

Senate Bill 686

Sponsored by COMMITTEE ON GENERAL GOVERNMENT, CONSUMER AND SMALL BUSINESS PROTECTION

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**.

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 646.605, 646.608,
3 646.636, 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 business;

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

12 (d) With the defendant's consent, where the prosecuting attorney maintains an office.

13 (2) "Documentary material" means the original or a copy of any book, record, report, memo-
14 randum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or
15 other tangible document or recording, wherever [*situate*] **located**.

16 (3) "Examination" [*of documentary material shall include inspection, study*] **means inspecting,**
17 **studying** or copying [*of any such*] **documentary** material[,] and taking testimony under oath or ac-
18 knowledgment [*in respect of any such documentary material or copy thereof*] **about the documentary**
19 **material or a copy of the documentary material.**

20 (4) "Person" means a natural [*persons, corporations, trusts, partnerships,*] **person, a corporation,**
21 **a trust, a partnership, an** incorporated or unincorporated [*associations*] **association** and any other
22 legal entity except bodies or officers acting under **the** statutory authority of this state or the United
23 States.

24 (5) "Prosecuting attorney" means the Attorney General or the district attorney of any county
25 in which a violation of ORS 646.605 to 646.652 is alleged to have occurred.

26 (6)(a) "Real estate, goods or services" means [*those*] **real estate, goods or services, including**
27 **insurance,** that are or may be obtained primarily for personal, family or household purposes, **that,**
28 **with respect to insurance, are or may be obtained for purposes other than personal, family**
29 **or household purposes,** or that are or may be obtained for any purposes as a result of a telephone
30 solicitation, and includes loans and extensions of credit[,] and franchises, distributorships and other

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 similar business opportunities[, *but does not include insurance*].

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

3 (A) “Real estate” does not [cover] **include** conduct covered by ORS chapter 90 [*except as pro-*
4 *vided in section 2, chapter 658, Oregon Laws 2003*].

5 (B) “Loans and extensions of credit” does not include transactions [*involving*] **that involve** a
6 pawnbroker, as defined in ORS 726.010, that is required to be licensed under ORS chapter 726.

7 (7) “Telephone solicitation” means a solicitation [*where*] **in which** a person, in the course of the
8 person’s business, vocation or occupation, uses a telephone or an automatic dialing-announcing de-
9 vice to initiate telephonic contact with a potential customer and the person is not one of the fol-
10 lowing:

11 (a) [*A person who is*] A broker-dealer or salesperson licensed under ORS 59.175, or a mortgage
12 banker or mortgage broker licensed under ORS 86A.106, [*when*] **if** the solicitation is for a security
13 qualified for sale [*pursuant to*] **under** ORS 59.055.

14 (b) A real estate licensee or a person who is otherwise authorized to engage in professional real
15 estate activity [*pursuant to*] **under** ORS chapter 696, [*when*] **if** the solicitation involves professional
16 real estate activity.

17 (c) A person licensed or exempt from licensure as a builder [*pursuant to*] **under** ORS chapter
18 701, [*when*] **if** the solicitation involves the [*construction, alteration, repair, improvement or demolition*
19 *of*] **constructing, altering, repairing, improving or demolishing** a structure.

20 [(*d*) *A person licensed or otherwise authorized to sell insurance as an insurance producer pursuant*
21 *to ORS chapter 744, when the solicitation involves insurance.*]

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

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

29 [(*g*)] (**f**) A supervised financial institution or parent, subsidiary or affiliate [*thereof*] **of a super-**
30 **vised financial institution**. As used in this paragraph, “supervised financial institution” means any
31 financial institution or trust company, as those terms are defined in ORS 706.008, or any personal
32 property broker, consumer finance lender, commercial finance lender or insurer that is subject to
33 regulation by an official or agency of this state or of the United States.

34 [(*h*)] (**g**) A person who is authorized to conduct prearrangement or preconstruction funeral or
35 cemetery sales, [*pursuant to*] **under** ORS chapter 692, [*when*] **if** the solicitation involves prear-
36 rangement or preconstruction funeral or cemetery plans.

37 [(*i*)] (**h**) A person who solicits the services [*provided by*] **that** a cable television system **that is**
38 licensed or franchised [*pursuant to*] **under** state, local or federal law **provides**, [*when*] **if** the solic-
39 itation involves cable television services.

40 [(*j*)] (**i**) A person or affiliate of a person whose business is regulated by the Public Utility Com-
41 mission of Oregon.

42 [(*k*)] (**j**) A person [*who*] **that** sells farm products as defined by ORS 576.006, if the solicitation
43 [*neither intends to nor actually results*] **is not intended to result or does not actually result** in a
44 sale that costs the purchaser [*in excess of*] **more than** \$100.

45 [(*L*)] (**k**) An issuer or subsidiary of an issuer that has a class of securities that is subject to

1 section 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from reg-
2 istration under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

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

6 [(n)] (m) A telecommunications utility with access lines of 15,000 or less or a cooperative tele-
7 phone association, [*when*] **if** the solicitation involves regulated goods or services.

8 (8) "Trade" and "commerce" mean advertising, offering or distributing, whether by sale, rental
9 or otherwise, any real estate, goods or services, and include any trade or commerce directly or in-
10 directly affecting the people of this state.

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

13 (a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or ina-
14 bility to understand the language of the agreement;

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

17 (c) Permits a customer to enter into a transaction with knowledge that [*there is no*] **the cus-**
18 **tomer does not have a** reasonable probability of [*payment of*] **paying** the attendant financial obli-
19 gation in full [*by the customer*] when due; or

20 (d) Knowingly takes advantage of a customer who is a disabled veteran, a disabled
21 servicemember or a servicemember in active service, or the spouse of a disabled veteran, disabled
22 servicemember or servicemember in active service. For purposes of this paragraph:

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

24 (B) "Disabled servicemember" means a servicemember, as defined in 50 U.S.C. App. 511 as in
25 effect on January 1, 2010, who may be entitled to disability compensation under laws administered
26 by the United States Department of Veterans Affairs.

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

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

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

31 (10) [A] "Willful" [*violation occurs when the person committing the*] **means a state of mind in**
32 **which a person who commits a** violation knew or should have known that the **person's** conduct
33 [*of the person*] was a violation.

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

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

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

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

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

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

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

44 **SECTION 2.** ORS 646.605, as amended by section 12, chapter 658, Oregon Laws 2003, section
45 199, chapter 71, Oregon Laws 2007, section 32, chapter 319, Oregon Laws 2007, section 2, chapter

1 215, Oregon Laws 2009, and section 2, chapter 94, Oregon Laws 2010, is amended to read:

2 646.605. As used in ORS 646.605 to 646.652:

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

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

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

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

8 (d) With the defendant's consent, where the prosecuting attorney maintains an office.

9 (2) "Documentary material" means the original or a copy of any book, record, report, memo-
10 randum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or
11 other tangible document or recording, wherever *[situate]* **located**.

12 (3) "Examination" *[of documentary material shall include inspection, study]* **means inspecting,**
13 **studying** or copying *[of any such]* **documentary** material[,] and taking testimony under oath or ac-
14 knowledgment *[in respect of any such documentary material or copy thereof]* **about the documentary**
15 **material or a copy of the documentary material**.

16 (4) "Person" means a natural *[persons, corporations, trusts, partnerships,]* **person, a corporation,**
17 **a trust, a partnership, an** incorporated or unincorporated *[associations]* **association** and any other
18 legal entity except bodies or officers acting under **the** statutory authority of this state or the United
19 States.

20 (5) "Prosecuting attorney" means the Attorney General or the district attorney of any county
21 in which a violation of ORS 646.605 to 646.652 is alleged to have occurred.

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

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

29 (A) "Real estate" does not *[cover]* **include** conduct covered by ORS chapter 90.

30 (B) "Loans and extensions of credit" does not include transactions *[involving]* **that involve** a
31 pawnbroker, as defined in ORS 726.010, that is required to be licensed under ORS chapter 726.

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33 person's business, vocation or occupation, uses a telephone or an automatic dialing-announcing de-
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35 lowing:

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38 qualified for sale *[pursuant to]* **under** ORS 59.055.

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40 estate activity *[pursuant to]* **under** ORS chapter 696, *[when]* **if** the solicitation involves professional
41 real estate activity.

42 (c) A person licensed or exempt from licensure as a builder *[pursuant to]* **under** ORS chapter
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44 *of]* **constructing, altering, repairing, improving or demolishing** a structure.

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

5 [(f)] (e) A person [soliciting] **that solicits** without the intent to complete and who does not
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7 sales presentation at a later face-to-face meeting between the [solicitor] **person** and the prospective
8 purchaser.

9 [(g)] (f) A supervised financial institution or parent, subsidiary or affiliate [thereof] **of a super-**
10 **vised financial institution.** As used in this paragraph, “supervised financial institution” means any
11 financial institution or trust company, as those terms are defined in ORS 706.008, or any personal
12 property broker, consumer finance lender, commercial finance lender or insurer that is subject to
13 regulation by an official or agency of this state or of the United States.

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23 [neither intends to nor actually results] **is not intended to result or does not actually result** in a
24 sale that costs the purchaser [in excess of] **more than** \$100.

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

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32 phone association, **if** [when] the solicitation involves regulated goods or services.

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34 or otherwise, any real estate, goods or services, and include any trade or commerce directly or in-
35 directly affecting the people of this state.

36 (9) “Unconscionable tactics” **means actions that** include, but are not limited to, actions [by]
37 **in** which a person:

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39 bility to understand the language of the agreement;

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

42 (c) Permits a customer to enter into a transaction with knowledge that [there is no] **the cus-**
43 **tomer does not have a** reasonable probability of [payment of] **paying** the attendant financial obli-
44 gation in full [by the customer] when due; or

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

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

3 (A) “Disabled veteran” has the meaning given that term in ORS 408.225.

4 (B) “Disabled servicemember” means a servicemember, as defined in 50 U.S.C. App. 511 as in
5 effect on January 1, 2010, who may be entitled to disability compensation under laws administered
6 by the United States Department of Veterans Affairs.

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9 Code as in effect on January 1, 2010; or

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

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12 **which a person who commits a** violation knew or should have known that the **person’s** conduct
13 [*of the person*] was a violation.

14 [(11) A loan is made “in close connection with the sale of a manufactured dwelling” if:]

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

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

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

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

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

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

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

26 646.608. (1) A person engages in an unlawful practice [*when*] **if** in the course of the person’s
27 business, vocation or occupation the person does any of the following:

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

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

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

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

36 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
37 ingredients, uses, benefits, quantities or qualities that [*they*] **the real estate, goods or services** do
38 not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection
39 that the person does not have.

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

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

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

1 by false or misleading representations of fact.

2 (i) Advertises real estate, goods or services with intent not to provide [*them*] **the real estate,**
3 **goods or services** as advertised, or with intent not to supply reasonably expectable public demand,
4 unless the advertisement discloses 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*] **if the**
13 **owner or apparent owner [*thereof*] of the goods or real estate does not authorize the service**
14 **or dismantling.**

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

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

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

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

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

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

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

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

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

35 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

2 (nnn) Violates ORS 646A.082.

3 (ooo) Violates ORS 646.647.

4 (ppp) Violates ORS 646A.115.

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

6 (rrr) Violates ORS 646A.092.

7 (sss) Violates a provision of ORS 646.644.

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

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

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

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

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

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

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

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

22 646.636. *[The]* **A** court may make *[such]* additional orders or judgments *[as may be]* **that the**
23 **court deems** necessary to restore to any person in interest any moneys or property, real or per-
24 sonal, of which the person was deprived by means of any practice declared to be unlawful in ORS
25 646.607 or 646.608, *[or as may be necessary]* to ensure cessation of unlawful trade practices **and to**
26 **provide any other equitable relief to the person in interest that the court deems**
27 **appropriate.**

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

29 646.638. (1) Except as provided in subsections (8) and (9) of this section, *[any]* **a** person *[who]*
30 **that** suffers *[any]* **an** ascertainable loss of money or property, real or personal, as a result of *[willful*
31 *use or employment by]* another *[person]* **person's willful use or employment** of a method, act or
32 practice declared unlawful *[by]* **under** ORS 646.608, may bring an individual action in an appropriate
33 court to recover actual damages or statutory damages of \$200, whichever is greater, **and to obtain**
34 **appropriate equitable relief.** The court or the jury, *[as the case may be,]* may award punitive dam-
35 ages and the court may provide *[the]* **any** equitable relief the court considers necessary or proper.

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

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

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

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

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

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

19 (7) Notwithstanding subsection (6) of this section, in any action *[brought by]* **that** a seller or
20 lessor **brings** against a purchaser or lessee of real estate, goods or services, the purchaser or lessee
21 may assert any counterclaim **that** the purchaser or lessee has arising out of a violation of ORS
22 646.605 to 646.652.

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

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

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

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

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

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

33 646.648. (1) As used in this section:

34 (a) "Buyer" means a person who buys or agrees to buy a manufactured dwelling from a manu-
35 factured dwelling dealer.

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

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

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

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

43 (2) A manufactured dwelling dealer engages in an unlawful practice when, in a sale of a manu-
44 factured dwelling, the dealer does any of the following:

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

- 1 (A) Credit life insurance;
- 2 (B) Credit disability insurance;
- 3 (C) Credit unemployment insurance;
- 4 (D) Credit property insurance;
- 5 (E) Health insurance;
- 6 (F) Life insurance; or
- 7 (G) An extended warranty.
- 8 (b) In close connection with the sale, misrepresents to a lender:
- 9 (A) The cash sale price;
- 10 (B) The amount of the buyer's down payment; or
- 11 (C) The buyer's credit or employment history.
- 12 **(3) For purposes of subsection (2)(b) of this section, a loan is made in close connection**
- 13 **with the sale of a manufactured dwelling if:**
- 14 **(a) The lender directly or indirectly controls, is controlled by or is under common control**
- 15 **with the seller, unless the relationship is remote and is not a factor in the transaction;**
- 16 **(b) The lender gives a commission, rebate or credit in any form to a seller who refers the**
- 17 **borrower to the lender, other than payment of the proceeds of the loan jointly to the seller**
- 18 **and the borrower;**
- 19 **(c) The lender is related to the seller by blood or marriage;**
- 20 **(d) The seller directly and materially assists the borrower in obtaining the loan;**
- 21 **(e) The seller prepares documents that are given to the lender and used in connection**
- 22 **with the loan; or**
- 23 **(f) The lender supplies documents to the seller used by the borrower in obtaining the**
- 24 **loan.**
- 25 **SECTION 7. The amendments to ORS 646.605, 646.608, 646.636, 646.638 and 646.648 by**
- 26 **sections 1 to 6 of this 2013 Act apply to proceedings that begin on or after the effective date**
- 27 **of this 2013 Act.**
- 28 **SECTION 8. This 2013 Act being necessary for the immediate preservation of the public**
- 29 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
- 30 **on its passage.**
- 31 _____