

# D R A F T

## SUMMARY

Prohibits financial institution from selling, sharing, transferring or otherwise disclosing consumer's personal financial information to unaffiliated party without first receiving consumer's explicit consent.

Permits enforcement of violation as unlawful trade practice.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to the privacy of consumer financial information; creating new  
3 provisions; amending ORS 646.608; and declaring an emergency.

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

5 **SECTION 1. As used in this section and section 2 of this 2013 Act:**

6 (1) **“Account verification service” means a person that for a fee or**  
7 **other consideration, including a subscription or membership dues, or**  
8 **on a cooperative basis with another person without exchanging con-**  
9 **sideration, regularly engages in a practice of:**

10 (a) **Assembling information about how frequently and where a**  
11 **consumer opens or attempts to open a depository account and in-**  
12 **stances when a depository institution closes a consumer's account; or**

13 (b) **Authenticating or validating Social Security numbers and ad-**  
14 **dresses and reporting the results of the person's attempt at**  
15 **authentication or validation to other persons for the purpose of pre-**  
16 **venting fraud.**

17 (2) **“Consumer” means an individual who is a resident of this state**  
18 **and who deposits or invests the individual's funds with or borrows**  
19 **from a financial institution or who serves as a surety or guarantor on**

1 a loan.

2 (3) “Credit reporting agency” means a person that for a fee or other  
3 consideration, including a subscription or membership dues, or on a  
4 cooperative basis with another person without exchanging consider-  
5 ation, regularly engages in a practice of:

6 (a) Assembling or evaluating consumer credit information or other  
7 information concerning a consumer; and

8 (b) Reporting the results of the person’s assembly or evaluation to  
9 other persons for the purpose of rating or assessing the consumer’s  
10 creditworthiness.

11 (4) “Financial institution” has the meaning given that term in ORS  
12 706.008.

13 (5) “Mercantile agency” means a person that for a fee or other  
14 consideration, including a subscription or membership dues, or on a  
15 cooperative basis with another person without exchanging consider-  
16 ation, regularly engages in a practice of:

17 (a) Assembling or evaluating business credit information or other  
18 information concerning a business; and

19 (b) Reporting the results of the person’s assembly or evaluation to  
20 another person for the purpose of assessing the business’s  
21 creditworthiness.

22 (6) “Person” means an individual, trust, corporation, partnership,  
23 joint venture, association, limited liability company or other business  
24 entity.

25 (7) “Personal financial information” means information that con-  
26 cerns a consumer’s finances, that is not widely available to the public  
27 and that is, is a copy of or is derived from:

28 (a) A document that by means of the consumer’s signature grants  
29 access to or authority over a demand, time, savings, passbook, share  
30 or share draft account or similar account that the consumer main-  
31 tains with a financial institution;

1 (b) A statement, ledger card or other record that shows trans-  
2 actions in or with reference to a demand, time, savings, passbook,  
3 share or share draft account or similar account that the consumer  
4 maintains with a financial institution;

5 (c) A check, draft or money order drawn on or issued or payable  
6 by or through a financial institution;

7 (d) A withdrawal from, deposit to or transfer or exchange between  
8 a consumer's account and another person's account, other than a pe-  
9 riodic charge that a financial institution imposes on the consumer's  
10 account, that occurs as the result of an agreement between a financial  
11 institution and the other person;

12 (e) Information related to a consumer's loan account or application  
13 for a loan; or

14 (f) Evidence of a transaction conducted by electronic or telephonic  
15 means.

16 (8) "Unaffiliated party" means a person that, directly or indirectly,  
17 is not under the control of, is not under common control with or does  
18 not control a person that receives, possesses, uses or processes, dis-  
19 tributes or transfers a consumer's personal financial information.

20 SECTION 2. (1) Except as provided in subsection (3) of this section,  
21 a financial institution may not sell, share, transfer or otherwise dis-  
22 close personal financial information with or to an unaffiliated party  
23 unless the financial institution first receives explicit consent from the  
24 consumer to whom the financial information relates. The Director of  
25 the Department of Consumer and Business Services by rule shall  
26 specify the form, means and contents of the consent that a financial  
27 institution must receive under the provisions of this section.

28 (2) A person that receives personal financial information from a fi-  
29 nancial institution may not sell, share, transfer or otherwise disclose  
30 the personal financial information with or to another person unless  
31 the financial institution may lawfully sell, share, transfer or otherwise

1 **disclose the financial information with or to the other person directly.**

2 **(3) Subsections (1) and (2) of this section do not apply to a disclo-**  
3 **sure:**

4 **(a) To the consumer to whom personal financial information re-**  
5 **lates, after the financial institution or the person verifies the**  
6 **consumer's identity;**

7 **(b) That a consumer explicitly authorizes and that is limited to the**  
8 **scope and purpose of the consumer's authorization;**

9 **(c) To a state agency or agency of a political subdivision of the state**  
10 **that by law is authorized to receive the disclosure;**

11 **(d) In response to a subpoena, court order or other lawful demand;**

12 **(e) That occurs in the course of a financial institution's preparing,**  
13 **examining, handling or maintaining records related to a consumer's**  
14 **account;**

15 **(f) To a certified public accountant who is examining the financial**  
16 **institution's records in the course of an independent audit;**

17 **(g) To a collection agency or employee or agent of the collection**  
18 **agency or to another person the financial institution engages to assist**  
19 **in recovering an amount owed to the financial institution, if the fi-**  
20 **ancial institution or the person makes the disclosure to further the**  
21 **recovery;**

22 **(h) To an officer, employee or agent of a regulatory agency who**  
23 **examines the financial institution's records in the course of perform-**  
24 **ing the officer's, employee's or agent's official duties;**

25 **(i) In publications that contain information that is derived from**  
26 **financial records and that does not identify a particular consumer,**  
27 **deposit, account or transaction;**

28 **(j) In reports, returns or other documents required under state or**  
29 **federal law;**

30 **(k) That is required or permitted under laws that govern a person's**  
31 **dishonoring a negotiable instrument;**

1 (L) That occurs between a financial institution and a credit re-  
2 porting agency during an exchange of credit information in the regular  
3 course of business, if the exchange otherwise complies with the Fair  
4 Credit Reporting Act, 15 U.S.C. 1681 et seq.;

5 (m) That occurs between a financial institution and a mercantile  
6 agency or account verification service during an exchange of infor-  
7 mation in the regular course of business, if the exchange otherwise  
8 complies with the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.;

9 (n) In an exchange of loan information that specifically affects a  
10 sale, foreclosure or loan closing if the purpose of the exchange is to  
11 accomplish the sale, foreclosure or loan closing; and

12 (o) To civil or criminal law enforcement agencies or within an in-  
13 dustry network if the disclosure concerns suspected criminal activities  
14 and the agencies use the information in the course of performing the  
15 agencies' official duties.

16 (4) A financial institution's or other person's violation of the pro-  
17 visions of this section is an unlawful trade practice that is subject to  
18 enforcement under ORS 646.632 or 646.638 and an action under ORS  
19 646.638.

20 SECTION 3. ORS 646.608, as amended by section 6, chapter 52, Oregon  
21 Laws 2012, is amended to read:

22 646.608. (1) A person engages in an unlawful practice when in the course  
23 of the person's business, vocation or occupation the person does any of the  
24 following:

25 (a) Passes off real estate, goods or services as [*those*] **the real estate,**  
26 **goods or services** of another.

27 (b) Causes likelihood of confusion or of misunderstanding as to the  
28 source, sponsorship, approval, or certification of real estate, goods or ser-  
29 vices.

30 (c) Causes likelihood of confusion or of misunderstanding as to affiliation,  
31 connection, or association with, or certification by, another.

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

3 (e) Represents that real estate, goods or services have sponsorship, ap-  
4 proval, characteristics, ingredients, uses, benefits, quantities or qualities that  
5 *[they]* **the real estate, goods or services** do not have or that a person has  
6 a sponsorship, approval, status, qualification, affiliation, or connection that  
7 the person does not have.

8 (f) Represents that real estate or goods are original or new if *[they]* **the**  
9 **real estate or goods** are deteriorated, altered, reconditioned, reclaimed,  
10 used or secondhand.

11 (g) Represents that real estate, goods or services are of a particular  
12 standard, quality, or grade, or that real estate or goods are of a particular  
13 style or model, if *[they]* **the real estate, goods or services** are of another.

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

16 (i) Advertises real estate, goods or services with intent not to provide  
17 *[them]* **the real estate, goods or services** as advertised, or with intent not  
18 to supply reasonably expectable public demand, unless the advertisement  
19 discloses a limitation of quantity.

20 (j) Makes false or misleading representations of fact concerning the rea-  
21 sons for, existence of, or amounts of price reductions.

22 (k) Makes false or misleading representations concerning credit avail-  
23 ability or the nature of the transaction or obligation incurred.

24 (L) Makes false or misleading representations relating to commissions or  
25 other compensation to be paid in exchange for permitting real estate, goods  
26 or services to be used for model or demonstration purposes or in exchange  
27 for submitting names of potential customers.

28 (m) Performs service on or dismantles any goods or real estate *[when not*  
29 *authorized by]* **if** the owner or apparent owner *[thereof]* **of the goods or real**  
30 **estate does not authorize the service or dismantling.**

31 (n) Solicits potential customers by telephone or door to door as a seller

1 unless the person provides the information required under ORS 646.611.

2 (o) In a sale, rental or other disposition of real estate, goods or services,  
3 gives or offers to give a rebate or discount or otherwise pays or offers to pay  
4 value to the customer in consideration of the customer giving to the person  
5 the names of prospective purchasers, lessees, or borrowers, or otherwise  
6 aiding the person in making a sale, lease, or loan to another person, if  
7 earning the rebate, discount or other value is contingent upon [*occurrence*  
8 *of*] an event [*subsequent to*] **occurring after** the time the customer enters  
9 into the transaction.

10 (p) Makes any false or misleading statement about a prize, contest or  
11 promotion used to publicize a product, business or service.

12 (q) Promises to deliver real estate, goods or services within a certain pe-  
13 riod of time with intent not to deliver [*them*] **the real estate, goods or**  
14 **services** as promised.

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

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

19 (t) Concurrent with tender or delivery of any real estate, goods or ser-  
20 vices fails to disclose any known material defect or material nonconformity.

21 (u) Engages in any other unfair or deceptive conduct in trade or com-  
22 merce.

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

26 (w) Manufactures mercury fever thermometers.

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

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

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

1 occur.

2 (y) Sells a thermostat that contains mercury unless the thermostat is la-  
3 beled in a manner to inform the purchaser that mercury is present in the  
4 thermostat and that the thermostat may not be disposed of until the mercury  
5 is removed, reused, recycled or otherwise managed to ensure that the mer-  
6 cury does not become part of the solid waste stream or wastewater. For  
7 purposes of this paragraph, “thermostat” means a device commonly used to  
8 sense and, through electrical communication with heating, cooling or venti-  
9 lation equipment, control room temperature.

10 (z) Sells or offers for sale a motor vehicle manufactured after January 1,  
11 2006, that contains mercury light switches.

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

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

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

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

16 (ee) Violates ORS 646.883 or 646.885.

17 (ff) Violates ORS 646.569.

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

19 (hh) Violates ORS 646A.360.

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

21 (jj) Violates ORS 646.563.

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

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

25 (mm) Violates ORS 646A.210 or 646A.214.

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

27 (oo) Violates ORS 646A.095.

28 (pp) Violates ORS 822.046.

29 (qq) Violates ORS 128.001.

30 (rr) Violates ORS 646.649 (2) to (4).

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

- 1 (tt) Violates ORS 87.686.  
2 (uu) Violates ORS 646.651.  
3 (vv) Violates ORS 646A.362.  
4 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or  
5 646A.054.  
6 (xx) Violates ORS 180.440 (1) or 180.486 (1).  
7 (yy) Commits the offense of acting as a vehicle dealer without a certif-  
8 icate under ORS 822.005.  
9 (zz) Violates ORS 87.007 (2) or (3).  
10 (aaa) Violates ORS 92.405 (1), (2) or (3).  
11 (bbb) Engages in an unlawful practice under ORS 646.648.  
12 (ccc) Violates ORS 646A.365.  
13 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.  
14 (eee) Sells a gift card in violation of ORS 646A.276.  
15 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.  
16 (ggg) Violates ORS 646A.430 to 646A.450.  
17 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.  
18 (iii) Violates a provision of ORS 646A.702 to 646A.720.  
19 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning  
20 or declaration described in ORS 646A.530 is issued for the children's product,  
21 as defined in ORS 646A.525, that is the subject of the violation.  
22 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,  
23 697.682, 697.692 or 697.707.  
24 (LLL) Violates the consumer protection provisions of the Servicemembers  
25 Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on January 1, 2010.  
26 (mmm) Violates a provision of ORS 646A.480 to 646A.495.  
27 (nnn) Violates ORS 646A.082.  
28 (ooo) Violates ORS 646.647.  
29 (ppp) Violates ORS 646A.115.  
30 (qqq) Violates a provision of ORS 646A.405.  
31 (rrr) Violates ORS 646A.092.

1 (sss) Violates a provision of ORS 646.644.

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

3 (uuu) Violates section 3, chapter 52, Oregon Laws 2012.

4 **(vvv) Violates a provision of section 2 of this 2013 Act.**

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

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

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

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

19 **SECTION 4. Sections 1 and 2 of this 2013 Act and the amendments**  
20 **to ORS 646.608 by section 3 of this 2013 Act apply to disclosures of**  
21 **personal financial information that occur on or after the operative**  
22 **date specified in section 5 of this 2013 Act.**

23 **SECTION 5. (1) Sections 1 and 2 of this 2013 Act and the amend-**  
24 **ments to ORS 646.608 by section 3 of this 2013 Act become operative**  
25 **January 1, 2014.**

26 **(2) The Director of the Department of Consumer and Business Ser-**  
27 **vices may take any action before the operative date specified in sub-**  
28 **section (1) of this section that is necessary to enable the director to**  
29 **exercise, on and after the operative date specified in subsection (1) of**  
30 **this section, all of the duties, functions and powers conferred on the**  
31 **director by sections 1 and 2 of this 2013 Act and the amendments to**

1 **ORS 646.608 by section 3 of this 2013 Act.**

2 **SECTION 6. This 2013 Act being necessary for the immediate pres-**  
3 **ervation of the public peace, health and safety, an emergency is de-**  
4 **clared to exist, and this 2013 Act takes effect on its passage.**

5

---