

A-Engrossed House Bill 4147

Ordered by the House February 15
Including House Amendments dated February 15

Sponsored by Representatives HOLVEY, GOMBERG, Senator PROZANSKI; Representatives ALONSO LEON, DOHERTY, EVANS, GREENLICK, HELM, HERNANDEZ, KENY-GUYER, LIVELY, MARSH, MCLAIN, NOSSE, REARDON, SALINAS, SANCHEZ, SMITH WARNER, SOLLMAN, WILLIAMSON, WITT (Presession filed.)

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.

[Prohibits consumer reporting agencies from charging certain fees related to security freezes on consumer reports or protective records.]

[Requires certain persons who own, license, possess or have access to personal consumer information to give notice of breach of data security to certain financial institutions and merchant services providers. Requires financial institutions and merchant services providers that discover or receive notice of data breach of another person to notify other person.]

[Requires notice of data breach to be given within 45 days of discovery of breach, unless such notice will impede criminal investigation.]

[Prohibits person providing free credit monitoring in connection with data breach from offering additional services, unless such services are free, or from conditioning free credit monitoring on acceptance of other services.]

[Modifies standards for safeguarding of personal information.]

[Permits person to initiate civil action on behalf of state for violations of Oregon Consumer Identity Theft Protection Act. Provides that person may receive award of no greater than 25 percent of monetary recovery. Provides that state may intervene and proceed with such action. Provides that when person or state prevails in such action, court shall award reasonable attorney fees and costs.]

Requires person that owns, licenses, has control over or has access to personal information and was subject to breach of security to notify consumer to whom personal information pertains and, if number of consumers to whom person must send notice exceeds 250, to Attorney General. Requires person to give notice in most expeditious manner possible, without unreasonable delay, but not later than 45 days after discovering or receiving notice of breach of security. Requires person, in providing notice, to determine sufficient contact information for notice recipients, to determine scope of breach of security and to restore integrity, security and confidentiality of personal information.

Provides that if person must notify consumer of breach of security and with notice person offers credit monitoring services or identity theft prevention and mitigation services without charge to consumer, person may not condition provision of services on consumer's providing person with credit card or debit card number or consumer's acceptance of any other service person offers for fee. Requires person to separately, distinctly, clearly and conspicuously disclose to consumer in any offer for additional credit monitoring services or identity theft prevention and mitigation services that person offers for fee that person will charge consumer fee.

Prohibits consumer reporting agency from charging consumer fee or collecting from consumer money or item of value for placing, temporarily lifting or removing security freeze on consumer's consumer report, creating or deleting protective record, placing or removing security freeze on protective record or replacing lost personal identification number or password.

Modifies standards for safeguarding personal information.

Punishes violation of Act under Unlawful Trade Practices Act.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to data security; creating new provisions; amending ORS 646.608, 646A.602, 646A.604,
3 646A.606, 646A.608, 646A.610 and 646A.622; and prescribing an effective date.

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

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 **SECTION 1.** ORS 646A.602 is amended to read:

2 646A.602. As used in ORS 646A.600 to 646A.628:

3 (1)(a) “Breach of security” means an unauthorized acquisition of computerized data that mate-
4 rially compromises the security, confidentiality or integrity of personal information that a person
5 maintains.

6 (b) “Breach of security” does not include an inadvertent acquisition of personal information by
7 a person or the person’s employee or agent if the personal information is not used in violation of
8 applicable law or in a manner that harms or poses an actual threat to the security, confidentiality
9 or integrity of the personal information.

10 (2) “Consumer” means an individual resident of this state.

11 (3) “Consumer report” means a consumer report as described in section 603(d) of the federal Fair
12 Credit Reporting Act (15 U.S.C. 1681a(d)), as that Act existed on [*January 1, 2016*] **the effective**
13 **date of this 2018 Act**, that a consumer reporting agency compiles and maintains.

14 (4) “Consumer reporting agency” means a consumer reporting agency as described in section
15 603(p) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(p)) as that Act existed on [*January*
16 *1, 2016*] **the effective date of this 2018 Act**.

17 (5) “Debt” means any obligation or alleged obligation arising out of a consumer transaction.

18 (6) “Encryption” means an algorithmic process that renders data unreadable or unusable with-
19 out the use of a confidential process or key.

20 (7) “Extension of credit” means a right to defer paying debt or a right to incur debt and defer
21 paying the debt, that is offered or granted primarily for personal, family or household purposes.

22 **(8) “Financial account information” means the following information that is associated**
23 **with a consumer’s account with a financial institution:**

24 **(a) An account number.**

25 **(b) A personal identification number.**

26 **(c) A card verification value number.**

27 **(d) A card security code number.**

28 **(e) An access code.**

29 **(f) A password.**

30 **(g) A biometric measurement or an encoding of a biometric measurement.**

31 **(h) Any other information or combination of information that a person that owns or li-**
32 **censes the information reasonably knows would permit access to the consumer’s account.**

33 **(9) “Financial institution” has the meaning given that term in ORS 706.008.**

34 [(8)] **(10) “Identity theft” has the meaning set forth in ORS 165.800.**

35 [(9)] **(11) “Identity theft declaration” means a completed and signed statement that documents**
36 **alleged identity theft, using [*the*] a form available from the Federal Trade Commission, or another**
37 **substantially similar form.**

38 [(10)] **(12) “Person” means an individual, private or public corporation, partnership, cooperative,**
39 **association, estate, limited liability company, organization or other entity, whether or not organized**
40 **to operate at a profit, or a public body as defined in ORS 174.109.**

41 [(11)] **(13)(a) “Personal information” means:**

42 [(a)] **(A) A consumer’s first name or first initial and last name in combination with any one or**
43 **more of the following data elements, if encryption, redaction or other methods have not rendered**
44 **the data elements unusable or if the data elements are encrypted and the encryption key has been**
45 **acquired:**

- 1 [(A)] (i) A consumer’s Social Security number;
- 2 [(B)] (ii) A consumer’s driver license number or state identification card number issued by the
3 Department of Transportation;
- 4 [(C)] (iii) A consumer’s passport number or other identification number issued by the United
5 States;
- 6 [(D)] (iv) A consumer’s financial account **information** [*number, credit card number or debit card
7 number, in combination with any required security code, access code or password that would permit
8 access to a consumer’s financial account*];
- 9 [(E)] (v) Data from automatic measurements of a consumer’s physical characteristics, such as
10 an image of a fingerprint, retina or iris, that are used to authenticate the consumer’s identity in the
11 course of a financial transaction or other transaction;
- 12 [(F)] (vi) A consumer’s health insurance policy number or health insurance subscriber identifi-
13 cation number in combination with any other unique identifier that a health insurer uses to identify
14 the consumer; [or] **and**
- 15 [(G)] (vii) Any information about a consumer’s medical history or mental or physical condition
16 or about a health care professional’s medical diagnosis or treatment of the consumer.
- 17 [(b)] (B) Any of the data elements or any combination of the data elements described in [*para-
18 graph (a) of this subsection*] **subparagraph (A) of this paragraph** without the consumer’s first name
19 or first initial and last name if:
- 20 [(A)] (i) Encryption, redaction or other methods have not rendered the data element or combi-
21 nation of data elements unusable; and
- 22 [(B)] (ii) The data element or combination of data elements would enable a person to commit
23 identity theft against a consumer.
- 24 [(c)] (b) “Personal information” does not include information in a federal, state or local govern-
25 ment record, other than a Social Security number, that is lawfully made available to the public.
- 26 [(12)] (14) “Proper identification” means written information or documentation that a consumer
27 or representative can present to another person as evidence of the consumer’s or representative’s
28 identity, examples of which include:
- 29 (a) A valid Social Security number or a copy of a valid Social Security card;
- 30 (b) A certified or otherwise official copy of a birth certificate that a governmental body issued;
31 and
- 32 (c) A copy of a driver license or other government-issued identification.
- 33 [(13)] (15) “Protected consumer” means an individual who is:
- 34 (a) Not older than 16 years old at the time a representative requests a security freeze on the
35 individual’s behalf; or
- 36 (b) Incapacitated or for whom a court or other authority has appointed a guardian or
37 conservator.
- 38 [(14)] (16) “Protective record” means information that a consumer reporting agency compiles to
39 identify a protected consumer for whom the consumer reporting agency has not prepared a consumer
40 report.
- 41 [(15)] (17) “Redacted” means altered or truncated so that no more than the last four digits of
42 a Social Security number, driver license number, state identification card number, passport number
43 or other number issued by the United States, financial account number, credit card number or debit
44 card number is visible or accessible.
- 45 [(16)] (18) “Representative” means a consumer who provides a consumer reporting agency with

1 sufficient proof of the consumer's authority to act on a protected consumer's behalf.

2 [(17)] (19) "Security freeze" means a notice placed in a consumer report at a consumer's request
3 or a representative's request or in a protective record at a representative's request that, subject to
4 certain exemptions, prohibits a consumer reporting agency from releasing information in the con-
5 sumer report or the protective record for an extension of credit, unless the consumer temporarily
6 lifts the security freeze on the consumer's consumer report or a protected consumer or represen-
7 tative removes the security freeze on or deletes the protective record.

8 **SECTION 2.** ORS 646A.604 is amended to read:

9 646A.604. (1) **If a person [that] owns, [or] licenses, has control over or has access to personal**
10 **information that the person uses in the course of the person's business, vocation, occupation or**
11 **volunteer activities and [that] the person was subject to a breach of security, the person shall give**
12 **notice of the breach of security to:**

13 (a) The consumer to whom the personal information pertains [*after the person discovers the*
14 *breach of security or after the person receives notice of a breach of security under subsection (2) of this*
15 *section. The person shall notify the consumer in the most expeditious manner possible, without unrea-*
16 *sonable delay, consistent with the legitimate needs of law enforcement described in subsection (3) of this*
17 *section and consistent with any measures that are necessary to determine sufficient contact information*
18 *for the affected consumer, determine the scope of the breach of security and restore the reasonable in-*
19 *tegrity, security and confidentiality of the personal information].*

20 (b) The Attorney General, either in writing or electronically, if the number of consumers to
21 whom the person must send the notice described in paragraph (a) of this subsection exceeds 250.
22 [*The person shall disclose the breach of security to the Attorney General in the manner described in*
23 *paragraph (a) of this subsection.*]

24 (2) A person that maintains or otherwise possesses personal information on behalf of, or under
25 license of, another person shall notify the other person after discovering a breach of security.

26 (3)(a) **Except as provided in paragraph (b) of this subsection, a person that must give**
27 **notice of a breach of security under subsection (1) or (2) of this section shall give the notice**
28 **in the most expeditious manner possible, without unreasonable delay, but not later than 45**
29 **days after discovering or receiving notification of the breach of security. In providing the**
30 **notice, the person shall undertake any measures that are necessary to:**

31 **(A) Determine sufficient contact information for the intended recipient of the notice;**

32 **(B) Determine the scope of the breach of security; and**

33 **(C) Restore the reasonable integrity, security and confidentiality of the personal infor-**
34 **mation.**

35 **(b) A person that [owns or licenses personal information] must give notice of a breach of se-**
36 **curity under subsection (1) or (2) of this section may delay [notifying a consumer of a breach of**
37 **security] giving the notice only if a law enforcement agency determines that a notification will**
38 **impede a criminal investigation and if the law enforcement agency requests in writing that the**
39 **person delay the notification.**

40 (4) For purposes of this section, a person that owns or licenses personal information, **or pos-**
41 **sesses or has access to personal information as a result of a transaction with a consumer,**
42 **may notify [a] the consumer of a breach of security:**

43 (a) In writing;

44 (b) Electronically, if the person customarily communicates with the consumer electronically or
45 if the notice is consistent with the provisions regarding electronic records and signatures set forth

1 in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001) as that Act ex-
2 isted on [January 1, 2016] **the effective date of this 2018 Act;**

3 (c) By telephone, if the person contacts the affected consumer directly; or

4 (d) With substitute notice, if the person demonstrates that the cost of notification otherwise
5 would exceed \$250,000 or that the affected class of consumers exceeds 350,000, or if the person does
6 not have sufficient contact information to notify affected consumers. For the purposes of this para-
7 graph, “substitute notice” means:

8 (A) Posting the notice or a link to the notice conspicuously on the person’s website if the person
9 maintains a website; and

10 (B) Notifying major statewide television and newspaper media.

11 (5) Notice under this section must include, at a minimum:

12 (a) A description of the breach of security in general terms;

13 (b) The approximate date of the breach of security;

14 (c) The type of personal information that was subject to the breach of security;

15 (d) Contact information for the person that owned or licensed, **or possessed or had access to**
16 **as a result of a transaction with a consumer**, the personal information that was subject to the
17 breach of security;

18 (e) Contact information for national consumer reporting agencies; and

19 (f) Advice to the consumer to report suspected identity theft to law enforcement, including the
20 Attorney General and the Federal Trade Commission.

21 (6) If a person discovers a breach of security that affects more than 1,000 consumers, the person
22 shall notify, without unreasonable delay, all consumer reporting agencies that compile and maintain
23 reports on consumers on a nationwide basis of the timing, distribution and content of the notice the
24 person gave to affected consumers and shall include in the notice any police report number assigned
25 to the breach of security. A person may not delay notifying affected consumers of a breach of se-
26 curity in order to notify consumer reporting agencies.

27 **(7)(a) If a person must notify a consumer of a breach of security under this section, and**
28 **in connection with the notification the person offers to provide credit monitoring services**
29 **or identity theft prevention and mitigation services without charge to the consumer, the**
30 **person may not condition the person’s provision of the services on the consumer’s providing**
31 **the person with a credit or debit card number or on the consumer’s acceptance of any other**
32 **service the person offers to provide for a fee.**

33 **(b) If a person offers additional credit monitoring services or identity theft prevention**
34 **and mitigation services for a fee to a consumer under the circumstances described in para-**
35 **graph (a) of this subsection, the person must separately, distinctly, clearly and conspicuously**
36 **disclose in the offer for the additional credit monitoring services or identity theft prevention**
37 **and mitigation services that the person will charge the consumer a fee.**

38 **(c) The terms and conditions of any contract under which one person offers or provides**
39 **credit monitoring services or identity theft prevention and mitigation services on behalf of**
40 **another person under the circumstances described in paragraph (a) of this subsection must**
41 **require compliance with the requirements of paragraphs (a) and (b) of this subsection.**

42 [(7)] **(8) Notwithstanding subsection (1) of this section, a person does not need to notify con-**
43 **sumers of a breach of security if, after an appropriate investigation or after consultation with rele-**
44 **vant federal, state or local law enforcement agencies, the person reasonably determines that the**
45 **consumers whose personal information was subject to the breach of security are unlikely to suffer**

1 harm. The person must document the determination in writing and maintain the documentation for
2 at least five years.

3 [(8)] **(9)** This section does not apply to:

4 (a) A person that complies with notification requirements or procedures for a breach of security
5 that the person's primary or functional federal regulator adopts, promulgates or issues in rules,
6 regulations, procedures, guidelines or guidance, if the rules, regulations, procedures, guidelines or
7 guidance provides greater protection to personal information and disclosure requirements at least
8 as thorough as the protections and disclosure requirements provided under this section.

9 (b) A person that complies with a state or federal law that provides greater protection to per-
10 sonal information and disclosure requirements at least as thorough as the protections and disclosure
11 requirements provided under this section.

12 (c) A person that is subject to and complies with regulations promulgated pursuant to Title V
13 of the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. 6801 to 6809) as that Act existed on [*January 1,*
14 *2016*] **the effective date of this 2018 Act, if the Act provides protections and disclosure re-**
15 **quirements that are as stringent and thorough as, or more stringent and thorough than, the**
16 **protections and disclosure requirements set forth in this section.**

17 [*(d)(A) Except as provided in subparagraph (B) of this paragraph, a covered entity, as defined in*
18 *45 C.F.R. 160.103, as in effect on January 1, 2016, that is governed under 45 C.F.R. parts 160 and*
19 *164, as in effect on January 1, 2016, if the covered entity sends the Attorney General a copy of the*
20 *notice the covered entity sent to consumers under this section or a copy of the notice that the covered*
21 *entity sent to the primary functional regulator designated for the covered entity under the Health In-*
22 *surance Portability and Availability Act of 1996, (P.L. 104-191, 110 Stat. 1936, 42 U.S.C. 300(gg), 29*
23 *U.S.C. 118 et seq., 42 U.S.C. 1320(d) et seq., 45 C.F.R. parts 160 and 164).]*

24 [*(B) A covered entity is subject to the provisions of this section if the covered entity does not send*
25 *a copy of a notice described in subparagraph (A) of this paragraph to the Attorney General within a*
26 *reasonable time after the Attorney General requests the copy.]*

27 **(d) A person that is subject to and that complies with the regulations set forth in 45**
28 **C.F.R. parts 160 and 164, as in effect on the effective date of this 2018 Act, if the regulations**
29 **provide protections and disclosure requirements that are as stringent and thorough as, or**
30 **more stringent and thorough than, the protections and disclosure requirements set forth in**
31 **this section.**

32 **(10) Notwithstanding the exemptions set forth in subsection (9) of this section, a person**
33 **that owns or licenses personal information shall provide to the Attorney General within a**
34 **reasonable time a copy of any notice the person sends to consumers or to the person's pri-**
35 **mary or functional regulator in compliance with this section or with other state or federal**
36 **laws or regulations that apply to the person as a consequence of a breach of security.**

37 [(9)(a)] **(11)(a)** A person's violation of a provision of ORS 646A.600 to 646A.628 is an unlawful
38 practice under ORS 646.607.

39 (b) The rights and remedies available under this section are cumulative and are in addition to
40 any other rights or remedies that are available under law.

41 **SECTION 3.** ORS 646A.606 is amended to read:

42 646A.606. (1) A consumer may elect to place a security freeze on the consumer's consumer re-
43 port or, if the consumer is a representative, on a protected consumer's consumer report or protec-
44 tive record by sending a written request to a consumer reporting agency at an address the agency
45 designates to receive such requests, or a secure electronic request at a website the agency desig-

1 nates to receive such requests if the consumer reporting agency, at the agency's discretion, makes
2 a secure electronic method available.

3 (2) If the consumer or protected consumer is the victim of identity theft or has reported a theft
4 of personal information to a law enforcement agency, the consumer or representative may include
5 a copy of the police report, incident report or identity theft declaration.

6 (3)(a) The consumer or representative must provide proper identification [*and any fee authorized*
7 *by ORS 646A.610*].

8 (b)(A) In addition to the information [*and fee*] described in paragraph (a) of this subsection, a
9 representative who seeks to place a security freeze on a protected consumer's consumer report or
10 protective record shall provide sufficient proof of the representative's authority to act on the pro-
11 tected consumer's behalf.

12 (B) For purposes of subparagraph (A) of this paragraph, sufficient proof of authority consists of:

13 (i) A court order that identifies or describes the relationship between the representative and the
14 protected consumer;

15 (ii) A valid and lawfully executed power of attorney that permits the representative to act on
16 the protected consumer's behalf; or

17 (iii) A written affidavit that the representative signs and has notarized in which the represen-
18 tative expressly describes the relationship between the representative and the protected consumer
19 and the representative's authority to act on the protected consumer's behalf.

20 (4)(a) Except as provided in ORS 646A.614, if a security freeze is in place for a consumer report,
21 information from the consumer report may not be released without prior express authorization from
22 the consumer.

23 (b) Information from a protective record may not be released until the protected consumer for
24 whom the consumer reporting agency created the protective record, or a representative of the pro-
25 tected consumer, removes the security freeze.

26 (5) This section does not prevent a consumer reporting agency from advising a third party that
27 a security freeze is in effect with respect to the consumer report or protective record.

28 **SECTION 4.** ORS 646A.608 is amended to read:

29 646A.608. (1)(a) A consumer reporting agency shall place a security freeze on a consumer report
30 not later than five business days after receiving from a consumer:

31 (A) The request described in ORS 646A.606 (1); **and**

32 (B) Proper identification. [*and*]

33 [(C) A fee, if applicable.]

34 (b) If a consumer report does not exist for a protected consumer on behalf of whom a repre-
35 sentative seeks to place a security freeze, a consumer reporting agency shall create a protective
36 record after receiving from the representative the request described in ORS 646A.606 (1), proper
37 identification for both the representative and the protected consumer and sufficient proof of au-
38 thority, as described in ORS 646A.606 (3)(b). After creating a protective record for a protected con-
39 sumer under this paragraph, the consumer reporting agency shall place the security freeze that the
40 representative requested on the protected consumer's protective record.

41 (c) The protective record that the consumer reporting agency creates under paragraph (b) of this
42 subsection does not need to contain any information other than the protected consumer's personal
43 information, if other information for the protected consumer is not available. Except as provided in
44 ORS 646A.614, a consumer reporting agency may not use or release to another person the informa-
45 tion in a protective record for the purpose of assessing a protected consumer's eligibility or capacity

1 for an extension of credit, as a basis for evaluating a protected consumer's character, reputation or
 2 personal characteristics or for other purposes that are not related to protecting the protected con-
 3 sumer from identity theft.

4 (2)(a) *[The]* **A** consumer reporting agency shall send a written confirmation of a security freeze
 5 on a consumer's consumer report to the consumer at the last known address for the consumer shown
 6 in the consumer report that the consumer reporting agency maintains, within 10 business days after
 7 placing the security freeze and, with the confirmation, shall provide the consumer with a unique
 8 personal identification number or password or similar device the consumer must use to authorize the
 9 consumer reporting agency to release the consumer's consumer report for a specific period of time
 10 or to permanently remove the security freeze. The consumer reporting agency shall include with the
 11 written confirmation information that describes how to remove a security freeze and how to tem-
 12 porarily lift a security freeze on a consumer report, other than a consumer report for a protected
 13 consumer, in order to allow access to information from the consumer's consumer report for a period
 14 of time while the security freeze is in place.

15 (b) This subsection does not require a consumer reporting agency to provide a consumer or
 16 representative with a personal identification number or password for the consumer or representative
 17 to use to authorize the consumer reporting agency to release information from a protective record.

18 (3)(a) If a consumer wishes to allow the consumer's consumer report to be accessed for a specific
 19 period of time while a security freeze is in effect, the consumer shall contact the consumer reporting
 20 agency using a point of contact the consumer reporting agency designates, request that the security
 21 freeze be temporarily lifted and provide the following:

22 (A) Proper identification;

23 (B) The unique personal identification number or password or similar device the consumer re-
 24 porting agency provided under subsection (2) of this section; **and**

25 (C) An indication of the period of time during which the consumer report must be available to
 26 users of the consumer report[; *and*].

27 *[(D) A fee, if applicable.]*

28 (b) A protective record is not subject to a temporary lift of a security freeze.

29 (c) Except as provided in ORS 646A.612 (2)(a), a consumer report for a protected consumer is
 30 not subject to a temporary lift of a security freeze.

31 (4) A consumer reporting agency that receives a request from *[the]* **a** consumer to temporarily
 32 lift a security freeze on a consumer report, other than a consumer report for a protected consumer,
 33 under subsection (3) of this section shall comply with the request not later than three business days
 34 after receiving from the consumer:

35 (a) Proper identification;

36 (b) The unique personal identification number or password or similar device the consumer re-
 37 porting agency provided under subsection (2) of this section; **and**

38 (c) An indication of the period of time during which the consumer report must be available to
 39 users of the consumer report[; *and*].

40 *[(d) A fee, if applicable.]*

41 (5)(a) A security freeze for a consumer report must remain in place until the consumer requests,
 42 using a point of contact the consumer reporting agency designates, that the security freeze be re-
 43 moved. A consumer reporting agency shall remove a security freeze within three business days after
 44 receiving a request for removal from the consumer, who provides:

45 (A) Proper identification; **and**

1 (B) The unique personal identification number or password or similar device the consumer re-
2 porting agency provided under subsection (2) of this section.[: and]

3 [(C) A fee, if applicable.]

4 (b) A security freeze for a protective record must remain in place until the protected consumer
5 or a representative requests, using a point of contact the consumer reporting agency designates,
6 that the security freeze be removed or that the protective record be deleted. The consumer reporting
7 agency does not have an affirmative duty to notify the protected consumer or the representative
8 that a security freeze is in place or to remove the security freeze or delete the protective record
9 once the protected consumer is no longer a protected consumer. A protected consumer or a repre-
10 sentative has the affirmative duty to request that the consumer reporting agency remove the secu-
11 rity freeze or delete the protective record. A consumer reporting agency shall remove a security
12 freeze or delete a protective record within 30 business days after receiving a request for removal
13 or deletion from the protected consumer or a representative, who provides:

14 (A) Proper identification;

15 (B) Sufficient proof of authority, as described in ORS 646A.606 (3)(b), if the representative seeks
16 to remove the security freeze or delete the protective record; **and**

17 (C) Proof that the representative's authority to act on the protected consumer's behalf is no
18 longer valid or applicable, if the protected consumer seeks to remove the security freeze or delete
19 the protective record.[: and]

20 [(D) A fee, if applicable.]

21 **SECTION 5.** ORS 646A.610 is amended to read:

22 646A.610. [(1) A consumer reporting agency may not charge a fee to a consumer or a protected
23 consumer who is the victim of identity theft or to a consumer who has reported or a protected consumer
24 for whom a representative has reported to a law enforcement agency the theft of personal information,
25 provided the consumer or the representative has submitted to the consumer reporting agency a copy of
26 a valid police report, incident report or identity theft declaration.]

27 [(2)(a) A consumer reporting agency may charge a reasonable fee of not more than \$10 to a con-
28 sumer, other than a consumer described in subsection (1) of this section, for each placement of a secu-
29 rity freeze, temporary lift of the security freeze, removal of the security freeze or replacing a lost
30 personal identification number or password previously provided to the consumer.]

31 [(b)(A) Except as provided in subsection (1) of this section and in subparagraph (B) of this para-
32 graph, a consumer reporting agency may charge a reasonable fee of not more than \$10 to place or re-
33 move a security freeze for a protected consumer's consumer report or protective record or to create or
34 delete a protective record for a protected consumer.]

35 [(B) A consumer reporting agency may not charge a fee to place or remove a security freeze on an
36 existing consumer report or protective record for a protected consumer who is under 16 years of age
37 at the time a representative requests the consumer reporting agency to place or remove the security
38 freeze.]

39 **A consumer reporting agency may not charge a consumer a fee or collect from a con-**
40 **sumer any money or item of value for:**

41 **(1) Placing, temporarily lifting or removing a security freeze on the consumer's con-**
42 **sumer report.**

43 **(2) Creating or deleting a protective record.**

44 **(3) Placing or removing a security freeze on a protective record for a protected con-**
45 **sumer.**

1 **(4) Replacing a lost personal identification number, password or similar device the con-**
2 **sumer reporting agency previously provided to the consumer.**

3 **SECTION 6.** ORS 646A.622 is amended to read:

4 646A.622. (1) A person that owns, maintains or otherwise possesses, **or has control over or**
5 **access to**, data that includes [*a consumer's*] personal information that the person uses in the course
6 of the person's business, vocation, occupation or volunteer activities shall develop, implement and
7 maintain reasonable safeguards to protect the security, confidentiality and integrity of the personal
8 information, including safeguards that protect the personal information when the person disposes
9 of the personal information.

10 (2) A person complies with subsection (1) of this section if the person:

11 (a) Complies with a state or federal law that provides greater protection to personal information
12 than the protections that this section provides.

13 (b) Complies with regulations promulgated under Title V of the Gramm-Leach-Bliley Act of 1999
14 (15 U.S.C. 6801 to 6809) as in effect on [*January 1, 2016*] **the effective date of this 2018 Act**, if the
15 person is subject to the Act.

16 (c) Complies with regulations that implement the Health Insurance Portability and Account-
17 ability Act of 1996 (45 C.F.R. parts 160 and 164) as in effect on [*January 1, 2016*] **the effective date**
18 **of this 2018 Act**, if the person is subject to the Act.

19 (d) Implements an information security program that includes:

20 (A) Administrative safeguards such as:

21 (i) Designating one or more employees to coordinate the security program;

22 (ii) Identifying reasonably foreseeable internal and external risks **with reasonable regularity**;

23 (iii) Assessing whether existing safeguards adequately control the identified risks;

24 (iv) Training and managing employees in security program practices and procedures **with rea-**
25 **sonable regularity**;

26 (v) Selecting service providers that are capable of maintaining appropriate safeguards **and ad-**
27 **hering to procedures and protocols to which the person and the service provider agree**, and
28 requiring the service providers by contract to maintain the safeguards, **procedures and protocols**;
29 [*and*]

30 (vi) Adjusting the security program in light of business changes, **potential threats** or new cir-
31 cumstances;

32 (vii) **Monitoring, verifying, logging and disseminating information about security updates**
33 **and upgrades to software that might be at risk of or vulnerable to a breach of security**; and

34 (viii) **Reviewing user access policies with reasonable regularity**;

35 (B) Technical safeguards such as:

36 (i) Assessing risks **and vulnerabilities** in network and software design **and in information**
37 **collection, processing, transmission, retention, access, storage and disposal and taking timely**
38 **action to address the risks and vulnerabilities with reasonable regularity**;

39 [*ii*] *Assessing risks in information processing, transmission and storage*;

40 (ii) **Applying security updates and upgrades to software that might be at risk of or vul-**
41 **nerable to a breach of security**;

42 (iii) **Monitoring**, detecting, preventing and responding to attacks or system failures; [*and*]

43 (iv) Testing and monitoring regularly the effectiveness of key controls, systems and procedures
44 **and taking action to reduce or eliminate weaknesses, deficiencies and risks in the controls,**
45 **systems and procedures**; and

1 (v) **Isolating and segregating personal information from other information and ensuring**
2 **that only authorized individuals have access to the personal information; and**

3 (C) Physical safeguards such as:

4 (i) Assessing **known and potential** risks of information **collection**, storage, **usage**, **retention**,
5 **access** and disposal **and implementing methods to remedy or mitigate identified risks;**

6 (ii) **Monitoring**, detecting, preventing, **isolating** and responding to intrusions **timely and with**
7 **reasonable regularity;**

8 (iii) Protecting against unauthorized access to or use of personal information during or after
9 collecting, **using**, **storing**, transporting, **retaining**, destroying or disposing of the personal infor-
10 mation; and

11 (iv) Disposing of personal information, **whether on or off the person's premises or property**,
12 after the person no longer needs the personal information for business purposes or as required by
13 local, state or federal law by burning, pulverizing, shredding or modifying a physical record and by
14 destroying or erasing electronic media so that the information cannot be read or reconstructed.

15 (3) A person complies with subsection (2)(d)(C)(iv) of this section if the person contracts with
16 another person engaged in the business of record destruction to dispose of personal information in
17 a manner that is consistent with subsection (2)(d)(C)(iv) of this section.

18 (4) Notwithstanding subsection (2) of this section, a person that is an owner of a small business
19 as defined in ORS 285B.123 (2) complies with subsection (1) of this section if the person's information
20 security and disposal program contains administrative, technical and physical safeguards and dis-
21 posal measures that are appropriate for the size and complexity of the small business, the nature
22 and scope of the small business's activities, and the sensitivity of the personal information the small
23 business collects from or about consumers.

24 **SECTION 7.** ORS 646.608, as operative until July 1, 2018, is amended to read:

25 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,
26 vocation or occupation the person does any of the following:

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

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

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

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

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

38 (f) Represents that real estate or goods are original or new if the real estate or goods are de-
39 teriorated, altered, reconditioned, reclaimed, used or secondhand.

40 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
41 or that real estate or goods are of a particular style or model, if the real estate, goods or services
42 are of another.

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

45 (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or

1 services as advertised, or with intent not to supply reasonably expectable public demand, unless the
2 advertisement discloses a limitation of quantity.

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

5 (k) Makes false or misleading representations concerning credit availability or the nature of the
6 transaction or obligation incurred.

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

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

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

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

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

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

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

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

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

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

30 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,
31 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-
32 ation.

33 (w) Manufactures mercury fever thermometers.

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

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

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

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

45 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains

- 1 mercury light switches.
- 2 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 3 (bb) Violates ORS 646A.070 (1).
- 4 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 5 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 6 (ee) Violates ORS 646.883 or 646.885.
- 7 (ff) Violates ORS 646.569.
- 8 (gg) Violates the provisions of ORS 646A.142.
- 9 (hh) Violates ORS 646A.360.
- 10 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 11 (jj) Violates ORS 646.563.
- 12 (kk) Violates ORS 759.680 or any rule adopted pursuant thereto.
- 13 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 14 thereto.
- 15 (mm) Violates ORS 646A.210 or 646A.214.
- 16 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 17 (oo) Violates ORS 646A.095.
- 18 (pp) Violates ORS 822.046.
- 19 (qq) Violates ORS 128.001.
- 20 (rr) Violates ORS 646A.800 (2) to (4).
- 21 (ss) Violates ORS 646A.090 (2) to (5).
- 22 (tt) Violates ORS 87.686.
- 23 (uu) Violates ORS 646A.803.
- 24 (vv) Violates ORS 646A.362.
- 25 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 26 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 27 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 28 (zz) Violates ORS 87.007 (2) or (3).
- 29 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 30 (bbb) Engages in an unlawful practice under ORS 646.648.
- 31 (ccc) Violates ORS 646A.365.
- 32 (ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted under ORS 98.864.
- 33 (eee) Sells a gift card in violation of ORS 646A.276.
- 34 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 35 (ggg) Violates ORS 646A.430 to 646A.450.
- 36 (hhh) Violates a provision of ORS 744.318 to 744.384.
- 37 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 38 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 39 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 40 subject of the violation.
- 41 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 42 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 43 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 44 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 45 (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 immigration consultant, as de-
9 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
10 do so or unless the person is an active member of the Oregon State Bar.
11 (www) Violates ORS 702.012, 702.029 or 702.054.
12 (xxx) Violates ORS 646A.806.
13 (yyy) Violates ORS 646A.810 (2).
14 (zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws 2015.
15 **(aaaa) Violates a provision of ORS 646A.600 to 646A.628.**
16 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
17 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
18 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-
19 cuting attorney need not prove competition between the parties or actual confusion or misunder-
20 standing.
21 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
22 torney General has first established a rule in accordance with the provisions of ORS chapter 183
23 declaring the conduct to be unfair or deceptive in trade or commerce.
24 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or
25 suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attor-
26 ney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney
27 fees.
28 **SECTION 8.** ORS 646.608 is amended to read:
29 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,
30 vocation or occupation the person does any of the following:
31 (a) Passes off real estate, goods or services as the real estate, goods or services of another.
32 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
33 proval, or certification of real estate, goods or services.
34 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
35 ciation with, or certification by, another.
36 (d) Uses deceptive representations or designations of geographic origin in connection with real
37 estate, goods or services.
38 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
39 ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have
40 or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the
41 person does not have.
42 (f) Represents that real estate or goods are original or new if the real estate or goods are de-
43 teriorated, altered, reconditioned, reclaimed, used or secondhand.
44 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
45 or that real estate or goods are of a particular style or model, if the real estate, goods or services

1 are of another.

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

4 (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or
5 services as advertised, or with intent not to supply reasonably expectable public demand, unless the
6 advertisement discloses a limitation of quantity.

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

9 (k) Makes false or misleading representations concerning credit availability or the nature of the
10 transaction or obligation incurred.

11 (L) Makes false or misleading representations relating to commissions or other compensation to
12 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
13 stration purposes or in exchange for submitting names of potential customers.

14 (m) Performs service on or dismantles any goods or real estate if the owner or apparent owner
15 of the goods or real estate does not authorize the service or dismantling.

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

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

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

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

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

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

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

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

34 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,
35 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-
36 ation.

37 (w) Manufactures mercury fever thermometers.

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

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

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

43 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
44 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
45 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the

1 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
2 graph, “thermostat” means a device commonly used to sense and, through electrical communication
3 with heating, cooling or ventilation equipment, control room temperature.

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

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

7 (bb) Violates ORS 646A.070 (1).

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

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

10 (ee) Violates ORS 646.883 or 646.885.

11 (ff) Violates ORS 646.569.

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

13 (hh) Violates ORS 646A.360.

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

15 (jj) Violates ORS 646.563.

16 (kk) Violates ORS 759.680 or any rule adopted pursuant thereto.

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

19 (mm) Violates ORS 646A.210 or 646A.214.

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

21 (oo) Violates ORS 646A.095.

22 (pp) Violates ORS 822.046.

23 (qq) Violates ORS 128.001.

24 (rr) Violates ORS 646A.800 (2) to (4).

25 (ss) Violates ORS 646A.090 (2) to (5).

26 (tt) Violates ORS 87.686.

27 (uu) Violates ORS 646A.803.

28 (vv) Violates ORS 646A.362.

29 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

30 (xx) Violates ORS 180.440 (1) or 180.486 (1).

31 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

32 (zz) Violates ORS 87.007 (2) or (3).

33 (aaa) Violates ORS 92.405 (1), (2) or (3).

34 (bbb) Engages in an unlawful practice under ORS 646.648.

35 (ccc) Violates ORS 646A.365.

36 (ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted under ORS 98.864.

37 (eee) Sells a gift card in violation of ORS 646A.276.

38 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.

39 (ggg) Violates ORS 646A.430 to 646A.450.

40 (hhh) Violates a provision of ORS 744.318 to 744.384.

41 (iii) Violates a provision of ORS 646A.702 to 646A.720.

42 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
43 scribed in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the
44 subject of the violation.

45 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.

1 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
2 U.S.C. App. 501 et seq., as in effect on January 1, 2010.

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

4 (nnn) Violates ORS 646A.082.

5 (ooo) Violates ORS 646.647.

6 (ppp) Violates ORS 646A.115.

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

8 (rrr) Violates ORS 646A.092.

9 (sss) Violates a provision of ORS 646.644.

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

11 (uuu) Violates ORS 646A.564.

12 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
13 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
14 do so or unless the person is an active member of the Oregon State Bar.

15 (www) Violates ORS 702.012, 702.029 or 702.054.

16 (xxx) Violates ORS 646A.806.

17 (yyy) Violates ORS 646A.810 (2).

18 (zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws 2015.

19 (aaaa) Violates ORS 443.376.

20 **(bbbb) Violates a provision of ORS 646A.600 to 646A.628.**

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

23 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-
24 cuting attorney need not prove competition between the parties or actual confusion or misunder-
25 standing.

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

29 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or
30 suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attor-
31 ney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney
32 fees.

33 **SECTION 9.** ORS 646.608, as amended by section 10, chapter 523, Oregon Laws 2015, section
34 15, chapter 113, Oregon Laws 2017, section 3, chapter 241, Oregon Laws 2017, section 16, chapter
35 480, Oregon Laws 2017, and section 6, chapter 656, Oregon Laws 2017, is amended to read:

36 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,
37 vocation or occupation the person does any of the following:

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

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

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

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

45 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,

1 ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have
2 or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the
3 person does not have.

4 (f) Represents that real estate or goods are original or new if the real estate or goods are de-
5 teriorated, altered, reconditioned, reclaimed, used or secondhand.

6 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
7 or that real estate or goods are of a particular style or model, if the real estate, goods or services
8 are of another.

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

11 (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or
12 services as advertised, or with intent not to supply reasonably expectable public demand, unless the
13 advertisement discloses a limitation of quantity.

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

16 (k) Makes false or misleading representations concerning credit availability or the nature of the
17 transaction or obligation incurred.

18 (L) Makes false or misleading representations relating to commissions or other compensation to
19 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
20 stration purposes or in exchange for submitting names of potential customers.

21 (m) Performs service on or dismantles any goods or real estate if the owner or apparent owner
22 of the goods or real estate does not authorize the service or dismantling.

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

25 (o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
26 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
27 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
28 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
29 discount or other value is contingent upon an event occurring after the time the customer enters
30 into the transaction.

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

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

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

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

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

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

41 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,
42 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-
43 ation.

44 (w) Manufactures mercury fever thermometers.

45 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal

1 law, or is:

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

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

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

11 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
12 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 759.680 or any rule adopted pursuant thereto.

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

31 (rr) Violates ORS 646A.800 (2) to (4).

32 (ss) Violates ORS 646A.090 (2) to (5).

33 (tt) Violates ORS 87.686.

34 (uu) Violates ORS 646A.803.

35 (vv) Violates ORS 646A.362.

36 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

37 (xx) Violates ORS 180.440 (1) or 180.486 (1).

38 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

39 (zz) Violates ORS 87.007 (2) or (3).

40 (aaa) Violates ORS 92.405 (1), (2) or (3).

41 (bbb) Engages in an unlawful practice under ORS 646.648.

42 (ccc) Violates ORS 646A.365.

43 (ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted under ORS 98.864.

44 (eee) Sells a gift card in violation of ORS 646A.276.

45 (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 or declaration de-
5 scribed in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the
6 subject of the violation.
7 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
8 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
9 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
10 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
11 (nnn) Violates ORS 646A.082.
12 (ooo) Violates ORS 646.647.
13 (ppp) Violates ORS 646A.115.
14 (qqq) Violates a provision of ORS 646A.405.
15 (rrr) Violates ORS 646A.092.
16 (sss) Violates a provision of ORS 646.644.
17 (ttt) Violates a provision of ORS 646A.295.
18 (uuu) Violates ORS 646A.564.
19 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
20 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
21 do so or unless the person is an active member of the Oregon State Bar.
22 (www) Violates ORS 702.012, 702.029 or 702.054.
23 (xxx) Violates ORS 646A.806.
24 (yyy) Violates ORS 646A.810 (2).
25 (zzz) Violates ORS 443.376.
26 **(aaaa) Violates a provision of ORS 646A.600 to 646A.628.**
27 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
28 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
29 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-
30 cuting attorney need not prove competition between the parties or actual confusion or misunder-
31 standing.
32 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
33 torney General has first established a rule in accordance with the provisions of ORS chapter 183
34 declaring the conduct to be unfair or deceptive in trade or commerce.
35 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or
36 suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attor-
37 ney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney
38 fees.
39 **SECTION 10. The amendments to ORS 646.608, 646A.602, 646A.604, 646A.606, 646A.608,**
40 **646A.610 and 646A.622 by sections 1 to 9 of this 2018 Act apply to contracts into which a**
41 **person enters with another person on or after the effective date of this 2018 Act.**
42 **SECTION 11. This 2018 Act takes effect on the 91st day after the date on which the 2018**
43 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**
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