 Act.**

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

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

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

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

19 **SECTION 3.** ORS 311.356 is amended to read:

20 311.356. (1) After receipt of the tax roll each year the tax collector shall receive and receipt for  
21 all moneys received for taxes and other amounts charged on such roll, and for each payment, shall  
22 note on the tax roll at the appropriate property assessment the following:

23 (a) The date payment was received.

24 (b) The amount of the payment.

25 (c) The discount allowed, if any.

26 (d) The interest charged, if any.

27 (e) The number of the receipt issued for such payment.

28 (2) Except as provided under subsection (3)(a) and (c) of this section, the tax collector shall  
29 credit all payments of property taxes as follows:

30 (a) First, to the payment of any taxes assessed against and due on the property for which the  
31 payment was made, paying first the earliest such taxes due on that property; and

32 (b) Second, to the payment of taxes assessed on any other property which have by any means  
33 become a lien against the property for which the payment was made.

34 (3)(a) Payments of property taxes made by the state on behalf of tax-deferred homestead property  
35 under ORS 311.666 to 311.701 shall be credited to the current tax year.

36 (b) At the election of the taxpayer, payments of property taxes made by the taxpayer on behalf  
37 of tax-deferred homestead property under ORS 311.666 to 311.701 shall be credited as provided in  
38 subsection (2) of this section, except that the payments shall be credited first to the payment of  
39 taxes that are not qualified to be deferred under ORS 311.688 (1) **or as a result of a determination**  
40 **of ineligibility made pursuant to ORS 311.689 (1)**, paying first the earliest of such taxes due on  
41 that property.

42 (c) Notwithstanding any contrary direction from the taxpayer, the tax collector shall credit  
43 payments of property taxes to the latest year for which taxes are due on the property for which  
44 payment is made if:

45 (A) The payment is made by a payer who is a mortgagee, beneficiary under a deed of trust or

1 vendor under a land sales contract and who pays taxes on behalf of any taxpayer; and

2 (B) The mortgagee, beneficiary or vendor directs that the payment be credited to the latest year  
3 for which taxes are due on the property; and

4 (C) The mortgagee, beneficiary or vendor includes in the payment submitted with the direction  
5 given under subparagraph (B) of this paragraph only the amounts for the payment of taxes on one  
6 or more properties for which delinquent taxes are owed and does not include in that payment taxes  
7 on property for which no delinquent taxes are owed.

8 (d) If the mortgagee, beneficiary or vendor does not direct the tax collector as to the application  
9 of taxes being paid, then the tax collector shall apply all payments as provided under subsection (2)  
10 of this section.

11 (4) The tax collector may, for convenience, divide the tax roll, as payments are made, into two  
12 portions, and file each separately, one portion containing the paid accounts and another portion  
13 containing the unpaid accounts. From time to time, and no later than the receipt of the next year's  
14 tax roll, the tax collector shall compute and indicate on the tax roll the unpaid balance of taxes for  
15 each property assessment.

16 **SECTION 4.** ORS 311.666 is amended to read:

17 311.666. As used in ORS 311.666 to 311.701:

18 (1) "County median RMV" means the median real market value entered on the last certified  
19 assessment and tax roll for all residential improved properties in the county in which a homestead  
20 is located **that are classified as 1-0-1 pursuant to the rule adopted by the Department of Re-**  
21 **venue under ORS 308.215.**

22 (2) "Homestead" means the owner occupied principal dwelling, either real or personal property,  
23 owned by the taxpayer and the tax lot upon which it is located. If the homestead is located in a  
24 multiunit building, the homestead is the portion of the building actually used as the principal  
25 dwelling and its percentage of the value of the common elements and of the value of the tax lot upon  
26 which it is built. The percentage is the value of the unit consisting of the homestead compared to  
27 the total value of the building exclusive of the common elements, if any.

28 (3) "Household income" has the meaning given that term in ORS 310.630.

29 (4)(a) "Net worth" means the sum of the current market value of all assets, including real  
30 property, cash, savings accounts, bonds and other investments, after deducting outstanding liabil-  
31 ities.

32 (b) "Net worth" does not include the value of a homestead for which deferral is claimed under  
33 ORS 311.666 to 311.701, the cash value of life insurance policies on the life of a taxpayer or tangible  
34 personal property owned by a taxpayer.

35 (5) "Person with a disability" means an individual who has been determined to be eligible to  
36 receive or who is receiving federal Social Security benefits due to disability or blindness, including  
37 an individual who is receiving Social Security survivor benefits in lieu of Social Security benefits  
38 due to disability or blindness.

39 (6) "Tax-deferred property" means the property upon which taxes are deferred under ORS  
40 311.666 to 311.701.

41 (7) "Taxes" or "property taxes" means ad valorem taxes, assessments, fees and charges entered  
42 on the assessment and tax roll.

43 (8) "Taxpayer" means an individual who has filed, as an individual or jointly, a claim for defer-  
44 ral under ORS 311.666 to 311.701.

45 (9)(a) "Transferee" means, without limitation, an heir, legatee, devisee, distributee of an estate

1 of a deceased individual, the assignee or donee of an insolvent individual or a person acting in a  
2 fiduciary capacity on behalf of a transferee.

3 (b) "Transferee" does not mean a bona fide purchaser for value.

4 (10) "U.S. City Average Consumer Price Index" means the U.S. City Average Consumer Price  
5 Index for All Urban Consumers (All Items) as published by the Bureau of Labor Statistics of the  
6 United States Department of Labor.

7 **SECTION 5.** ORS 311.689 is amended to read:

8 311.689. (1)(a) [*On or before April 15 of the third year for which deferral under ORS 311.666 to*  
9 *311.701 is claimed and every two years thereafter, all taxpayers claiming the deferral must certify to*  
10 *the county assessor that the homestead remains eligible for, and the taxpayers remain eligible to claim,*  
11 *the deferral.*] **The Department of Revenue shall certify the eligibility of each homestead**  
12 **granted, and the respective taxpayers claiming, deferral under ORS 311.666 to 311.701, not**  
13 **less than once every three years.**

14 (b) **The department shall notify the taxpayers in writing of the obligation to certify el-**  
15 **igibility under this subsection and the taxpayers shall respond, by the means prescribed by**  
16 **the department, within 60 days of receipt of the request.**

17 (c) **Failure to respond as required under paragraph (b) of this subsection disqualifies the**  
18 **homestead for deferral for the next following property tax year.**

19 (2)(a) For any year in which the household income of the taxpayers exceeds the amounts al-  
20 lowable under ORS 311.668, the property taxes deferred under ORS 311.666 to 311.701 for that year,  
21 including accrued interest, become payable by the applicable due date prescribed in ORS 311.686  
22 (1)(b) or (2).

23 (b) The provisions of ORS chapters 305 and 314 apply to this subsection in the same manner as  
24 those provisions are applicable to an income tax deficiency.

25 (c) The amount of deferred taxes payable under this subsection shall bear interest from the date  
26 paid by the department [*of Revenue*] until paid at the rate established under ORS 305.220 for defi-  
27 ciencies.

28 (d) A deficiency may not be assessed under this subsection if notice is not given to the taxpayer  
29 or spouse within three years after the date that the department has paid the deferred taxes to the  
30 county.

31 (e) Upon payment of the amount assessed as a deficiency under this subsection and any interest,  
32 the department shall execute a release in the amount of the payment. The release shall be conclu-  
33 sive evidence of the removal and extinguishment of the lien under ORS 311.666 to 311.701 to the  
34 extent of the payment.

35 (3) Subsection (2) of this section does not affect the continued deferral of taxes that have been  
36 deferred for tax years beginning before a tax year to which subsection (2) of this section applies or  
37 the deferral of taxes for tax years beginning after a tax year to which subsection (2) of this section  
38 applies, provided subsection (2) of this section does not apply to those tax years.

39 (4) This section applies to all tax-deferred property, whether the deferral under ORS 311.666 to  
40 311.701 is claimed before or after October 3, 1989.

41 **SECTION 6.** **Not later than May 31, 2012, the Department of Revenue shall report to the**  
42 **interim committees of the Legislative Assembly related to revenue on the claim form to be**  
43 **supplied by the department to taxpayers pursuant to ORS 311.672 (1)(a)(A) for the property**  
44 **tax year beginning on July 1, 2012.**

45 **SECTION 7.** **The amendments to ORS 311.356 by section 3 of this 2012 Act apply to de-**

1 terminations of ineligibility made on or after September 29, 2011.

2 SECTION 8. This 2012 Act takes effect on the 91st day after the date on which the 2012  
3 regular session of the Seventy-sixth Legislative Assembly adjourns sine die.

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