

## SENATE AMENDMENTS TO SENATE BILL 558

By COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS  
PROTECTION

April 12

1 On page 1 of the printed bill, line 3, delete the first “and” and insert a comma and after  
2 “646.607” insert “and 646.638”.

3 In line 16, delete “100” and insert “175”.

4 In line 20, after “commenced” insert “under ORS 86.735 or 88.010”.

5 In line 21, after “affidavit” insert “in a form and with the contents the Attorney General spec-  
6 ifies by rule”.

7 On page 2, line 9, after “electronically” insert “, by facsimile”.

8 In line 10, after “amount” insert “and in a manner that”.

9 In line 32, after “electronically” insert “, by facsimile”.

10 After line 39, insert:

11 “(d) This subsection does not apply to a beneficiary that has submitted an affidavit and is ex-  
12 empt under subsection (1)(b) of this section.”.

13 On page 3, delete line 6 and insert:

14 “(A) Specify a range of dates within which and a location at which the resolution conference  
15 will occur;”.

16 In line 15, after “conference” insert “, and that the attorney or housing counselor must attend  
17 the resolution conference in person unless there are compelling circumstances that prevent attend-  
18 ance in person”.

19 In line 19, delete “for the facilitator’s services”.

20 In line 20, after “amount” insert “and in a manner that” and after the second period insert  
21 “Within five days after receiving the fee from the grantor, the service provider shall send a written  
22 notice to the grantor and the beneficiary that specifies the date, time and location of the resolution  
23 conference.”.

24 “(b) The service provider shall pay to the Attorney General, for deposit into the Foreclosure  
25 Avoidance Fund established under section 4, chapter 112, Oregon Laws 2012, moneys the service  
26 provider receives from the grantor under paragraph (a) of this subsection.”.

27 In line 21, delete “(b)” and insert “(c)”.

28 After line 25, insert:

29 “(3) The grantor shall consult a housing counselor before attending the resolution conference  
30 unless the grantor cannot obtain an appointment with a housing counselor before the date of the  
31 resolution conference.”.

32 In line 26, delete “(3)” and insert “(4)”.

33 Delete lines 28 through 45 and insert:

34 “(a) Pay a fee to the service provider in an amount that is not more than \$600 and in a manner  
35 that the Attorney General specifies by rule. The service provider shall pay to the Attorney General,

1 for deposit into the Foreclosure Avoidance Fund established under section 4, chapter 112, Oregon  
2 Laws 2012, moneys the service provider receives from the beneficiary under this paragraph.

3 “(b) Submit to the service provider:

4 “(A) Copies of:

5 “(i) The residential trust deed; and

6 “(ii) The promissory note that is evidence of the obligation that the residential trust deed se-  
7 cures and that the beneficiary or beneficiary’s agent certifies is a true copy;

8 “(B) The name and address of the person that owns the obligation that is secured by the resi-  
9 dential trust deed;

10 “(C) A record of the grantor’s payment history for the longer of the preceding 12 months or  
11 since the beneficiary last deemed the grantor current on the obligation;

12 “(D) An itemized statement that shows:

13 “(i) The amount the grantor owes on the obligation, itemized to reflect the principal, interest,  
14 fees, charges and any other amounts included within the obligation; and

15 “(ii) The amount the grantor must pay to cure the grantor’s default;

16 “(E) A document that identifies:

17 “(i) The input values for each net present value model that the beneficiary or the beneficiary’s  
18 agent uses; and”.

19 On page 4, line 1, delete “(iii)” and insert “(ii)”.

20 In line 11, delete “(4)(a)” and insert “(5)(a)”.

21 In line 14, after “writing” insert “that is not more than 30 days after the original date scheduled  
22 for the resolution conference”.

23 In line 16, delete “(3)(a)” and insert “(4)(a)”.

24 In line 22, delete “(5)(a)” and insert “(6)(a)”.

25 Delete lines 25 through 35 and insert:

26 “(b) A facilitator is not subject to a subpoena and cannot be compelled to testify in any pro-  
27 ceeding that is related to a resolution conference, other than a proceeding against a facilitator for  
28 an act or omission for which the facilitator may be liable under paragraph (c) of this subsection.

29 “(c) A facilitator is not civilly liable for any act or omission done or made while engaged in  
30 efforts to assist or facilitate a resolution conference unless the facilitator acted or made an omission  
31 in bad faith, with malicious intent or in a manner that exhibited a willful or wanton disregard of  
32 the rights, safety or property of another person.

33 “(d) The limitations on liability provided by this subsection apply to the officers, directors, em-  
34 ployees and agents of the service provider and any dispute resolution program engaged in facilitat-  
35 ing resolution conferences.

36 “(e) Information that a beneficiary or grantor submits under this section is not subject to ORS  
37 192.410 to 192.505.”.

38 Delete lines 39 through 45 and insert:

39 “(b)(A) A beneficiary may send an agent to the resolution conference if the agent attends the  
40 resolution conference in person and has complete authority to negotiate on the beneficiary’s behalf  
41 and commit the beneficiary to a foreclosure avoidance measure or, if the agent who attends the re-  
42 solution conference in person does not have complete authority, the beneficiary also requires the  
43 participation, by remote communication, of a person who does have complete authority to negotiate  
44 on the beneficiary’s behalf and commit the beneficiary to a foreclosure avoidance measure.

45 “(B) A grantor may have an attorney or a housing counselor, or both, present to represent the

1 grantor at the resolution conference, but the grantor, or any individual that a court appoints to act  
2 on the grantor's behalf, must attend the resolution conference in person unless there are compelling  
3 circumstances that prevent attendance in person.”.

4 On page 5, line 30, delete “(3)” and insert “(4)”.

5 Delete lines 32 through 36 and insert:

6 “(C) Appeared in person at, or sent an agent in person to, the resolution conference with com-  
7 plete authority to negotiate on the beneficiary's behalf and commit the beneficiary to a foreclosure  
8 avoidance measure or, if the beneficiary or agent did not have complete authority, required the  
9 participation by remote communication of a person with complete authority to negotiate on the  
10 beneficiary's behalf and commit the beneficiary to a foreclosure avoidance measure; and”.

11 In line 42, delete “paragraph (a) of this subsection” and insert “section 2, 3 or 4 of this 2013  
12 Act”.

13 In line 45, delete “a” and insert “the”.

14 On page 6, line 2, delete “(4)(b)” and insert “(5)(b)”.

15 Delete lines 5 through 21 and insert:

16 “**SECTION 6. (1) The Attorney General shall:**

17 “(a) **Appoint and enter into an agreement with a service provider to coordinate and**  
18 **manage a program to implement the provisions of sections 2, 3, 4 and 5 of this 2013 Act.**

19 “(b) **Enter into an agreement for information technology goods or services.**

20 “(c) **Receive affidavits submitted under section 2 (1)(b) of this 2013 Act and copies of no-**  
21 **tices sent under section 4a (1), chapter 112, Oregon Laws 2012.**

22 “(d) **Specify the amount a beneficiary must pay to the service provider under sections 2**  
23 **(2) and 3 (4)(a) of this 2013 Act and the amount that the grantor must pay to the service**  
24 **provider under section 3 (2)(a) of this 2013 Act.**

25 “(e) **Prescribe qualifications, training and experience requirements for facilitators that**  
26 **conduct or assist resolution conferences.**

27 “(f) **Specify procedures and guidelines for conducting a resolution conference.**

28 “(g) **Adopt additional rules to implement sections 2, 3, 4 and 5 of this 2013 Act and**  
29 **sections 4 and 4a, chapter 112, Oregon Laws 2012.**

30 “(2) **The Attorney General shall pay for the service provider's services and for informa-**  
31 **tion technology goods and services from the Foreclosure Avoidance Fund established under**  
32 **section 4, chapter 112, Oregon Laws 2012. The Attorney General is not subject to ORS chap-**  
33 **ter 279A, 279B or 279C in appointing a service provider or entering into an agreement under**  
34 **subsection (1)(a) or (b) of this section.**

35 “(3) **In addition to and not in lieu of any other penalty provided by law, violation of sec-**  
36 **tion 2 (1)(a) or (2), 3 (4) or 4 (1) or (2) of this 2013 Act by a beneficiary is an unlawful practice**  
37 **under ORS 646.607 that is subject to enforcement under ORS 646.632.”.**

38 In line 40, delete “by rule”.

39 On page 9, line 32, restore the bracketed material.

40 In line 33, delete “a service provider to coordinate a”.

41 In line 36, restore “the expenses of coordinating” and delete “a service provider to”.

42 In line 37, delete “coordinate”.

43 On page 10, line 18, restore the bracketed material and delete “(1)”.

44 In line 20, delete “any” and insert “a”.

45 Delete lines 25 through 28 and insert “shall mail a written notice to the grantor within 10 days

1 after making the determination. The beneficiary shall mail a copy of the notice to the Department  
2 of Justice on the same date that the beneficiary mails the notice to the grantor.

3 “(b) The notice described in paragraph (a) of this subsection must in plain language explain the  
4 basis for the beneficiary’s determination. The notice and any information in the notice are not sub-  
5 ject to disclosure under ORS 192.410 to 192.505.

6 “(c) This subsection does not impose an affirmative duty on the beneficiary to determine if a  
7 grantor is eligible for a foreclosure avoidance measure.”.

8 On page 11, delete lines 7 through 9 and insert:

9 “(3)(a) A beneficiary that fails to substantially comply with subsection (1)(b) of this section, or  
10 otherwise fails to comply with subsection (1)(a) or (2) of this section, is liable to the grantor in the  
11 amount of \$500 plus the amount of the grantor’s actual damages for each failure.”.

12 On page 14, line 14, delete “section 3 (3) or section” and insert “3 (4) or”.

13 Delete lines 16 through 36 and insert:

14 “**SECTION 14.** ORS 646.638 is amended to read:

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

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

29 “(3) The court may award reasonable attorney fees and costs at trial and on appeal to a pre-  
30 vailing plaintiff in an action under this section. The court may award reasonable attorney fees and  
31 costs at trial and on appeal to a prevailing defendant only if the court finds *[there was no]* **that an**  
32 objectively reasonable basis for bringing the action or asserting the ground for appeal **did not**  
33 **exist.**

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

37 “(5) Any permanent injunction or final judgment or order *[of]* the court *[made]* **makes** under  
38 ORS 646.632 or 646.636 is prima facie evidence in an action brought under this section that the re-  
39 spondent used or employed a method, act or practice declared unlawful *[by]* **under** ORS 646.608, but  
40 an assurance of voluntary compliance, whether or not approved by the court, *[shall not be]* **is not**  
41 evidence of the violation.

42 “(6) Actions brought under this section *[shall]* **must** be commenced within one year *[from]* **after**  
43 the discovery of the unlawful method, act or practice. *[However, whenever any complaint is filed*  
44 *by]* **Notwithstanding this limitation, if** a prosecuting *[attorney]* **attorney filed a complaint** to  
45 prevent, restrain or punish *[violations]* **a violation** of ORS 646.608, *[running of]* **the complaint tolls**

1 the statute of limitations with respect to every private right of action under this section [and] **that**  
2 **is based in whole or in part on any matter set forth in the prosecuting attorney’s complaint for**  
3 **the period of time in which the proceeding that the prosecuting attorney initiated is pending**  
4 *[complained of in said proceeding shall be suspended during the pendency thereof].*

5 “(7) Notwithstanding subsection (6) of this section, in any action *[brought by]* **that** a seller or  
6 lessor **brings** against a purchaser or lessee of real estate, goods or services, the purchaser or lessee  
7 may assert any counterclaim **that** the purchaser or lessee has arising out of a violation of ORS  
8 646.605 to 646.652.

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

10 “(a) Statutory damages under subsection (1) of this section may be recovered on behalf of class  
11 members only if the plaintiffs in the action establish that the members have sustained an  
12 ascertainable loss of money or property as a result of a reckless or knowing use or employment by  
13 the defendant of a method, act or practice declared unlawful by ORS 646.608;

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

15 “(c) The court may award appropriate equitable relief.

16 “(9) This section does not apply to:

17 “(a) Any method, act or practice described in ORS 646.608 (1)(aa). Actions for violation of laws  
18 relating to odometers are provided under ORS 815.410 and 815.415.

19 “(b) **A violation of section 2 (1)(a) or (2), 3 (4) or 4 (1) or (2) of this 2013 Act.**

20 “**SECTION 15. Sections 2a and 3, chapter 112, Oregon Laws 2012, are repealed.**

21 “**SECTION 16. (1) Sections 2 to 6 of this 2013 Act, the amendments to ORS 86.735, 86.740,**  
22 **88.010, 646.607 and 646.638 and sections 2, 4 and 4a, chapter 112, Oregon Laws 2012, by**  
23 **sections 7 to 14 of this 2013 Act and the repeal of sections 2a and 3, chapter 112, Oregon Laws**  
24 **2012, by section 15 of this 2013 Act become operative 61 days after the effective date of this**  
25 **2013 Act.**

26 “(2) **The Attorney General may take any action before the operative date specified in**  
27 **subsection (1) of this section that is necessary to enable the Attorney General to exercise,**  
28 **on and after the operative date specified in subsection (1) of this section, all of the duties,**  
29 **functions and powers conferred on the Attorney General by sections 2 to 6 of this 2013 Act**  
30 **and the amendments to ORS 86.735, 86.740, 88.010, 646.607 and 646.638 and sections 2, 4 and**  
31 **4a, chapter 112, Oregon Laws 2012, by sections 7 to 14 of this 2013 Act. At least 30 days before**  
32 **the operative date specified in subsection (1) of this section, the Attorney General shall**  
33 **publish and make available to interested persons copies of any draft rules the Attorney**  
34 **General proposes to adopt under this section.**

35 “**SECTION 17. Sections 2 to 6 of this 2013 Act, the amendments to ORS 86.735, 86.740,**  
36 **88.010, 646.607 and 646.638 and sections 2, 4 and 4a, chapter 112, Oregon Laws 2012, by**  
37 **sections 7 to 14 of this 2013 Act and the repeal of sections 2a and 3, chapter 112, Oregon Laws**  
38 **2012, by section 15 of this 2013 Act apply to requests for resolution conferences that a bene-**  
39 **ficiary or grantor submits, to notices of sale that a trustee or beneficiary or an agent of the**  
40 **trustee or beneficiary sends, and to suits to foreclose a residential trust deed that com-**  
41 **ence, on or after the operative date specified in section 16 of this 2013 Act.**

42 “**SECTION 18. The Attorney General may use moneys in the Foreclosure Avoidance Fund**  
43 **established under section 4, chapter 112, Oregon Laws 2012, to pay the remaining expenses**  
44 **of the program established under sections 2, 2a, 3, 4 and 4a, chapter 112, Oregon Laws 2012.**

45 “**SECTION 19. This 2013 Act being necessary for the immediate preservation of the public**

1 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
2 **on its passage.”**

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