

Requested by Representative KENY-GUYER

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2661**

1 On page 1 of the printed bill, line 2, delete “676.992” and insert “124.050  
2 and 646.608”.

3 Delete lines 5 through 31 and delete pages 2 and 3 and insert:

4 **“SECTION 1. As used in sections 1 to 3 of this 2017 Act:**

5 **“(1) ‘Client’ means an individual who seeks a long term care refer-**  
6 **ral for the individual or for another individual.**

7 **“(2) ‘Facility’ means:**

8 **“(a) A long term care facility as defined in ORS 442.015.**

9 **“(b) A residential care facility as defined in ORS 443.400, including**  
10 **but not limited to an assisted living facility and a facility marketed**  
11 **as a memory care community.**

12 **“(c) An adult foster home as defined in ORS 443.705.**

13 **“(d) A continuing care retirement community as defined in ORS**  
14 **101.020.**

15 **“(3) ‘Long term care referral’ means a referral to a facility in con-**  
16 **nection with which the referral agent receives compensation from the**  
17 **facility.**

18 **“(4) ‘Placement information’ means any information a person col-**  
19 **lects from a client about the client or the subject of placement, in-**  
20 **cluding but not limited to name, electronic mail address, phone**  
21 **number, zip code, medical history, information about necessary as-**

1 **sistance for activities of daily living or the reasons for seeking long**  
2 **term care.**

3 **“(5)(a) ‘Referral agent’ means a person that provides long term care**  
4 **referrals.**

5 **“(b) ‘Referral agent’ does not include:**

6 **“(A) A facility or its employees.**

7 **“(B) A resident or patron of a facility who refers a client to a fa-**  
8 **cility and receives a discount or other remuneration from the facility.**

9 **“(C) A public body as defined in ORS 174.109.**

10 **“(6) ‘Subject of placement’ means the individual to be placed with**  
11 **a facility through a long term care referral.**

12 **“SECTION 2. (1) Before providing a long term care referral, a re-**  
13 **ferred agent shall provide the client with a disclosure designed to give**  
14 **actual notice to the client of its contents. The disclosure must be**  
15 **conspicuous and provided in clear language. The disclosure may be**  
16 **made orally, if the referral agent records the disclosure with consent**  
17 **of the client and thereafter provides the client with a written disclo-**  
18 **sure. The disclosure must include:**

19 **“(a) A description of the long term care referral to be provided by**  
20 **the referral agent, including the length of any contract the referral**  
21 **agent has with a facility regarding placement information about the**  
22 **client or the subject of placement.**

23 **“(b) The referral agent’s contact information, including address and**  
24 **phone number.**

25 **“(c) The referral agent’s privacy policy.**

26 **“(d) A statement of whether the referral agent provides referrals**  
27 **only to facilities with which the agent has an existing contract.**

28 **“(e) A statement of whether the referral fees for the long term care**  
29 **referral will be paid to the referral agent by the facility.**

30 **“(2) A referral agent may not:**

1       “(a) Share a client’s placement information with or sell a client’s  
2 placement information to a facility or marketing affiliate without ob-  
3 taining affirmative consent from the client for each instance of shar-  
4 ing or selling the information.

5       “(b) Refer a client to a facility in which the referral agent or an  
6 immediate family member of the referral agent has an ownership in-  
7 terest.

8       “(c) Contact a client who has requested in writing that the referral  
9 agent stop contacting the client.

10       “(3) If a referral agent has received compensation from a facility in  
11 connection with a client and the subject of placement later leaves that  
12 facility, the client may notify the referral agent in writing that the  
13 client wishes to use a new referral agent. Upon receipt of notice under  
14 this subsection, the first referral agent may not accept compensation  
15 from another facility in connection with the client.

16       “(4) If a referral agent maintains a website, the website must con-  
17 tain a link to any state agency website listing complaints concerning  
18 facilities. If the referral agent does not maintain a website, the refer-  
19 ral agent shall notify clients in writing of the state agency website  
20 addresses.

21       “(5)(a) A referral agent must include in any contract with a long  
22 term care facility provisions prohibiting the referral agent from col-  
23 lecting compensation from a facility if a new referral agent subse-  
24 quently refers the subject of placement to the facility under the  
25 following circumstances:

26       “(A) The subject of placement enters a facility to which the subject  
27 of placement is referred by the first referral agent, but subsequently  
28 leaves that facility; and

29       “(B) A new referral agent refers the subject of placement to a fa-  
30 cility.

1       **“(b) When a subsequent referral is made for a subject of placement**  
2 **by a new referral agent as described in paragraph (a) of this sub-**  
3 **section, the new referral agent must present evidence to the facility**  
4 **that the first referral agent is not entitled to compensation.**

5       **“(6) Violation of this section is an unlawful practice under ORS**  
6 **646.608.**

7       **“SECTION 3. (1) A person may not provide a long term care referral**  
8 **unless the person is registered with the Department of Human Ser-**  
9 **vices under this section.**

10       **“(2) The department shall issue a registration to provide long term**  
11 **care referrals to an applicant who meets requirements established by**  
12 **the department by rule and pays a \$200 fee.**

13       **“(3) A registration issued under this section must be renewed every**  
14 **two years. The renewal fee is \$200.**

15       **“(4) The department shall require an applicant to:**

16       **“(a) Identify an individual responsible for the application;**

17       **“(b) Demonstrate that the applicant meets the requirements of**  
18 **section 2 of this 2017 Act;**

19       **“(c) Demonstrate that the applicant maintains at least \$1 million**  
20 **in general liability insurance; and**

21       **“(d) Perform background checks on referral agents who have direct**  
22 **contact with clients, as defined by rule of the department.**

23       **“(5) The department may adopt rules as necessary to administer**  
24 **sections 1 to 3 of this 2017 Act.**

25       **“(6) The department may impose a civil penalty on a person for vi-**  
26 **olation of sections 1 to 3 of this 2017 Act or violation of rules adopted**  
27 **under sections 1 to 3 of this 2017 Act.**

28       **“SECTION 4. ORS 124.050 is amended to read:**

29       **“124.050. As used in ORS 124.050 to 124.095:**

30       **“(1) ‘Abuse’ means one or more of the following:**

1 “(a) Any physical injury to an elderly person caused by other than acci-  
2 dental means, or which appears to be at variance with the explanation given  
3 of the injury.

4 “(b) Neglect.

5 “(c) Abandonment, including desertion or willful forsaking of an elderly  
6 person or the withdrawal or neglect of duties and obligations owed an el-  
7 derly person by a caretaker or other person.

8 “(d) Willful infliction of physical pain or injury upon an elderly person.

9 “(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411,  
10 163.415, 163.425, 163.427, 163.465, 163.467 or 163.525.

11 “(f) Verbal abuse.

12 “(g) Financial exploitation.

13 “(h) Sexual abuse.

14 “(i) Involuntary seclusion of an elderly person for the convenience of a  
15 caregiver or to discipline the person.

16 “(j) A wrongful use of a physical or chemical restraint of an elderly per-  
17 son, excluding an act of restraint prescribed by a physician licensed under  
18 ORS chapter 677 and any treatment activities that are consistent with an  
19 approved treatment plan or in connection with a court order.

20 “(2) ‘Elderly person’ means any person 65 years of age or older who is not  
21 subject to the provisions of ORS 441.640 to 441.665.

22 “(3) ‘Facility’ means:

23 “(a) A long term care facility as that term is defined in ORS 442.015.

24 “(b) A residential facility as that term is defined in ORS 443.400, includ-  
25 ing but not limited to an assisted living facility.

26 “(c) An adult foster home as that term is defined in ORS 443.705.

27 “(4) ‘Financial exploitation’ means:

28 “(a) Wrongfully taking the assets, funds or property belonging to or in-  
29 tended for the use of an elderly person or a person with a disability.

30 “(b) Alarming an elderly person or a person with a disability by convey-

1 ing a threat to wrongfully take or appropriate money or property of the  
2 person if the person would reasonably believe that the threat conveyed would  
3 be carried out.

4 “(c) Misappropriating, misusing or transferring without authorization any  
5 money from any account held jointly or singly by an elderly person or a  
6 person with a disability.

7 “(d) Failing to use the income or assets of an elderly person or a person  
8 with a disability effectively for the support and maintenance of the person.

9 “(5) ‘Intimidation’ means compelling or deterring conduct by threat.

10 “(6) ‘Law enforcement agency’ means:

11 “(a) Any city or municipal police department.

12 “(b) Any county sheriff’s office.

13 “(c) The Oregon State Police.

14 “(d) Any district attorney.

15 “(e) A police department established by a university under ORS 352.121  
16 or 353.125.

17 “(7) ‘Neglect’ means failure to provide basic care or services that are  
18 necessary to maintain the health or safety of an elderly person.

19 “(8) ‘Person with a disability’ means a person described in:

20 “(a) ORS 410.040 (7); or

21 “(b) ORS 410.715.

22 “(9) ‘Public or private official’ means:

23 “(a) Physician or physician assistant licensed under ORS chapter 677,  
24 naturopathic physician or chiropractor, including any intern or resident.

25 “(b) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s  
26 aide, home health aide or employee of an in-home health service.

27 “(c) Employee of the Department of Human Services or community de-  
28 velopmental disabilities program.

29 “(d) Employee of the Oregon Health Authority, local health department  
30 or community mental health program.

- 1 “(e) Peace officer.
- 2 “(f) Member of the clergy.
- 3 “(g) Regulated social worker.
- 4 “(h) Physical, speech or occupational therapist.
- 5 “(i) Senior center employee.
- 6 “(j) Information and referral or outreach worker.
- 7 “(k) Licensed professional counselor or licensed marriage and family  
8 therapist.
- 9 “(L) Member of the Legislative Assembly.
- 10 “(m) Firefighter or emergency medical services provider.
- 11 “(n) Psychologist.
- 12 “(o) Provider of adult foster care or an employee of the provider.
- 13 “(p) Audiologist.
- 14 “(q) Speech-language pathologist.
- 15 “(r) Attorney.
- 16 “(s) Dentist.
- 17 “(t) Optometrist.
- 18 “(u) Chiropractor.
- 19 “(v) Personal support worker, as defined by rule adopted by the Home  
20 Care Commission.
- 21 “(w) Home care worker, as defined in ORS 410.600.
- 22 “**(x) Referral agent, as defined in section 1 of this 2017 Act.**
- 23 “(10) ‘Services’ includes but is not limited to the provision of food,  
24 clothing, medicine, housing, medical services, assistance with bathing or  
25 personal hygiene or any other service essential to the well-being of an el-  
26 derly person.
- 27 “(11)(a) ‘Sexual abuse’ means:
- 28 “(A) Sexual contact with an elderly person who does not consent or is  
29 considered incapable of consenting to a sexual act under ORS 163.315;
- 30 “(B) Verbal or physical harassment of a sexual nature, including but not

1 limited to severe or pervasive exposure to sexually explicit material or lan-  
2 guage;

3 “(C) Sexual exploitation;

4 “(D) Any sexual contact between an employee of a facility or paid  
5 caregiver and an elderly person served by the facility or caregiver; or

6 “(E) Any sexual contact that is achieved through force, trickery, threat  
7 or coercion.

8 “(b) ‘Sexual abuse’ does not mean consensual sexual contact between an  
9 elderly person and:

10 “(A) An employee of a facility who is also the spouse of the elderly per-  
11 son; or

12 “(B) A paid caregiver.

13 “(12) ‘Sexual contact’ has the meaning given that term in ORS 163.305.

14 “(13) ‘Verbal abuse’ means to threaten significant physical or emotional  
15 harm to an elderly person or a person with a disability through the use of:

16 “(a) Derogatory or inappropriate names, insults, verbal assaults, profanity  
17 or ridicule; or

18 “(b) Harassment, coercion, threats, intimidation, humiliation, mental cru-  
19 elty or inappropriate sexual comments.

20 **“SECTION 5.** ORS 646.608 is amended to read:

21 “646.608. (1) A person engages in an unlawful practice if in the course of  
22 the person’s business, vocation or occupation the person does any of the  
23 following:

24 “(a) Passes off real estate, goods or services as the real estate, goods or  
25 services of another.

26 “(b) Causes likelihood of confusion or of misunderstanding as to the  
27 source, sponsorship, approval, or certification of real estate, goods or ser-  
28 vices.

29 “(c) Causes likelihood of confusion or of misunderstanding as to affil-  
30 iation, connection, or association with, or certification by, another.



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

3       “(e) Represents that real estate, goods or services have sponsorship, ap-  
4 proval, characteristics, ingredients, uses, benefits, quantities or qualities that  
5 the real estate, goods or services do not have or that a person has a spon-  
6 sorship, approval, status, qualification, affiliation, or connection that the  
7 person does not have.

8       “(f) Represents that real estate or goods are original or new if the real  
9 estate or goods are deteriorated, altered, reconditioned, reclaimed, used or  
10 secondhand.

11       “(g) Represents that real estate, goods or services are of a particular  
12 standard, quality, or grade, or that real estate or goods are of a particular  
13 style or model, if the real estate, goods or services are of another.

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

16       “(i) Advertises real estate, goods or services with intent not to provide  
17 the real estate, goods or services as advertised, or with intent not to supply  
18 reasonably expectable public demand, unless the advertisement discloses a  
19 limitation of quantity.

20       “(j) Makes false or misleading representations of fact concerning the  
21 reasons for, existence of, or amounts of price reductions.

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

24       “(L) Makes false or misleading representations relating to commissions  
25 or other compensation to be paid in exchange for permitting real estate,  
26 goods or services to be used for model or demonstration purposes or in ex-  
27 change for submitting names of potential customers.

28       “(m) Performs service on or dismantles any goods or real estate if the  
29 owner or apparent owner of the goods or real estate does not authorize the  
30 service or dismantling.

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

3       “(o) In a sale, rental or other disposition of real estate, goods or services,  
4 gives or offers to give a rebate or discount or otherwise pays or offers to pay  
5 value to the customer in consideration of the customer giving to the person  
6 the names of prospective purchasers, lessees, or borrowers, or otherwise  
7 aiding the person in making a sale, lease, or loan to another person, if  
8 earning the rebate, discount or other value is contingent upon an event oc-  
9 ccurring after the time the customer enters into the transaction.

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

12       “(q) Promises to deliver real estate, goods or services within a certain  
13 period of time with intent not to deliver the real estate, goods or services  
14 as promised.

15       “(r) Organizes or induces or attempts to induce membership in a pyramid  
16 club.

17       “(s) Makes false or misleading representations of fact concerning the of-  
18 fering price of, or the person’s cost for real estate, goods or services.

19       “(t) Concurrent with tender or delivery of any real estate, goods or ser-  
20 vices fails to disclose any known material defect or material nonconformity.

21       “(u) Engages in any other unfair or deceptive conduct in trade or com-  
22 merce.

23       “(v) Violates any of the provisions relating to auction sales, consignment  
24 sales, auctioneers, consignees or auction marts under ORS 698.640, whether  
25 in a commercial or noncommercial situation.

26       “(w) Manufactures mercury fever thermometers.

27       “(x) Sells or supplies mercury fever thermometers unless the thermometer  
28 is required by federal law, or is:

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

30       “(B) Supplied with instructions on the careful handling of the

1 thermometer to avoid breakage and on the proper cleanup of mercury should  
2 breakage occur.

3 “(y) Sells a thermostat that contains mercury unless the thermostat is  
4 labeled in a manner to inform the purchaser that mercury is present in the  
5 thermostat and that the thermostat may not be disposed of until the mercury  
6 is removed, reused, recycled or otherwise managed to ensure that the mer-  
7 cury does not become part of the solid waste stream or wastewater. For  
8 purposes of this paragraph, ‘thermostat’ means a device commonly used to  
9 sense and, through electrical communication with heating, cooling or venti-  
10 lation equipment, control room temperature.

11 “(z) Sells or offers for sale a motor vehicle manufactured after January  
12 1, 2006, that contains mercury light switches.

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

14 “(bb) Violates ORS 646A.070 (1).

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

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

17 “(ee) Violates ORS 646.883 or 646.885.

18 “(ff) Violates ORS 646.569.

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

20 “(hh) Violates ORS 646A.360.

21 “(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

22 “(jj) Violates ORS 646.563.

23 “(kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

24 “(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any  
25 rule adopted pursuant thereto.

26 “(mm) Violates ORS 646A.210 or 646A.214.

27 “(nn) Violates any provision of ORS 646A.124 to 646A.134.

28 “(oo) Violates ORS 646A.095.

29 “(pp) Violates ORS 822.046.

30 “(qq) Violates ORS 128.001.

1 “(rr) Violates ORS 646A.800 (2) to (4).  
2 “(ss) Violates ORS 646A.090 (2) to (4).  
3 “(tt) Violates ORS 87.686.  
4 “(uu) Violates ORS 646A.803.  
5 “(vv) Violates ORS 646A.362.  
6 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or  
7 646A.054.  
8 “(xx) Violates ORS 180.440 (1) or 180.486 (1).  
9 “(yy) Commits the offense of acting as a vehicle dealer without a certif-  
10 icate under ORS 822.005.  
11 “(zz) Violates ORS 87.007 (2) or (3).  
12 “(aaa) Violates ORS 92.405 (1), (2) or (3).  
13 “(bbb) Engages in an unlawful practice under ORS 646.648.  
14 “(ccc) Violates ORS 646A.365.  
15 “(ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.  
16 “(eee) Sells a gift card in violation of ORS 646A.276.  
17 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.  
18 “(ggg) Violates ORS 646A.430 to 646A.450.  
19 “(hhh) Violates a provision of ORS 744.318 to 744.384.  
20 “(iii) Violates a provision of ORS 646A.702 to 646A.720.  
21 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning  
22 or declaration described in ORS 646A.530 is issued for the children’s product,  
23 as defined in ORS 646A.525, that is the subject of the violation.  
24 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,  
25 697.682, 697.692 or 697.707.  
26 “(LLL) Violates the consumer protection provisions of the  
27 Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on  
28 January 1, 2010.  
29 “(mmm) Violates a provision of ORS 646A.480 to 646A.495.  
30 “(nnn) Violates ORS 646A.082.

1 “(ooo) Violates ORS 646.647.  
2 “(ppp) Violates ORS 646A.115.  
3 “(qqq) Violates a provision of ORS 646A.405.  
4 “(rrr) Violates ORS 646A.092.  
5 “(sss) Violates a provision of ORS 646.644.  
6 “(ttt) Violates a provision of ORS 646A.295.  
7 “(uuu) Violates ORS 646A.564.  
8 “(vvv) Engages in the business of, or acts in the capacity of, an immi-  
9 gration consultant, as defined in ORS 9.280, in this state and for compen-  
10 sation, unless federal law authorizes the person to do so or unless the person  
11 is an active member of the Oregon State Bar.  
12 “(www) Violates ORS 702.012, 702.029, 702.032 or 702.054.  
13 “(xxx) Violates ORS 646A.806.  
14 “(yyy) Violates ORS 646A.810 (2).  
15 “(zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws  
16 2015.  
17 **“(aaaa) Violates section 2 of this 2017 Act.**  
18 “(2) A representation under subsection (1) of this section or ORS 646.607  
19 may be any manifestation of any assertion by words or conduct, including,  
20 but not limited to, a failure to disclose a fact.  
21 “(3) In order to prevail in an action or suit under ORS 336.184 and 646.605  
22 to 646.652, a prosecuting attorney need not prove competition between the  
23 parties or actual confusion or misunderstanding.  
24 “(4) An action or suit may not be brought under subsection (1)(u) of this  
25 section unless the Attorney General has first established a rule in accord-  
26 ance with the provisions of ORS chapter 183 declaring the conduct to be  
27 unfair or deceptive in trade or commerce.  
28 “(5) Notwithstanding any other provision of ORS 336.184 and 646.605 to  
29 646.652, if an action or suit is brought under subsection (1)(xx) of this section  
30 by a person other than a prosecuting attorney, relief is limited to an in-

1 junction and the prevailing party may be awarded reasonable attorney fees.

2 **“SECTION 6.** ORS 646.608, as amended by section 10, chapter 523, Oregon  
3 Laws 2015, is amended to read:

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

7 “(a) Passes off real estate, goods or services as the real estate, goods or  
8 services of another.

9 “(b) 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) Causes likelihood of confusion or of misunderstanding as to affil-  
13 iation, connection, or association with, or certification by, another.

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

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

21 “(f) 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) 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) Disparages the real estate, goods, services, property or business of a  
28 customer or another by false or misleading representations of fact.

29 “(i) Advertises real estate, goods or services with intent not to provide  
30 the real estate, goods or services as advertised, or with intent not to supply

1 reasonably expectable public demand, unless the advertisement discloses a  
2 limitation of quantity.

3 “(j) Makes false or misleading representations of fact concerning the  
4 reasons for, existence of, or amounts of price reductions.

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

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

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

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

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

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

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

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

30 “(s) Makes false or misleading representations of fact concerning the of-

1   fering price of, or the person’s cost for real estate, goods or services.

2       “(t) Concurrent with tender or delivery of any real estate, goods or ser-  
3   vices fails to disclose any known material defect or material nonconformity.

4       “(u) Engages in any other unfair or deceptive conduct in trade or com-  
5   merce.

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

9       “(w) Manufactures mercury fever thermometers.

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

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

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

24       “(z) Sells or offers for sale a motor vehicle manufactured after January  
25   1, 2006, that contains mercury light switches.

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

27       “(bb) Violates ORS 646A.070 (1).

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

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

30       “(ee) Violates ORS 646.883 or 646.885.



- 1 “(ff) Violates ORS 646.569.
- 2 “(gg) Violates the provisions of ORS 646A.142.
- 3 “(hh) Violates ORS 646A.360.
- 4 “(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 5 “(jj) Violates ORS 646.563.
- 6 “(kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 7 “(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any  
8 rule adopted pursuant thereto.
- 9 “(mm) Violates ORS 646A.210 or 646A.214.
- 10 “(nn) Violates any provision of ORS 646A.124 to 646A.134.
- 11 “(oo) Violates ORS 646A.095.
- 12 “(pp) Violates ORS 822.046.
- 13 “(qq) Violates ORS 128.001.
- 14 “(rr) Violates ORS 646A.800 (2) to (4).
- 15 “(ss) Violates ORS 646A.090 (2) to (4).
- 16 “(tt) Violates ORS 87.686.
- 17 “(uu) Violates ORS 646A.803.
- 18 “(vv) Violates ORS 646A.362.
- 19 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or  
20 646A.054.
- 21 “(xx) Violates ORS 180.440 (1) or 180.486 (1).
- 22 “(yy) Commits the offense of acting as a vehicle dealer without a certifi-  
23 cate under ORS 822.005.
- 24 “(zz) Violates ORS 87.007 (2) or (3).
- 25 “(aaa) Violates ORS 92.405 (1), (2) or (3).
- 26 “(bbb) Engages in an unlawful practice under ORS 646.648.
- 27 “(ccc) Violates ORS 646A.365.
- 28 “(ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 29 “(eee) Sells a gift card in violation of ORS 646A.276.
- 30 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.

1 “(ggg) Violates ORS 646A.430 to 646A.450.  
2 “(hhh) Violates a provision of ORS 744.318 to 744.384.  
3 “(iii) Violates a provision of ORS 646A.702 to 646A.720.  
4 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning  
5 or declaration described in ORS 646A.530 is issued for the children’s product,  
6 as defined in ORS 646A.525, that is the subject of the violation.  
7 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,  
8 697.682, 697.692 or 697.707.  
9 “(LLL) Violates the consumer protection provisions of the  
10 Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on  
11 January 1, 2010.  
12 “(mmm) Violates a provision of ORS 646A.480 to 646A.495.  
13 “(nnn) Violates ORS 646A.082.  
14 “(ooo) Violates ORS 646.647.  
15 “(ppp) Violates ORS 646A.115.  
16 “(qqq) Violates a provision of ORS 646A.405.  
17 “(rrr) Violates ORS 646A.092.  
18 “(sss) Violates a provision of ORS 646.644.  
19 “(ttt) Violates a provision of ORS 646A.295.  
20 “(uuu) Violates ORS 646A.564.  
21 “(vvv) Engages in the business of, or acts in the capacity of, an immi-  
22 gration consultant, as defined in ORS 9.280, in this state and for compen-  
23 sation, unless federal law authorizes the person to do so or unless the person  
24 is an active member of the Oregon State Bar.  
25 “(www) Violates ORS 702.012, 702.029, 702.032 or 702.054.  
26 “(xxx) Violates ORS 646A.806.  
27 “(yyy) Violates ORS 646A.810 (2).  
28 “(zzz) **Violates section 2 of this 2017 Act.**  
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,

1 but not limited to, a failure to disclose a fact.

2 “(3) In order to prevail in an action or suit under ORS 336.184 and 646.605  
3 to 646.652, a prosecuting attorney need not prove competition between the  
4 parties or actual confusion or misunderstanding.

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

9 “(5) Notwithstanding any other provision of ORS 336.184 and 646.605 to  
10 646.652, if an action or suit is brought under subsection (1)(xx) of this section  
11 by a person other than a prosecuting attorney, relief is limited to an in-  
12 junction and the prevailing party may be awarded reasonable attorney fees.

13 **“SECTION 7. (1) Sections 1 to 3 of this 2017 Act and the amend-  
14 ments to ORS 124.050 and 646.608 by sections 4 to 6 of this 2017 Act  
15 become operative on July 1, 2018.**

16 **“(2) The Department of Human Services may take any action before  
17 the operative date specified in subsection (1) of this section that is  
18 necessary to enable the department, on and after the operative date  
19 specified in subsection (1) of this section, to exercise all of the duties,  
20 functions and powers conferred on the department by sections 1 to 3  
21 of this 2017 Act and the amendments to ORS 124.050 and 646.608 by  
22 sections 4 to 6 of this 2017 Act.**

23 **“SECTION 8. Section 2 of this 2017 Act applies only to contracts  
24 entered into between a referral agent and a facility or between a re-  
25 ferral agent and a client on or after July 1, 2018.**

26 **“SECTION 9. This 2017 Act being necessary for the immediate  
27 preservation of the public peace, health and safety, an emergency is  
28 declared to exist, and this 2017 Act takes effect on its passage.”.**

29