

D R A F T

SUMMARY

Prohibits person from sending to consumer check, draft, payment instrument or other negotiable instrument that is with, part of or related to solicitation for or offer of credit or loan, unless the consumer previously requested or consented to receive check, draft, payment instrument or other negotiable instrument. Provides that consumer's previous request or consent must have been affirmative and in written agreement that is separate from any other agreement.

Becomes operative 91 days after effective date.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to unlawful trade practices; creating new provisions; amending ORS
3 459.045, 646.607, 646.608, 646.609, 646.611, 646.633, 646.638, 646.883,
4 646A.110, 646A.365 and 698.640; and declaring an emergency.

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

6 **SECTION 1.** ORS 646A.365 is amended to read:

7 646A.365. (1) A person may not mail or cause to be sent a check, draft
8 or other payment instrument that, when deposited or cashed, obligates the
9 depositor or payee thereafter to make any payment. This *[section]* **subsection**
10 does not apply to an extension of credit or an offer to lend money.

11 (2)(a) **As used in this subsection, "consumer" means an individual**
12 **resident of this state.**

13 (b) **A person may not send to a consumer a check, draft, payment**
14 **instrument or other negotiable instrument that is with, part of or re-**
15 **lated to a solicitation for or an offer of credit or a loan, unless the**
16 **consumer previously requested or consented to receive the check,**

1 **draft, payment instrument or other negotiable instrument. The**
2 **consumer's previous request or consent must have been affirmative**
3 **and in a written agreement that is separate from any other agreement.**

4 **(3) Violating a provision of subsection (2) of this section is an un-**
5 **lawful practice under ORS 646.607 that is subject to enforcement under**
6 **ORS 646.618 and 646.632. A prosecuting attorney who intends to take**
7 **an enforcement action under this subsection against a state regulated**
8 **lender, as defined in ORS 646.633, may bring the person's conduct to**
9 **the attention of the Director of the Department of Consumer and**
10 **Business Services but otherwise shall comply with the provisions of**
11 **ORS 646.633.**

12 **SECTION 2.** ORS 646.607 is amended to read:

13 646.607. A person engages in an unlawful practice if in the course of the
14 person's business, vocation or occupation the person:

15 (1) Employs any unconscionable tactic in connection with selling, renting
16 or disposing of real estate, goods or services, or collecting or enforcing an
17 obligation;

18 (2) Fails to deliver all or any portion of real estate, goods or services as
19 promised, and at a customer's request, fails to refund money that the cus-
20 tomer gave to the person to purchase the undelivered real estate, goods or
21 services and that the person does not retain pursuant to any right, claim or
22 defense the person may assert in good faith. This subsection does not create
23 a warranty obligation and does not apply to a dispute over the quality of real
24 estate, goods or services delivered to a customer;

25 (3) Violates ORS 401.965 (2);

26 (4) Violates a provision of ORS 646A.725 to 646A.750;

27 (5) Violates ORS 646A.530;

28 (6) Employs a collection practice that is unlawful under ORS 646.639;

29 (7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or
30 86.732 (1) or (2); [or]

31 (8) Violates ORS 646A.093[.]; **or**

1 **(9) Violates ORS 646A.365 (2).**

2 **SECTION 3.** ORS 646.608, as amended by section 3, chapter 19, Oregon
3 Laws 2014, is amended to read:

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

7 [(a)] **(1)** Passes off real estate, goods or services as the real estate, goods
8 or services of another.

9 [(b)] **(2)** Causes likelihood of confusion or of misunderstanding as to the
10 source, sponsorship, approval, or certification of real estate, goods or ser-
11 vices.

12 [(c)] **(3)** Causes likelihood of confusion or of misunderstanding as to af-
13 filiation, connection, or association with, or certification by, another.

14 [(d)] **(4)** Uses deceptive representations or designations of geographic or-
15 igin in connection with real estate, goods or services.

16 [(e)] **(5)** Represents that real estate, goods or services have sponsorship,
17 approval, characteristics, ingredients, uses, benefits, quantities or qualities
18 that the real estate, goods or services do not have or that a person has a
19 sponsorship, approval, status, qualification, affiliation, or connection that
20 the person does not have.

21 [(f)] **(6)** Represents that real estate or goods are original or new if the real
22 estate or goods are deteriorated, altered, reconditioned, reclaimed, used or
23 secondhand.

24 [(g)] **(7)** Represents that real estate, goods or services are of a particular
25 standard, quality, or grade, or that real estate or goods are of a particular
26 style or model, if the real estate, goods or services are of another.

27 [(h)] **(8)** Disparages the real estate, goods, services, property or business
28 of a customer or another by false or misleading representations of fact.

29 [(i)] **(9)** Advertises real estate, goods or services with intent not to pro-
30 vide the real estate, goods or services as advertised, or with intent not to
31 supply reasonably expectable public demand, unless the advertisement dis-

1 closes a limitation of quantity.

2 [(j)] (10) Makes false or misleading representations of fact concerning the
3 reasons for, existence of, or amounts of price reductions.

4 [(k)] (11) Makes false or misleading representations concerning credit
5 availability or the nature of the transaction or obligation incurred.

6 [(L)] (12) Makes false or misleading representations relating to commis-
7 sions or other compensation to be paid in exchange for permitting real es-
8 tate, goods or services to be used for model or demonstration purposes or in
9 exchange for submitting names of potential customers.

10 [(m)] (13) Performs service on or dismantles any goods or real estate if
11 the owner or apparent owner of the goods or real estate does not authorize
12 the service or dismantling.

13 [(n)] (14) [*Solicits potential customers by telephone or door to door as a*
14 *seller unless the person provides the information required under*] **Violates**
15 ORS 646.611.

16 [(o)] (15) In a sale, rental or other disposition of real estate, goods or
17 services, gives or offers to give a rebate or discount or otherwise pays or
18 offers to pay value to the customer in consideration of the customer giving
19 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 per-
21 son, if earning the rebate, discount or other value is contingent upon an
22 event occurring after the time the customer enters into the transaction.

23 [(p)] (16) Makes any false or misleading statement about a prize, contest
24 or promotion used to publicize a product, business or service.

25 [(q)] (17) Promises to deliver real estate, goods or services within a cer-
26 tain period of time with intent not to deliver the real estate, goods or ser-
27 vices as promised.

28 [(r)] (18) Organizes or induces or attempts to induce membership in a
29 pyramid club.

30 [(s)] (19) Makes false or misleading representations of fact concerning the
31 offering price of, or the person's cost for real estate, goods or services.

1 [(t)] **(20)** Concurrent with tender or delivery of any real estate, goods or
2 services fails to disclose any known material defect or material noncon-
3 formity.

4 [(u)] **(21)** Engages in any other unfair or deceptive conduct in trade or
5 commerce.

6 [(v)] **(22)** Violates any of the provisions relating to auction sales,
7 consignment sales, auctioneers, consignees or auction marts under ORS
8 698.640, whether in a commercial or noncommercial situation.

9 [(w)] **(23)** Manufactures mercury fever thermometers.

10 [(x)] **(24)** Sells or supplies mercury fever thermometers unless the
11 thermometer is required by federal law, or is:

12 [(A)] **(a)** Prescribed by a person licensed under ORS chapter 677; and

13 [(B)] **(b)** Supplied with instructions on the careful handling of the
14 thermometer to avoid breakage and on the proper cleanup of mercury should
15 breakage occur.

16 [(y)] **(25)** Sells a thermostat that contains mercury unless the thermostat
17 is labeled in a manner to inform the purchaser that mercury is present in
18 the thermostat and that the thermostat may not be disposed of until the
19 mercury is removed, reused, recycled or otherwise managed to ensure that
20 the mercury does not become part of the solid waste stream or wastewater.
21 For purposes of this *[paragraph]* **subsection**, “thermostat” means a device
22 commonly used to sense and, through electrical communication with heating,
23 cooling or ventilation equipment, control room temperature.

24 [(z)] **(26)** Sells or offers for sale a motor vehicle manufactured after Jan-
25 uary 1, 2006, that contains mercury light switches.

26 [(aa)] **(27)** Violates the provisions of ORS 803.375, 803.385 or 815.410 to
27 815.430.

28 [(bb)] **(28)** Violates ORS 646A.070 (1).

29 [(cc)] **(29)** Violates any requirement of ORS 646A.030 to 646A.040.

30 [(dd)] **(30)** Violates the provisions of ORS 128.801 to 128.898.

31 [(ee)] **(31)** Violates ORS 646.883 or 646.885.

- 1 [(ff)] (32) Violates ORS 646.569.
- 2 [(gg)] (33) Violates the provisions of ORS 646A.142.
- 3 [(hh)] (34) Violates ORS 646A.360.
- 4 [(ii)] (35) Violates ORS 646.553 or 646.557 or any rule adopted pursuant
5 thereto.
- 6 [(jj)] (36) Violates ORS 646.563.
- 7 [(kk)] (37) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 8 [(LL)] (38) Violates the provisions of ORS 759.705, 759.710 and 759.720 or
9 any rule adopted pursuant thereto.
- 10 [(mm)] (39) Violates ORS 646A.210 or 646A.214.
- 11 [(nn)] (40) Violates any provision of ORS 646A.124 to 646A.134.
- 12 [(oo)] (41) Violates ORS 646A.095.
- 13 [(pp)] (42) Violates ORS 822.046.
- 14 [(qq)] (43) Violates ORS 128.001.
- 15 [(rr)] (44) Violates ORS 646A.800 (2) to (4).
- 16 [(ss)] (45) Violates ORS 646A.090 (2) to (4).
- 17 [(tt)] (46) Violates ORS 87.686.
- 18 [(uu)] (47) Violates ORS 646A.803.
- 19 [(vv)] (48) Violates ORS 646A.362.
- 20 [(ww)] (49) Violates ORS 646A.052 or any rule adopted under ORS
21 646A.052 or 646A.054.
- 22 [(xx)] (50) Violates ORS 180.440 (1) or 180.486 (1).
- 23 [(yy)] (51) Commits the offense of acting as a vehicle dealer without a
24 certificate under ORS 822.005.
- 25 [(zz)] (52) Violates ORS 87.007 (2) or (3).
- 26 [(aaa)] (53) Violates ORS 92.405 (1), (2) or (3).
- 27 [(bbb)] (54) Engages in an unlawful practice under ORS 646.648.
- 28 [(ccc)] (55) Violates ORS 646A.365 (1).
- 29 [(ddd)] (56) Violates ORS 98.854 or 98.858 or a rule adopted under ORS
30 98.864.
- 31 [(eee)] (57) Sells a gift card in violation of ORS 646A.276.

- 1 [(fff)] (58) Violates ORS 646A.102, 646A.106 or 646A.108.
- 2 [(ggg)] (59) Violates ORS 646A.430 to 646A.450.
- 3 [(hhh)] (60) Violates a provision of ORS 744.318 to 744.384.
- 4 [(iii)] (61) Violates a provision of ORS 646A.702 to 646A.720.
- 5 [(jjj)] (62) Violates ORS 646A.530 30 or more days after a recall notice,
6 warning or declaration described in ORS 646A.530 is issued for the children's
7 product, as defined in ORS 646A.525, that is the subject of the violation.
- 8 [(kkk)] (63) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,
9 697.682, 697.692 or 697.707.
- 10 [(LLL)] (64) Violates the consumer protection provisions of the
11 Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on
12 January 1, 2010.
- 13 [(mmm)] (65) Violates a provision of ORS 646A.480 to 646A.495.
- 14 [(nnn)] (66) Violates ORS 646A.082.
- 15 [(ooo)] (67) Violates ORS 646.647.
- 16 [(ppp)] (68) Violates ORS 646A.115.
- 17 [(qqq)] (69) Violates a provision of ORS 646A.405.
- 18 [(rrr)] (70) Violates ORS 646A.092.
- 19 [(sss)] (71) Violates a provision of ORS 646.644.
- 20 [(ttt)] (72) Violates a provision of ORS 646A.295.
- 21 [(uuu)] (73) Violates ORS 646A.564.
- 22 [(vvv)] (74) Engages in the business of, or acts in the capacity of, an im-
23 migration consultant, as defined in ORS 9.280, in this state and for compen-
24 sation, unless federal law authorizes the person to do so or unless the person
25 is an active member of the Oregon State Bar.
- 26 [(www)] (75) Violates ORS 702.012, 702.029, 702.032 or 702.054.
- 27 [(xxx)] (76) Violates ORS 646A.806.
- 28 [(yyy)] (77) Violates section 2 (2), chapter 19, Oregon Laws 2014.
- 29 [(2) *A representation under subsection (1) of this section or ORS 646.607*
30 *may be any manifestation of any assertion by words or conduct, including, but*
31 *not limited to, a failure to disclose a fact.*]

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

4 [(4) *An action or suit may not be brought under subsection (1)(u) of this*
5 *section unless the Attorney General has first established a rule in accordance*
6 *with the provisions of ORS chapter 183 declaring the conduct to be unfair or*
7 *deceptive in trade or commerce.*]

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

12 **SECTION 4. (1) A representation under ORS 646.607 or 646.608 may**
13 **be any manifestation of any assertion by words or conduct, including,**
14 **but not limited to, a failure to disclose a fact.**

15 **(2) In order to prevail in an action or suit under ORS 646.605 to**
16 **646.652, a prosecuting attorney need not prove competition between the**
17 **parties or actual confusion or misunderstanding.**

18 **(3) An action or suit may not be brought under ORS 646.608 (21)**
19 **unless the Attorney General has first established a rule in accordance**
20 **with the provisions of ORS chapter 183 declaring the conduct to be**
21 **unfair or deceptive in trade or commerce.**

22 **(4) Notwithstanding any other provision of ORS 646.605 to 646.652,**
23 **if an action or suit is brought under ORS 646.608 (50) by a person other**
24 **than a prosecuting attorney, relief is limited to an injunction and the**
25 **prevailing party may be awarded reasonable attorney fees.**

26 **SECTION 5.** ORS 459.045 is amended to read:

27 459.045. (1) The Environmental Quality Commission shall adopt reason-
28 able and necessary solid waste management rules governing the:

29 (a) Accumulation, storage, collection, transportation and disposal of solid
30 wastes to prevent vector production and sustenance, transmission of diseases
31 to humans or animals, air pollution, pollution of surface or ground waters,

1 and hazards to service or disposal workers or to the public.

2 (b) Location of disposal sites, giving consideration to:

3 (A) The adaptability of each disposal site to the population served, to-
4 pography and geology of the area and other characteristics as they affect
5 protection of ground and surface waters and air pollution;

6 (B) Minimum standards of design, management and operation of disposal
7 sites; and

8 (C) Salvage operations at disposal sites.

9 (c) Construction, loading and operation of vehicles used in performing
10 collection service to prevent the contents of the vehicles from dropping,
11 sifting, leaking or escaping onto public highways.

12 (d) Definition of other "wastes" subject to regulation under ORS 459.005
13 to 459.105, 459.205 to 459.385 and 459.992 (1) and (2).

14 (e) Closure and post-closure maintenance of land disposal sites.

15 (2) The commission may by rule:

16 (a) Exempt a class of land disposal sites other than those receiving do-
17 mestic solid waste from the requirement to provide financial assurance under
18 ORS 459.272; or

19 (b) Establish criteria that a land disposal site must meet to be exempted
20 from the requirement to provide financial assurance under ORS 459.272.

21 (3) The commission shall adopt rules on other subjects as necessary to
22 carry out:

23 (a) ORS 459.005 to 459.105 and 459.205 to 459.385.

24 (b) ORS 646.608 [(1)(y)] (25). Rules adopted under this paragraph shall, to
25 the greatest extent practicable, be consistent with the labeling requirements
26 of other states.

27 (4) The commission shall adopt rules which have modified or limited ap-
28 plication in different geographic areas of the state when special conditions
29 prevail in specified geographic areas. Special conditions that shall be con-
30 sidered include, but are not limited to, climatic conditions, zone classifica-
31 tion of the area, population characteristics, methods and costs of solid waste

1 management, solid waste management plans and other conditions in the area.
2 Modifications or limitations shall not be unreasonable, arbitrary or inimical
3 to the policy and purposes of ORS 459.005 to 459.105 and 459.205 to 459.385.

4 (5) All rules adopted under this section shall be adopted after public
5 hearing and in accordance with ORS chapter 183.

6 (6) Unless a rule adopted under this section is adopted pursuant to the
7 authority granted by ORS 183.335 (5), the commission shall mail copies of the
8 proposed rules to all persons who have requested such copies. The copies
9 shall be mailed at least 30 days prior to the hearing required by subsection
10 (5) of this section.

11 **SECTION 6.** ORS 646.609 is amended to read:

12 646.609. As used in ORS 646.608 [(1)(r)] (18), “pyramid club” means a sales
13 device whereby a person, upon condition that the person make an invest-
14 ment, is granted a license or right to solicit or recruit for economic gain one
15 or more additional persons who are also granted such license or right upon
16 condition of making an investment and who may further perpetuate the chain
17 of persons who are granted such license or right upon such condition. “Pyr-
18 amid club” also includes any such sales device which does not involve the
19 sale or distribution of any real estate, goods or services, including but not
20 limited to a chain letter scheme. A limitation as to the number of persons
21 who may participate, or the presence of additional conditions affecting el-
22 igibility for such license or right to recruit or solicit or the receipt of eco-
23 nomic gain therefrom, does not change the identity of the scheme as a
24 pyramid club. As used herein, “investment” means any acquisition, for a
25 consideration other than personal services, of property, tangible or intangi-
26 ble, and includes without limitation, franchises, business opportunities and
27 services. It does not include sales demonstration equipment and materials
28 furnished at cost for use in making sales and not for resale. For the purpose
29 of ORS 646.608 [(1)(r)] (18), any person who organizes or induces or attempts
30 to induce membership in a pyramid club is acting in the course of the
31 person’s business, vocation or occupation.

1 **SECTION 7.** ORS 646.611 is amended to read:

2 646.611. (1) A person [*who solicits*] **may not solicit** potential customers
3 by telephone or [*door to door*] **door-to-door** as a seller [*is in violation of*
4 *ORS 646.608 (1)(n)*] unless the person:

5 [(1)] (a) Within 30 seconds after beginning the conversation:

6 [(a)] (A) Provides identification of both the person and whom the person
7 represents;

8 [(b)] (B) Explains the purpose of the person's call;

9 [(c)] (C) Provides a description in commonly understood terms of the
10 goods or services offered for sale; and

11 [(d)] (D) Inquires whether the person being solicited is interested in lis-
12 tening to a sales presentation and immediately discontinues the solicitation
13 if the person being solicited gives a negative response; and

14 [(2)] (b) During the course of the solicitation, states the total cost of the
15 goods or services offered for sale and the number, timing and amount of in-
16 stallment payments if payment on an installment basis is available to the
17 person being solicited.

18 **(2) Soliciting a potential customer by telephone or door-to-door**
19 **without making the disclosures required under subsection (1) of this**
20 **section is a violation of ORS 646.608 that is subject to enforcement**
21 **under ORS 646.638.**

22 **SECTION 8.** ORS 646.633 is amended to read:

23 646.633. (1) For purposes of this section, "state regulated lender" means:

24 (a) A banking institution as defined in ORS 706.008;

25 (b) A credit union as defined in ORS 723.006;

26 (c) A person that is required to be licensed under ORS 725.045;

27 (d) A pawnbroker, as defined in ORS 726.010, that is required to be li-
28 censed under ORS chapter 726; or

29 (e) A mortgage banker, mortgage broker or **mortgage** loan originator, as
30 those terms are defined in ORS 86A.100, that is required to be licensed under
31 ORS 86A.095 to 86A.198.

1 (2) A prosecuting attorney may not take action under ORS 646.618 or
2 646.632 with respect to an alleged unlawful practice under ORS 646.607 or
3 646.608 when the conduct involves loans or extensions of credit and was en-
4 gaged in by a state regulated lender unless requested to do so by the Director
5 of the Department of Consumer and Business Services. In any action re-
6 quested to be taken by the director under this subsection, the director may
7 elect to be named as a party to the proceeding or suit.

8 (3) The Attorney General may not adopt rules under [ORS 646.608 (4)]
9 **section 4 (3) of this 2015 Act** with respect to conduct involving loans or
10 extensions of credit that is engaged in by a state regulated lender except
11 with the prior review and approval of the proposed rules by the director. The
12 Attorney General may not adopt rules under [ORS 646.608 (4)] **section 4 (3)**
13 **of this 2015 Act** with respect to conduct involving loans or extensions of
14 credit that is engaged in by a state regulated lender except as provided in
15 this subsection.

16 (4) As soon as practicable upon receipt, the Attorney General shall pro-
17 vide the director with copies of any complaint or other initial pleading or
18 any judgment received under ORS 646.638 when the action involves the con-
19 duct of a state regulated lender.

20 **SECTION 9.** ORS 646.638 is amended to read:

21 646.638. (1) Except as provided in subsections (8) and (9) of this section,
22 a person that suffers an ascertainable loss of money or property, real or
23 personal, as a result of another person's willful use or employment of a
24 method, act or practice declared unlawful under ORS 646.608, may bring an
25 individual action in an appropriate court to recover actual damages or stat-
26 utory damages of \$200, whichever is greater. The court or the jury may
27 award punitive damages and the court may provide any equitable relief the
28 court considers necessary or proper.

29 (2) A person that brings an action under subsection (1) of this section
30 shall mail a copy of the complaint or other initial pleading to the Attorney
31 General at the time the action commences and, upon entry of any judgment

1 in the action, shall mail a copy of the judgment to the Attorney General.
2 Failure to mail a copy of the complaint is not a jurisdictional defect, but a
3 court may not enter judgment for the plaintiff until proof of mailing is filed
4 with the court. Proof of mailing may be by affidavit or by return receipt of
5 mailing.

6 (3) The court may award reasonable attorney fees and costs at trial and
7 on appeal to a prevailing plaintiff in an action under this section. The court
8 may award reasonable attorney fees and costs at trial and on appeal to a
9 prevailing defendant only if the court finds that an objectively reasonable
10 basis for bringing the action or asserting the ground for appeal did not exist.

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

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

20 (6) Actions brought under this section must be commenced within one
21 year after the discovery of the unlawful method, act or practice. Notwith-
22 standing this limitation, if a prosecuting attorney filed a complaint to pre-
23 vent, restrain or punish a violation of ORS 646.608, the complaint tolls the
24 statute of limitations with respect to every private right of action under this
25 section that is based in whole or in part on any matter set forth in the
26 prosecuting attorney's complaint for the period of time in which the pro-
27 ceeding that the prosecuting attorney initiated is pending.

28 (7) Notwithstanding subsection (6) of this section, in any action that a
29 seller or lessor brings against a purchaser or lessee of real estate, goods or
30 services, the purchaser or lessee may assert any counterclaim that the pur-
31 chaser or lessee has arising out of a violation of ORS 646.605 to 646.652.

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

3 (a) Statutory damages under subsection (1) of this section may be recov-
4 ered on behalf of class members only if the plaintiffs in the action establish
5 that the members have sustained an ascertainable loss of money or property
6 as a result of a reckless or knowing use or employment by the defendant of
7 a method, act or practice declared unlawful by ORS 646.608;

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

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

10 (9) This section does not apply to:

11 (a) Any method, act or practice described in ORS 646.608 [(1)(aa)] **(27)**.
12 Actions for violation of laws relating to odometers are provided under ORS
13 815.410 and 815.415.

14 (b) A violation of ORS 86.726 (1)(a) or (2), 86.729 (4) or 86.732 (1) or (2).

15 **SECTION 10.** ORS 646.883 is amended to read:

16 646.883. *[It shall be unlawful for]* A seller *[to]* **may not** include a price
17 comparison in an advertisement unless:

18 (1) The seller clearly and conspicuously identifies in the advertisement
19 the origin of the price that the seller is comparing to the seller's current
20 price. The origin of the price that the seller is comparing to the seller's
21 current price includes but is not limited to the seller's former selling price,
22 a manufacturer's list price or a competitor's price for the same real estate,
23 goods or services.

24 (2) The price comparison is in compliance with ORS 646.608 [(1)(j)] **(10)**
25 and the rules adopted under [ORS 646.608 (4)] **section 4 (3) of this 2015 Act**
26 and compliance is established based on facts provable by the seller.

27 **SECTION 11.** ORS 646A.110 is amended to read:

28 646A.110. (1) ORS 646.608 [(1)(ddd)] **(56)**, 646A.100 to 646A.110 and
29 646A.112 apply only to persons who engage in the retail sale of merchandise
30 in the regular course of their business.

31 (2) ORS 646.608 [(1)(ddd)] **(56)**, 646A.100 to 646A.110 and 646A.112 do not

1 apply to public officials acting within the scope of their duties as public of-
2 ficials.

3 **SECTION 12.** ORS 698.640 is amended to read:

4 698.640. (1) Except as provided in ORS 698.650:

5 (a) This section establishes requirements for auction sales, consignment
6 sales, auctioneers, consignees and auction marts.

7 (b) A person who violates a requirement under this section commits an
8 unlawful practice as described in ORS 646.608 [(1)(v)] **(22)** that is subject to
9 enforcement and penalty as provided under ORS 646.605 to 646.652.

10 (c) The requirements of this section are in addition to the provisions of
11 ORS 72.3280 that relate to auctions and in addition to other provisions of law
12 that govern consignment sales.

13 (2) The following requirements apply to auction sales, consignment sales,
14 auctioneers, consignees and auction marts as described:

15 (a) An advertisement of an auction sale or consignment sale must include
16 the name of the auctioneer who will conduct the auction sale or the person
17 responsible for conducting the auction sale or consignment sale.

18 (b) An auctioneer, auction mart operator or consignee may not use any
19 method of bidding at an auction or selling at a consignment sale that will
20 allow the auctioneer, auction mart operator or consignee to purchase prop-
21 erty in an undisclosed manner on the auctioneer's, auction mart operator's
22 or consignee's own behalf.

23 (c) An auctioneer, auction mart operator or consignee may not use a
24 method of bidding at an auction or selling at a consignment sale that allows
25 the auctioneer, auction mart operator or consignee to avoid selling property
26 offered for sale at auction or at a consignment sale.

27 (d) An auctioneer, auction mart operator or consignee may not employ
28 or use another person to act as a bidder or buyer at the auction or
29 consignment sale on behalf of the auctioneer, auction mart operator or con-
30 signee.

31 (e) If an auctioneer, auction mart operator or consignee does not imme-

1 diately pay moneys that the auctioneer, auction mart operator or consignee
2 owes to a person after selling real or personal property that the person of-
3 fered, gave or entrusted to the auctioneer, auction mart operator or con-
4 signee to sell on the person's behalf at auction or at a consignment sale, the
5 auctioneer, auction mart operator or consignee shall:

6 (A) Maintain the moneys in trust for the person in a trust account that
7 is separate from any account that the auctioneer, auction mart operator or
8 consignee uses for personal reasons or other business reasons, and identify
9 and account for the moneys so that the moneys may be distinguished from
10 moneys that are subject to the auctioneer's, auction mart operator's or
11 consignee's other debts;

12 (B) Account to the person for all moneys the auctioneer, auction mart
13 operator or consignee receives in payment for the person's real or personal
14 property;

15 (C) Pay the moneys the auctioneer, auction mart operator or consignee
16 owes to the person within 21 calendar days after the date of the auction or
17 the consignment sale at which the auctioneer, auction mart operator or
18 consignee sold the person's real or personal property, unless the person and
19 the auctioneer, auction mart operator or consignee have mutually agreed in
20 writing to payment on a different date; and

21 (D) Return the person's unsold property within 21 calendar days after the
22 auction or consignment sale unless the parties have mutually agreed in
23 writing to another date.

24 **SECTION 13. (1) Section 4 of this 2015 Act and the amendments to**
25 **ORS 459.045, 646.607, 646.608, 646.609, 646.611, 646.633, 646.638, 646.883,**
26 **646A.110, 646A.635 and 698.640 by sections 1 to 3 and 5 to 12 of this 2015**
27 **Act become operative 91 days after the effective date of this 2015 Act.**

28 **(2) The Attorney General and the Director of the Department of**
29 **Consumer and Business Services may take any action before the op-**
30 **erative date specified in subsection (1) of this section that is necessary**
31 **to enable the Attorney General or the director to exercise, on and af-**

1 ter the effective date specified in subsection (1) of this section, all of
2 the duties, functions and powers conferred on the Attorney General
3 and the director by section 4 of this 2015 Act and the amendments to
4 ORS 459.045, 646.607, 646.608, 646.609, 646.611, 646.633, 646.638, 646.883,
5 646A.110, 646A.635 and 698.640 by sections 1 to 3 and 5 to 12 of this 2015
6 Act.

7 SECTION 14. This 2015 Act being necessary for the immediate
8 preservation of the public peace, health and safety, an emergency is
9 declared to exist, and this 2015 Act takes effect on its passage.

10