

**PROPOSED AMENDMENTS TO
SENATE BILL 558**

1 On page 1 of the printed bill, line 3, delete the first “and” and insert a
2 comma and after “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
6 Attorney General specifies 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 On page 3, delete line 6 and insert:

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

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

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

19 “(b) The service provider shall pay to the Attorney General, for deposit
20 into the Foreclosure Avoidance Fund established under section 4, chapter
21 112, Oregon Laws 2012, moneys the service provider receives from the
22 grantor under paragraph (a) of this subsection.”.

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

2 After line 25, insert:

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

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

7 Delete lines 28 through 45 and insert:

8 “(a) Pay a fee to the service provider in an amount that is not more than
9 \$600 and in a manner that the Attorney General specifies by rule. The ser-
10 vice provider shall pay to the Attorney General, for deposit into the Fore-
11 closure Avoidance Fund established under section 4, chapter 112, Oregon
12 Laws 2012, moneys the service provider receives from the beneficiary under
13 this paragraph.

14 “(b) Submit to the service provider:

15 “(A) Copies of:

16 “(i) The residential trust deed; and

17 “(ii) The promissory note that is evidence of the obligation that the resi-
18 dential trust deed secures and that the beneficiary or beneficiary’s agent
19 certifies is a true copy;

20 “(B) The name and address of the person that owns the obligation that
21 is secured by the residential trust deed;

22 “(C) A record of the grantor’s payment history for the longer of the pre-
23 ceding 12 months or since the beneficiary last deemed the grantor current
24 on the obligation;

25 “(D) An itemized statement that shows:

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

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

30 “(E) A document that identifies:

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

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

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

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

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

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

9 Delete lines 25 through 35 and insert:

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

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

19 “(d) The limitations on liability provided by this subsection apply to the
20 officers, directors, employees and agents of the service provider and any
21 dispute resolution program engaged in facilitating resolution conferences.

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

24 Delete lines 39 through 45 and insert:

25 “(b)(A) A beneficiary may send an agent to the resolution conference if
26 the agent attends the resolution conference in person and has complete au-
27 thority to negotiate on the beneficiary’s behalf and commit the beneficiary
28 to a foreclosure avoidance measure or, if the agent who attends the resolu-
29 tion conference in person does not have complete authority, the beneficiary
30 also requires the participation, by remote communication, of a person who

1 does have complete authority to negotiate on the beneficiary’s behalf and
2 commit the beneficiary to a foreclosure avoidance measure.

3 “(B) A grantor may have an attorney or a housing counselor, or both,
4 present to represent the grantor at the resolution conference.”.

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

6 Delete lines 32 through 36 and insert:

7 “(C) Appeared in person at, or sent an agent in person to, the resolution
8 conference with complete authority to negotiate on the beneficiary’s behalf
9 and commit the beneficiary to a foreclosure avoidance measure or, if the
10 beneficiary or agent did not have complete authority, required the partic-
11 ipation by remote communication of a person with complete authority to
12 negotiate on the beneficiary’s behalf and commit the beneficiary to a fore-
13 closure avoidance measure; and”.

14 In line 42, delete “paragraph (a) of this subsection” and insert “section
15 2, 3 or 4 of this 2013 Act”.

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

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

18 Delete lines 5 through 21 and insert:

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

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

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

25 **“(c) Receive affidavits submitted under section 2 (1)(b) of this 2013**
26 **Act and copies of notices sent under section 4a (1), chapter 112, Oregon**
27 **Laws 2012.**

28 **“(d) Specify the amount a beneficiary must pay to the service pro-**
29 **vider under sections 2 (2) and 3 (4)(a) of this 2013 Act and the amount**
30 **that the grantor must pay to the service provider under section 3 (2)(a)**

1 **of this 2013 Act.**

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

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

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

8 **“(2) The Attorney General shall pay for the service provider’s ser-**
9 **vices and for information technology goods and services from the**
10 **Foreclosure Avoidance Fund established under section 4, chapter 112,**
11 **Oregon Laws 2012. The Attorney General is not subject to ORS chapter**
12 **279A, 279B or 279C in appointing a service provider or entering into an**
13 **agreement under subsection (1)(a) or (b) of this section.**

14 **“(3) In addition to and not in lieu of any other penalty provided by**
15 **law, violation of section 2 (1)(a) or (2), 3 (4) or 4 (1) or (2) of this 2013**
16 **Act by a beneficiary or a beneficiary’s agent is an unlawful practice**
17 **under ORS 646.607 that is subject to enforcement under ORS 646.632.”.**

18 In line 40, delete “by rule”.

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

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

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

23 In line 37, delete “coordinate”.

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

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

26 Delete lines 25 through 28 and insert “shall mail a written notice to the
27 grantor within 10 days after making the determination. The beneficiary shall
28 mail a copy of the notice to the Department of Justice on the same date that
29 the beneficiary mails the notice to the grantor.

30 **“(b) The notice described in paragraph (a) of this subsection must in plain**

1 language explain the basis for the beneficiary’s determination.

2 “(c) This subsection does not impose an affirmative duty on the benefi-
3 ary to determine if a grantor is eligible for a foreclosure avoidance
4 measure.”.

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

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

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

12 Delete lines 16 through 36 and insert:

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

14 “646.638. (1) Except as provided in subsections (8) and (9) of this section,
15 *[any]* **a person** *[who]* **that** suffers *[any]* **an** ascertainable loss of money or
16 property, real or personal, as a result of *[willful use or employment by]* an-
17 other *[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
19 action in an appropriate court to recover actual damages or statutory dam-
20 ages of \$200, whichever is greater. The court or the jury, *as the case may*
21 *be,* may award punitive damages and the court may provide *[the]* **any** equi-
22 table relief the court considers necessary or proper.

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

1 affidavit or by return receipt of mailing.

2 “(3) The court may award reasonable attorney fees and costs at trial and
3 on appeal to a prevailing plaintiff in an action under this section. The court
4 may award reasonable attorney fees and costs at trial and on appeal to a
5 prevailing defendant only if the court finds [*there was no*] **that an** objec-
6 tively reasonable basis for bringing the action or asserting the ground for
7 appeal **did not exist**.

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

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

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

28 “(7) Notwithstanding subsection (6) of this section, in any action [*brought*
29 *by*] **that** a seller or lessor **brings** against a purchaser or lessee of real estate,
30 goods or services, the purchaser or lessee may assert any counterclaim **that**

1 the purchaser or lessee has arising out of a violation of ORS 646.605 to
2 646.652.

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

5 “(a) Statutory damages under subsection (1) of this section may be re-
6 covered on behalf of class members only if the plaintiffs in the action es-
7 tablish that the members have sustained an ascertainable loss of money or
8 property as a result of a reckless or knowing use or employment by the de-
9 fendant of a method, act or practice declared unlawful by ORS 646.608;

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

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

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

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

16 “(b) A violation of section 2 (1)(a) or (2), 3 (4) or 4 (1) or (2) of this
17 2013 Act.

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

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

26 “(2) The Attorney General may take any action before the operative
27 date specified in subsection (1) of this section that is necessary to en-
28 able the Attorney General to exercise, on and after the operative date
29 specified in subsection (1) of this section, all of the duties, functions
30 and powers conferred on the Attorney General by sections 2 to 6 of this

1 2013 Act and the amendments to ORS 86.735, 86.740, 88.010, 646.607 and
2 646.638 and sections 2, 4 and 4a, chapter 112, Oregon Laws 2012, by
3 sections 7 to 14 of this 2013 Act. At least 30 days before the operative
4 date specified in subsection (1) of this section, the Attorney General
5 shall publish and make available to interested persons copies of any
6 draft rules the Attorney General proposes to adopt under this section.

7 **SECTION 17.** Sections 2 to 6 of this 2013 Act, the amendments to
8 ORS 86.735, 86.740, 88.010, 646.607 and 646.638 and sections 2, 4 and 4a,
9 chapter 112, Oregon Laws 2012, by sections 7 to 14 of this 2013 Act and
10 the repeal of sections 2a and 3, chapter 112, Oregon Laws 2012, by
11 section 15 of this 2013 Act apply to requests for resolution conferences
12 that a beneficiary or grantor submits, to notices of sale that a trustee
13 or beneficiary or an agent of the trustee or beneficiary sends, and to
14 suits to foreclose a residential trust deed that commence, on or after
15 the operative date specified in section 16 of this 2013 Act.

16 **SECTION 18.** The Attorney General may use moneys in the Fore-
17 closure Avoidance Fund established under section 4, chapter 112,
18 Oregon Laws 2012, to pay the remaining expenses of the program es-
19 tablished under sections 2, 2a, 3, 4 and 4a, chapter 112, Oregon Laws
20 2012.

21 **SECTION 19.** This 2013 Act being necessary for the immediate
22 preservation of the public peace, health and safety, an emergency is
23 declared to exist, and this 2013 Act takes effect on its passage.”.

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