

D R A F T

SUMMARY

Includes insurance in definition of real estate, goods and services that are subject to penalties for unlawful trade practices.

Permits person to obtain, and court to award, appropriate equitable relief in addition to monetary damages in action under Unlawful Trade Practices Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to unlawful trade practices; creating new provisions; amending ORS
3 646.605, 646.608, 646.636, 646.638 and 646.648; and declaring an emergency.

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

5 **SECTION 1.** ORS 646.605 is amended to read:

6 646.605. As used in ORS 646.605 to 646.652:

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

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

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

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

13 (d) With the defendant's consent, where the prosecuting attorney main-
14 tains an office.

15 (2) "Documentary material" means the original or a copy of any book,
16 record, report, memorandum, paper, communication, tabulation, map, chart,
17 photograph, mechanical transcription, or other tangible document or record-
18 ing, wherever [*situate*] **located**.

1 (3) "Examination" [*of documentary material shall include inspection,*
2 *study*] **means inspecting, studying** or copying [*of any such*] **documentary**
3 **material[,] and taking testimony under oath or acknowledgment** [*in respect*
4 *of any such documentary material or copy thereof*] **about the documentary**
5 **material or a copy of the documentary material.**

6 (4) "Person" means **a natural** [*persons, corporations, trusts, partnerships,*]
7 **person, a corporation, a trust, a partnership, an** incorporated or unin-
8 corporated [*associations*] **association** and any other legal entity except
9 bodies or officers acting under **the** statutory authority of this state or the
10 United States.

11 (5) "Prosecuting attorney" means the Attorney General or the district
12 attorney of any county in which a violation of ORS 646.605 to 646.652 is al-
13 leged to have occurred.

14 (6)(a) "Real estate, goods or services" means [*those*] **real estate, goods**
15 **or services, including insurance,** that are or may be obtained primarily for
16 personal, family or household purposes, **that, with respect to insurance,**
17 **are or may be obtained for purposes other than personal, family or**
18 **household purposes,** or that are or may be obtained for any purposes as a
19 result of a telephone solicitation, and includes loans and extensions of
20 credit[,] and franchises, distributorships and other similar business
21 opportunities[, *but does not include insurance*].

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

23 (A) "Real estate" does not [*cover*] **include** conduct covered by ORS chap-
24 ter 90 [*except as provided in section 2, chapter 658, Oregon Laws 2003*].

25 (B) "Loans and extensions of credit" does not include transactions [*in-*
26 *volving*] **that involve** a pawnbroker, as defined in ORS 726.010, that is re-
27 quired to be licensed under ORS chapter 726.

28 (7) "Telephone solicitation" means a solicitation [*where*] **in which** a per-
29 son, in the course of the person's business, vocation or occupation, uses a
30 telephone or an automatic dialing-announcing device to initiate telephonic
31 contact with a potential customer and the person is not one of the following:

1 (a) *[A person who is]* A broker-dealer or salesperson licensed under ORS
2 59.175, or a mortgage banker or mortgage broker licensed under ORS
3 86A.106, *[when]* **if** the solicitation is for a security qualified for sale *[pursu-*
4 *ant to]* **under** ORS 59.055.

5 (b) A real estate licensee or a person who is otherwise authorized to en-
6 gage in professional real estate activity *[pursuant to]* **under** ORS chapter
7 696, *[when]* **if** the solicitation involves professional real estate activity.

8 (c) A person licensed or exempt from licensure as a builder *[pursuant to]*
9 **under** ORS chapter 701, *[when]* **if** the solicitation involves the *[construction,*
10 *alteration, repair, improvement or demolition of]* **constructing, altering, re-**
11 **pairing, improving or demolishing** a structure.

12 *[(d) A person licensed or otherwise authorized to sell insurance as an in-*
13 *surance producer pursuant to ORS chapter 744, when the solicitation involves*
14 *insurance.]*

15 *[(e)]* **(d)** A person *[soliciting]* **that solicits** the sale of a newspaper of
16 general circulation, a magazine or membership in a book or record club who
17 complies with ORS 646.611, *[when]* **if** the solicitation involves newspapers,
18 magazines or membership in a book or record club.

19 *[(f)]* **(e)** A person *[soliciting]* **that solicits** without the intent to complete
20 and who does not complete *[the]* **a** sales presentation during the telephone
21 solicitation and who only completes the sales presentation at a later face-
22 to-face meeting between the *[solicitor]* **person** and the prospective purchaser.

23 *[(g)]* **(f)** A supervised financial institution or parent, subsidiary or affil-
24 iate *[thereof]* **of a supervised financial institution**. As used in this para-
25 graph, “supervised financial institution” means any financial institution or
26 trust company, as those terms are defined in ORS 706.008, or any personal
27 property broker, consumer finance lender, commercial finance lender or
28 insurer that is subject to regulation by an official or agency of this state or
29 of the United States.

30 *[(h)]* **(g)** A person who is authorized to conduct prearrangement or pre-
31 construction funeral or cemetery sales, *[pursuant to]* **under** ORS chapter 692,

1 [when] **if** the solicitation involves prearrangement or preconstruction funeral
2 or cemetery plans.

3 [(i)] **(h)** A person who solicits the services [provided by] **that** a cable
4 television system **that is** licensed or franchised [pursuant to] **under** state,
5 local or federal law **provides**, [when] **if** the solicitation involves cable tele-
6 vision services.

7 [(j)] **(i)** A person or affiliate of a person whose business is regulated by
8 the Public Utility Commission of Oregon.

9 [(k)] **(j)** A person [who] **that** sells farm products as defined by ORS
10 576.006, if the solicitation [neither intends to nor actually results] **is not in-**
11 **tended to result or does not actually result** in a sale that costs the pur-
12 chaser [in excess of] **more than** \$100.

13 [(L)] **(k)** An issuer or subsidiary of an issuer that has a class of securities
14 that is subject to section 12 of the Securities Exchange Act of 1934 and that
15 is either registered or exempt from registration under paragraph (A), (B), (C),
16 (E), (F), (G) or (H) or subsection (g) of that section.

17 [(m)] **(L)** A person [soliciting exclusively] **that solicits only** the sale of
18 telephone answering services [to be provided by] that **the** person or [that] **the**
19 person's employer [when] **will provide**, if the solicitation involves answering
20 services.

21 [(n)] **(m)** A telecommunications utility with access lines of 15,000 or less
22 or a cooperative telephone association, [when] **if** the solicitation involves
23 regulated goods or services.

24 (8) "Trade" and "commerce" mean advertising, offering or distributing,
25 whether by sale, rental or otherwise, any real estate, goods or services, and
26 include any trade or commerce directly or indirectly affecting the people of
27 this state.

28 (9) "Unconscionable tactics" **means actions that** include, but are not
29 limited to, actions [by] **in** which a person:

30 (a) Knowingly takes advantage of a customer's physical infirmity, igno-
31 rance, illiteracy or inability to understand the language of the agreement;

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

3 (c) Permits a customer to enter into a transaction with knowledge that
4 *[there is no]* **the customer does not have** a reasonable probability of *[pay-*
5 *ment of]* **paying** the attendant financial obligation in full *[by the customer]*
6 when due; or

7 (d) Knowingly takes advantage of a customer who is a disabled veteran,
8 a disabled servicemember or a servicemember in active service, or the spouse
9 of a disabled veteran, disabled servicemember or servicemember in active
10 service. For purposes of this paragraph:

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

12 (B) "Disabled servicemember" means a servicemember, as defined in 50
13 U.S.C. App. 511 as in effect on January 1, 2010, who may be entitled to dis-
14 ability compensation under laws administered by the United States Depart-
15 ment of Veterans Affairs.

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

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

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

20 (10) [A] "Willful" *[violation occurs when the person committing the]*
21 **means a state of mind in which a person who commits a** violation knew
22 or should have known that the **person's** conduct *[of the person]* was a vio-
23 lation.

24 *[(11) A loan is made "in close connection with the sale of a manufactured*
25 *dwelling" if:]*

26 *[(a) The lender directly or indirectly controls, is controlled by or is under*
27 *common control with the seller, unless the relationship is remote and is not a*
28 *factor in the transaction;]*

29 *[(b) The lender gives a commission, rebate or credit in any form to a seller*
30 *who refers the borrower to the lender, other than payment of the proceeds of*
31 *the loan jointly to the seller and the borrower;]*

1 [(c) *The lender is related to the seller by blood or marriage;*]

2 [(d) *The seller directly and materially assists the borrower in obtaining the*
3 *loan;*]

4 [(e) *The seller prepares documents that are given to the lender and used in*
5 *connection with the loan; or*]

6 [(f) *The lender supplies documents to the seller used by the borrower in*
7 *obtaining the loan.*]

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

12 646.605. As used in ORS 646.605 to 646.652:

13 (1) “Appropriate court” means the circuit court of a county:

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

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

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

19 (d) With the defendant’s consent, where the prosecuting attorney main-
20 tains an office.

21 (2) “Documentary material” means the original or a copy of any book,
22 record, report, memorandum, paper, communication, tabulation, map, chart,
23 photograph, mechanical transcription, or other tangible document or record-
24 ing, wherever [*situate*] **located**.

25 (3) “Examination” [*of documentary material shall include inspection,*
26 *study*] **means inspecting, studying** or copying [*of any such*] **documentary**
27 **material[,] and taking testimony under oath or acknowledgment [*in respect***
28 ***of any such documentary material or copy thereof*] **about the documentary**
29 **material or a copy of the documentary material.****

30 (4) “Person” means a natural [*persons, corporations, trusts, partnerships,*]
31 **person, a corporation, a trust, a partnership, an incorporated or unin-**

1 corporated [*associations*] **association** and any other legal entity except
2 bodies or officers acting under **the** statutory authority of this state or the
3 United States.

4 (5) "Prosecuting attorney" means the Attorney General or the district
5 attorney of any county in which a violation of ORS 646.605 to 646.652 is al-
6 leged to have occurred.

7 (6)(a) "Real estate, goods or services" means [*those*] **real estate, goods**
8 **or services, including insurance**, that are or may be obtained primarily for
9 personal, family or household purposes, **that, with respect to insurance,**
10 **are or may be obtained for purposes other than personal, family or**
11 **household purposes**, or that are or may be obtained for any purposes as a
12 result of a telephone solicitation, and includes loans and extensions of
13 credit[,] and franchises, distributorships and other similar business
14 opportunities[, *but does not include insurance*].

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

16 (A) "Real estate" does not [*cover*] **include** conduct covered by ORS chap-
17 ter 90.

18 (B) "Loans and extensions of credit" does not include transactions [*in-*
19 *volving*] **that involve** a pawnbroker, as defined in ORS 726.010, that is re-
20 quired to be licensed under ORS chapter 726.

21 (7) "Telephone solicitation" means a solicitation [*where*] **in which** a per-
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23 telephone or an automatic dialing-announcing device to initiate telephonic
24 contact with a potential customer and the person is not one of the following:

25 (a) [*A person who is*] A broker-dealer or salesperson licensed under ORS
26 59.175, or a mortgage banker or mortgage broker licensed under ORS
27 86A.106, [*when*] **if** the solicitation is for a security qualified for sale [*pursu-*
28 *ant to*] **under** ORS 59.055.

29 (b) A real estate licensee or a person who is otherwise authorized to en-
30 gage in professional real estate activity [*pursuant to*] **under** ORS chapter
31 696, [*when*] **if** the solicitation involves professional real estate activity.

1 (c) A person licensed or exempt from licensure as a builder [*pursuant to*]
2 **under** ORS chapter 701, [*when*] **if** the solicitation involves [*the construction,*
3 *alteration, repair, improvement or demolition of*] **constructing, altering, re-**
4 **pairing, improving or demolishing** a structure.

5 [(*d*) A person licensed or otherwise authorized to sell insurance as an in-
6 surance producer pursuant to ORS chapter 744, when the solicitation involves
7 insurance.]

8 [(*e*)] (**d**) A person [*soliciting*] **that solicits** the sale of a newspaper of
9 general circulation, a magazine or membership in a book or record club who
10 complies with ORS 646.611, [*when*] **if** the solicitation involves newspapers,
11 magazines or membership in a book or record club.

12 [(*f*)] (**e**) A person [*soliciting*] **that solicits** without the intent to complete
13 and who does not complete [*the*] **a** sales presentation during the telephone
14 solicitation and who only completes the sales presentation at a later face-
15 to-face meeting between the [*solicitor*] **person** and the prospective purchaser.

16 [(*g*)] (**f**) A supervised financial institution or parent, subsidiary or affil-
17 iate [*thereof*] **of a supervised financial institution**. As used in this para-
18 graph, “supervised financial institution” means any financial institution or
19 trust company, as those terms are defined in ORS 706.008, or any personal
20 property broker, consumer finance lender, commercial finance lender or
21 insurer that is subject to regulation by an official or agency of this state or
22 of the United States.

23 [(*h*)] (**g**) A person who is authorized to conduct prearrangement or pre-
24 construction funeral or cemetery sales, [*pursuant to*] **under** ORS chapter 692,
25 [*when*] **if** the solicitation involves prearrangement or preconstruction funeral
26 or cemetery plans.

27 [(*i*)] (**h**) A person who solicits the services [*provided by*] **that** a cable
28 television system **that is** licensed or franchised [*pursuant to*] **under** state,
29 local or federal law **provides**, [*when*] **if** the solicitation involves cable tele-
30 vision services.

31 [(*j*)] (**i**) A person or affiliate of a person whose business is regulated by

1 the Public Utility Commission of Oregon.

2 [(k)] (j) A person [who] **that** sells farm products as defined by ORS
3 576.006, if the solicitation [neither intends to nor actually results] **is not in-**
4 **tended to result or does not actually result** in a sale that costs the pur-
5 chaser [in excess of] **more than** \$100.

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

10 [(m)] (L) A person [soliciting exclusively] **that solicits only** the sale of
11 telephone answering services [to be provided by] that **the** person or [that] **the**
12 person's employer [when] **will provide, if** the solicitation involves answering
13 services.

14 [(n)] (m) A telecommunications utility with access lines of 15,000 or less
15 or a cooperative telephone association, **if** [when] the solicitation involves
16 regulated goods or services.

17 (8) "Trade" and "commerce" mean advertising, offering or distributing,
18 whether by sale, rental or otherwise, any real estate, goods or services, and
19 include any trade or commerce directly or indirectly affecting the people of
20 this state.

21 (9) "Unconscionable tactics" **means actions that** include, but are not
22 limited to, actions [by] **in** which a person:

23 (a) Knowingly takes advantage of a customer's physical infirmity, igno-
24 rance, illiteracy or inability to understand the language of the agreement;

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

27 (c) Permits a customer to enter into a transaction with knowledge that
28 [there is no] **the customer does not have a** reasonable probability of [pay-
29 ment of] **paying** the attendant financial obligation in full [by the customer]
30 when due; or

31 (d) Knowingly takes advantage of a customer who is a disabled veteran,

1 a disabled servicemember or a servicemember in active service, or the spouse
2 of a disabled veteran, disabled servicemember or servicemember in active
3 service. For purposes of this paragraph:

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

5 (B) "Disabled servicemember" means a servicemember, as defined in 50
6 U.S.C. App. 511 as in effect on January 1, 2010, who may be entitled to dis-
7 ability compensation under laws administered by the United States Depart-
8 ment of Veterans Affairs.

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

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

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

13 (10) [A] "Willful" [*violation occurs when the person committing the*]
14 **means a state of mind in which a person who commits a** violation knew
15 or should have known that the **person's** conduct [*of the person*] was a vio-
16 lation.

17 [(11) A loan is made "*in close connection with the sale of a manufactured*
18 *dwelling*" if:]

19 [(a) *The lender directly or indirectly controls, is controlled by or is under*
20 *common control with the seller, unless the relationship is remote and is not a*
21 *factor in the transaction;*]

22 [(b) *The lender gives a commission, rebate or credit in any form to a seller*
23 *who refers the borrower to the lender, other than payment of the proceeds of*
24 *the loan jointly to the seller and the borrower;*]

25 [(c) *The lender is related to the seller by blood or marriage;*]

26 [(d) *The seller directly and materially assists the borrower in obtaining the*
27 *loan;*]

28 [(e) *The seller prepares documents that are given to the lender and used in*
29 *connection with the loan; or*]

30 [(f) *The lender supplies documents to the seller used by the borrower in*
31 *obtaining the loan.*]

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

3 646.608. (1) A person engages in an unlawful practice [*when*] **if** in the
4 course of the person's business, vocation or occupation the person does any
5 of the following:

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

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

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

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

15 (e) Represents that real estate, goods or services have sponsorship, ap-
16 proval, characteristics, ingredients, uses, benefits, quantities or qualities that
17 [*they*] **the real estate, goods or services** do not have or that a person has
18 a sponsorship, approval, status, qualification, affiliation, or connection that
19 the person does not have.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (t) Concurrent with tender or delivery of any real estate, goods or ser-

1 vices fails to disclose any known material defect or material nonconformity.

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

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

7 (w) Manufactures mercury fever thermometers.

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

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

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

14 (y) Sells a thermostat that contains mercury unless the thermostat is la-
15 beled in a manner to inform the purchaser that mercury is present in the
16 thermostat and that the thermostat may not be disposed of until the mercury
17 is removed, reused, recycled or otherwise managed to ensure that the mer-
18 cury does not become part of the solid waste stream or wastewater. For
19 purposes of this paragraph, "thermostat" means a device commonly used to
20 sense and, through electrical communication with heating, cooling or venti-
21 lation equipment, control room temperature.

22 (z) Sells or offers for sale a motor vehicle manufactured after January 1,
23 2006, that contains mercury light switches.

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

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

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

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

28 (ee) Violates ORS 646.883 or 646.885.

29 (ff) Violates ORS 646.569.

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

31 (hh) Violates ORS 646A.360.

- 1 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
2 (jj) Violates ORS 646.563.
3 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
4 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any
5 rule adopted pursuant thereto.
6 (mm) Violates ORS 646A.210 or 646A.214.
7 (nn) Violates any provision of ORS 646A.124 to 646A.134.
8 (oo) Violates ORS 646A.095.
9 (pp) Violates ORS 822.046.
10 (qq) Violates ORS 128.001.
11 (rr) Violates ORS 646.649 (2) to (4).
12 (ss) Violates ORS 646A.090 (2) to (4).
13 (tt) Violates ORS 87.686.
14 (uu) Violates ORS 646.651.
15 (vv) Violates ORS 646A.362.
16 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or
17 646A.054.
18 (xx) Violates ORS 180.440 (1) or 180.486 (1).
19 (yy) Commits the offense of acting as a vehicle dealer without a certifi-
20 cate under ORS 822.005.
21 (zz) Violates ORS 87.007 (2) or (3).
22 (aaa) Violates ORS 92.405 (1), (2) or (3).
23 (bbb) Engages in an unlawful practice under ORS 646.648.
24 (ccc) Violates ORS 646A.365.
25 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
26 (eee) Sells a gift card in violation of ORS 646A.276.
27 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
28 (ggg) Violates ORS 646A.430 to 646A.450.
29 (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
30 (iii) Violates a provision of ORS 646A.702 to 646A.720.
31 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning

1 or declaration described in ORS 646A.530 is issued for the children's product,
2 as defined in ORS 646A.525, that is the subject of the violation.

3 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,
4 697.682, 697.692 or 697.707.

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

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

8 (nnn) Violates ORS 646A.082.

9 (ooo) Violates ORS 646.647.

10 (ppp) Violates ORS 646A.115.

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

12 (rrr) Violates ORS 646A.092.

13 (sss) Violates a provision of ORS 646.644.

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

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

16 **(vvv) Violates a provision of ORS 746.230.**

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

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

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

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

31 **SECTION 4.** ORS 646.636 is amended to read:

1 646.636. *[The]* **A** court may make *[such]* additional orders or judgments
2 *[as may be]* **that the court deems** necessary to restore to any person in
3 interest any moneys or property, real or personal, of which the person was
4 deprived by means of any practice declared to be unlawful in ORS 646.607
5 or 646.608, *[or as may be necessary]* to ensure cessation of unlawful trade
6 practices **and to provide any other equitable relief to the person in in-**
7 **terest that the court deems appropriate.**

8 **SECTION 5.** ORS 646.638 is amended to read:

9 646.638. (1) Except as provided in subsections (8) and (9) of this section,
10 *[any]* **a** person *[who]* **that** suffers *[any]* **an** ascertainable loss of money or
11 property, real or personal, as a result of *[willful use or employment by]* an-
12 other *[person]* **person's willful use or employment** of a method, act or
13 practice declared unlawful *[by]* **under** ORS 646.608, may bring an individual
14 action in an appropriate court to recover actual damages or statutory dam-
15 ages of \$200, whichever is greater, **and to obtain appropriate equitable**
16 **relief.** The court or the jury*[, as the case may be,]* may award punitive dam-
17 ages and the court may provide *[the]* **any** equitable relief the court considers
18 necessary or proper.

19 (2) *[Upon commencement of any action brought]* **A person that brings an**
20 **action** under subsection (1) of this section *[the party bringing the action]*
21 shall mail a copy of the complaint or other initial pleading to the Attorney
22 General **at the time the action commences** and, upon entry of any judg-
23 ment in the action, shall mail a copy of the judgment to the Attorney Gen-
24 eral. Failure to mail a copy of the complaint *[shall not be]* **is not** a
25 jurisdictional defect, but a court may not enter judgment for the plaintiff
26 until proof of mailing is filed with the court. Proof of mailing may be by
27 affidavit or by return receipt of mailing.

28 (3) The court may award reasonable attorney fees and costs at trial and
29 on appeal to a prevailing plaintiff in an action under this section. The court
30 may award reasonable attorney fees and costs at trial and on appeal to a
31 prevailing defendant only if the court finds *[there was no]* **that an objec-**

1 tively reasonable basis for bringing the action or asserting the ground for
2 appeal **did not exist**.

3 (4) The court may not award attorney fees to a prevailing defendant under
4 the provisions of subsection (3) of this section if the action under this section
5 is maintained as a class action pursuant to ORCP 32.

6 (5) Any permanent injunction or final judgment or order [of] the court
7 [made] **makes** under ORS 646.632 or 646.636 is prima facie evidence in an
8 action brought under this section that the respondent used or employed a
9 method, act or practice declared unlawful [by] **under** ORS 646.608, but an
10 assurance of voluntary compliance, whether or not approved by the court,
11 [shall not be] **is not** evidence of the violation.

12 (6) Actions brought under this section [shall] **must** be commenced within
13 one year [from] **after** the discovery of the unlawful method, act or practice.
14 [However, whenever any complaint is filed by] **Notwithstanding this limi-**
15 **tation, if** a prosecuting [attorney] **attorney filed a complaint** to prevent,
16 restrain or punish [violations] **a violation** of ORS 646.608, [running of] **the**
17 **complaint tolls** the statute of limitations with respect to every private right
18 of action under this section [and] **that is** based in whole or in part on any
19 matter **set forth in the prosecuting attorney's complaint for the period**
20 **of time in which the proceeding that the prosecuting attorney initiated**
21 **is pending** [complained of in said proceeding shall be suspended during the
22 pendency thereof].

23 (7) Notwithstanding subsection (6) of this section, in any action [brought
24 by] **that** a seller or lessor **brings** against a purchaser or lessee of real estate,
25 goods or services, the purchaser or lessee may assert any counterclaim **that**
26 the purchaser or lessee has arising out of a violation of ORS 646.605 to
27 646.652.

28 (8) A class action may be maintained under this section. In any class
29 action under this section:

30 (a) Statutory damages under subsection (1) of this section may be recov-
31 ered on behalf of class members only if the plaintiffs in the action establish

1 that the members have sustained an ascertainable loss of money or property
2 as a result of a reckless or knowing use or employment by the defendant of
3 a method, act or practice declared unlawful by ORS 646.608;

4 (b) The trier of fact may award punitive damages; and

5 (c) The court may award appropriate equitable relief.

6 (9) This section does not apply to any method, act or practice described
7 in ORS 646.608 (1)(aa). Actions for violation of laws relating to odometers
8 are provided under ORS 815.410 and 815.415.

9 **SECTION 6.** ORS 646.648 is amended to read:

10 646.648. (1) As used in this section:

11 (a) "Buyer" means a person who buys or agrees to buy a manufactured
12 dwelling from a manufactured dwelling dealer.

13 (b) "Cash sale price" means the price for which a manufactured dwelling
14 dealer would sell to a buyer, and the buyer would buy from a dealer, a
15 manufactured dwelling that is covered by a purchase agreement, if the sale
16 were a sale for cash instead of a retail installment sale.

17 (c) "Manufactured dwelling" has the meaning given that term in ORS
18 446.003.

19 (d) "Manufactured dwelling dealer" means a person licensed under ORS
20 446.691 or 446.696 or a temporary manufactured structure dealer licensee
21 under ORS 446.701.

22 (e) "Retail installment sale" has the meaning given that term in ORS
23 83.510.

24 (2) A manufactured dwelling dealer engages in an unlawful practice when,
25 in a sale of a manufactured dwelling, the dealer does any of the following:

26 (a) Misrepresents to a buyer that, as a condition of financing, the buyer
27 must purchase:

28 (A) Credit life insurance;

29 (B) Credit disability insurance;

30 (C) Credit unemployment insurance;

31 (D) Credit property insurance;

1 (E) Health insurance;

2 (F) Life insurance; or

3 (G) An extended warranty.

4 (b) In close connection with the sale, misrepresents to a lender:

5 (A) The cash sale price;

6 (B) The amount of the buyer's down payment; or

7 (C) The buyer's credit or employment history.

8 **(3) For purposes of subsection (2)(b) of this section, a loan is made**
9 **in close connection with the sale of a manufactured dwelling if:**

10 **(a) The lender directly or indirectly controls, is controlled by or is**
11 **under common control with the seller, unless the relationship is re-**
12 **mote and is not a factor in the transaction;**

13 **(b) The lender gives a commission, rebate or credit in any form to**
14 **a seller who refers the borrower to the lender, other than payment of**
15 **the proceeds of the loan jointly to the seller and the borrower;**

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

17 **(d) The seller directly and materially assists the borrower in ob-**
18 **taining the loan;**

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

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

23 **SECTION 7. The amendments to ORS 646.605, 646.608, 646.636, 646.638**
24 **and 646.648 by sections 1 to 6 of this 2013 Act apply to proceedings that**
25 **begin on or after the effective date of this 2013 Act.**

26 **SECTION 8. This 2013 Act being necessary for the immediate pres-**
27 **ervation of the public peace, health and safety, an emergency is de-**
28 **clared to exist, and this 2013 Act takes effect on its passage.**

29

