

Requested by HOUSE COMMITTEE ON BUSINESS AND LABOR

**PROPOSED AMENDMENTS TO
HOUSE BILL 4147**

- 1 On page 1 of the printed bill, line 2, after “ORS” insert “646.608,”.
- 2 Delete lines 5 through 20 and delete pages 2 through 13 and insert:
- 3 **“SECTION 1.** ORS 646A.602 is amended to read:
- 4 “646A.602. As used in ORS 646A.600 to 646A.628:
- 5 “(1)(a) ‘Breach of security’ means an unauthorized acquisition of comput-
- 6 erized data that materially compromises the security, confidentiality or in-
- 7 tegrity of personal information that a person maintains.
- 8 “(b) ‘Breach of security’ does not include an inadvertent acquisition of
- 9 personal information by a person or the person’s employee or agent if the
- 10 personal information is not used in violation of applicable law or in a man-
- 11 ner that harms or poses an actual threat to the security, confidentiality or
- 12 integrity of the personal information.
- 13 “(2) ‘Consumer’ means an individual resident of this state.
- 14 “(3) ‘Consumer report’ means a consumer report as described in section
- 15 603(d) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)), as that
- 16 Act existed on [*January 1, 2016*] **the effective date of this 2018 Act**, that
- 17 a consumer reporting agency compiles and maintains.
- 18 “(4) ‘Consumer reporting agency’ means a consumer reporting agency as
- 19 described in section 603(p) of the federal Fair Credit Reporting Act (15 U.S.C.
- 20 1681a(p)) as that Act existed on [*January 1, 2016*] **the effective date of this**
- 21 **2018 Act.**

1 “(5) ‘Debt’ means any obligation or alleged obligation arising out of a
2 consumer transaction.

3 “(6) ‘Encryption’ means an algorithmic process that renders data unread-
4 able or unusable without the use of a confidential process or key.

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

8 “(8) ‘Financial account information’ means the following informa-
9 tion that is associated with a consumer’s account with a financial in-
10 stitution:

11 “(a) An account number.

12 “(b) A personal identification number.

13 “(c) A card verification value number.

14 “(d) A card security code number.

15 “(e) An access code.

16 “(f) A password.

17 “(g) A biometric measurement or an encoding of a biometric
18 measurement.

19 “(h) Any other information or combination of information that
20 would permit access to the consumer’s account.

21 “(9) ‘Financial institution’ has the meaning given that term in ORS
22 706.008.

23 “[8] (10) ‘Identity theft’ has the meaning set forth in ORS 165.800.

24 “[9] (11) ‘Identity theft declaration’ means a completed and signed
25 statement that documents alleged identity theft, using [*the*] a form available
26 from the Federal Trade Commission, or another substantially similar form.

27 “[10] (12) ‘Person’ means an individual, private or public corporation,
28 partnership, cooperative, association, estate, limited liability company, or-
29 ganization or other entity, whether or not organized to operate at a profit,
30 or a public body as defined in ORS 174.109.

1 “[(11)] **(13)(a)** ‘Personal information’ means:

2 “[(a)] **(A)** A consumer’s first name or first initial and last name in com-
3 bination with any one or more of the following data elements, if encryption,
4 redaction or other methods have not rendered the data elements unusable
5 or if the data elements are encrypted and the encryption key has been ac-
6 quired:

7 “[(A)] **(i)** A consumer’s Social Security number;

8 “[(B)] **(ii)** A consumer’s driver license number or state identification card
9 number issued by the Department of Transportation;

10 “[(C)] **(iii)** A consumer’s passport number or other identification number
11 issued by the United States;

12 “[(D)] **(iv)** A consumer’s financial account **information** [*number, credit*
13 *card number or debit card number, in combination with any required security*
14 *code, access code or password that would permit access to a consumer’s fi-*
15 *ancial account*];

16 “[(E)] **(v)** Data from automatic measurements of a consumer’s physical
17 characteristics, such as an image of a fingerprint, retina or iris, that are
18 used to authenticate the consumer’s identity in the course of a financial
19 transaction or other transaction;

20 “[(F)] **(vi)** A consumer’s health insurance policy number or health insur-
21 ance subscriber identification number in combination with any other unique
22 identifier that a health insurer uses to identify the consumer; [*or*] **and**

23 “[(G)] **(vii)** Any information about a consumer’s medical history or mental
24 or physical condition or about a health care professional’s medical diagnosis
25 or treatment of the consumer.

26 “[(b)] **(B)** Any of the data elements or any combination of the data ele-
27 ments described in [*paragraph (a) of this subsection*] **subparagraph (A) of**
28 **this paragraph** without the consumer’s first name or first initial and last
29 name if:

30 “[(A)] **(i)** Encryption, redaction or other methods have not rendered the

1 data element or combination of data elements unusable; and

2 “[~~(B)~~] **(ii)** The data element or combination of data elements would enable
3 a person to commit identity theft against a consumer.

4 “[~~(c)~~] **(b)** ‘Personal information’ does not include information in a federal,
5 state or local government record, other than a Social Security number, that
6 is lawfully made available to the public.

7 “[~~(12)~~] **(14)** ‘Proper identification’ means written information or doc-
8 umentation that a consumer or representative can present to another person
9 as evidence of the consumer’s or representative’s identity, examples of which
10 include:

11 “(a) A valid Social Security number or a copy of a valid Social Security
12 card;

13 “(b) A certified or otherwise official copy of a birth certificate that a
14 governmental body issued; and

15 “(c) A copy of a driver license or other government-issued identification.

16 “[~~(13)~~] **(15)** ‘Protected consumer’ means an individual who is:

17 “(a) Not older than 16 years old at the time a representative requests a
18 security freeze on the individual’s behalf; or

19 “(b) Incapacitated or for whom a court or other authority has appointed
20 a guardian or conservator.

21 “[~~(14)~~] **(16)** ‘Protective record’ means information that a consumer re-
22 porting agency compiles to identify a protected consumer for whom the con-
23 sumer reporting agency has not prepared a consumer report.

24 “[~~(15)~~] **(17)** ‘Redacted’ means altered or truncated so that no more than
25 the last four digits of a Social Security number, driver license number, state
26 identification card number, passport number or other number issued by the
27 United States, financial account number, credit card number or debit card
28 number is visible or accessible.

29 “[~~(16)~~] **(18)** ‘Representative’ means a consumer who provides a consumer
30 reporting agency with sufficient proof of the consumer’s authority to act on

1 a protected consumer's behalf.

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

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

11 "646A.604. (1) **If** a person [*that*] owns or licenses personal information
12 that the person uses in the course of the person's business, vocation, occu-
13 pation or volunteer activities, **or that the person possesses or has access**
14 **to as a direct or indirect result of the person's or another person's**
15 **transaction with a consumer**, and [*that*] **the personal information** was
16 subject to a breach of security, **the person** shall give notice of the breach
17 of security to:

18 "(a) The consumer to whom the personal information pertains [*after the*
19 *person discovers the breach of security or after the person receives notice of a*
20 *breach of security under subsection (2) of this section. The person shall notify*
21 *the consumer in the most expeditious manner possible, without unreasonable*
22 *delay, consistent with the legitimate needs of law enforcement described in*
23 *subsection (3) of this section and consistent with any measures that are nec-*
24 *essary to determine sufficient contact information for the affected consumer,*
25 *determine the scope of the breach of security and restore the reasonable integ-*
26 *riety, security and confidentiality of the personal information*].

27 "(b) The Attorney General, either in writing or electronically, if the
28 number of consumers to whom the person must send the notice described in
29 paragraph (a) of this subsection exceeds 250. [*The person shall disclose the*
30 *breach of security to the Attorney General in the manner described in para-*

1 *graph (a) of this subsection.]*

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

5 “(3)(a) **Except as provided in paragraph (b) of this subsection, a**
6 **person that must give notice of a breach of security under subsection**
7 **(1) or (2) of this section shall give the notice in the most expeditious**
8 **manner possible, without unreasonable delay, but not later than 45**
9 **days after discovering or receiving notification of the breach of secu-**
10 **rity. In providing the notice, the person shall undertake any measures**
11 **that are necessary to:**

12 “(A) **Determine sufficient contact information for the intended re-**
13 **cipient of the notice;**

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

15 “(C) **Restore the reasonable integrity, security and confidentiality**
16 **of the personal information.**

17 “(b) A person that [*owns or licenses personal information*] **must give**
18 **notice of a breach of security under subsection (1) or (2) of this section**
19 **may delay [*notifying a consumer of a breach of security*] giving the notice**
20 **only if a law enforcement agency determines that a notification will impede**
21 **a criminal investigation and if the law enforcement agency requests in**
22 **writing that the person delay the notification.**

23 “(4) For purposes of this section, a person that owns or licenses personal
24 information, **or possesses or has access to personal information as a**
25 **result of a transaction with a consumer,** may notify [*a*] **the** consumer of
26 a breach of security:

27 “(a) In writing;

28 “(b) Electronically, if the person customarily communicates with the
29 consumer electronically or if the notice is consistent with the provisions
30 regarding electronic records and signatures set forth in the Electronic Sig-

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

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

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

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

12 “(B) Notifying major statewide television and newspaper media.

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

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

15 “(b) The approximate date of the breach of security;

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

18 “(d) Contact information for the person that owned or licensed, **or pos-**
19 **sessed or had access to as a result of a transaction with a consumer,**
20 the personal information that was subject to the breach of security;

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

22 “(f) Advice to the consumer to report suspected identity theft to law
23 enforcement, including the Attorney General and the Federal Trade Com-
24 mission.

25 “(6) If a person discovers a breach of security that affects more than 1,000
26 consumers, the person shall notify, without unreasonable delay, all consumer
27 reporting agencies that compile and maintain reports on consumers on a
28 nationwide basis of the timing, distribution and content of the notice the
29 person gave to affected consumers and shall include in the notice any police
30 report number assigned to the breach of security. A person may not delay

1 notifying affected consumers of a breach of security in order to notify con-
2 sumer reporting agencies.

3 **“(7)(a) If a person must notify a consumer of a breach of security**
4 **under this section and, in connection with the notification, the person**
5 **offers to provide credit monitoring services or identity theft pre-**
6 **vention and mitigation services without charge to the consumer, the**
7 **person may not condition the person’s provision of the services on the**
8 **consumer’s providing the person with a credit or debit card number**
9 **or on the consumer’s acceptance of any other service the person offers**
10 **to provide for a fee.**

11 **“(b) If a person offers additional credit monitoring services or**
12 **identity theft prevention and mitigation services for a fee to a con-**
13 **sumer under the circumstances described in paragraph (a) of this**
14 **subsection, the person must clearly and conspicuously disclose in the**
15 **offer for the additional credit monitoring services or identity theft**
16 **prevention and mitigation services that the person will charge the**
17 **consumer a fee.**

18 **“[(7)] (8) Notwithstanding subsection (1) of this section, a person does not**
19 **need to notify consumers of a breach of security if, after an appropriate in-**
20 **vestigation or after consultation with relevant federal, state or local law**
21 **enforcement agencies, the person reasonably determines that the consumers**
22 **whose personal information was subject to the breach of security are un-**
23 **likely to suffer harm. The person must document the determination in writ-**
24 **ing and maintain the documentation for at least five years.**

25 **“[(8)] (9) This section does not apply to:**

26 **“(a) A person that complies with notification requirements or procedures**
27 **for a breach of security that the person’s primary or functional federal reg-**
28 **ulator adopts, promulgates or issues in rules, regulations, procedures,**
29 **guidelines or guidance, if the rules, regulations, procedures, guidelines or**
30 **guidance provide greater protection to personal information and disclosure**

1 requirements at least as thorough as the protections and disclosure require-
2 ments provided under this section.

3 “(b) A person that complies with a state or federal law that provides
4 greater protection to personal information and disclosure requirements at
5 least as thorough as the protections and disclosure requirements provided
6 under this section.

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

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

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

27 “(d) A person that is subject to and that complies with the regu-
28 lations set forth in 45 C.F.R. parts 160 and 164, as in effect on the ef-
29 fective date of this 2018 Act, if the regulations provide protections and
30 disclosure requirements that are as stringent and thorough as, or

1 **more stringent and thorough than, the protections and disclosure re-**
2 **quirements set forth in this section.**

3 **“(10) Notwithstanding the exemptions set forth in subsection (9) of**
4 **this section, a person shall provide to the Attorney General within a**
5 **reasonable time a copy of any notice the person sends to consumers**
6 **or to the person’s primary or functional regulator in compliance with**
7 **this section or with other state or federal laws or regulations that**
8 **apply to the person as a consequence of a breach of security.**

9 “[~~(9)(a)~~] **(11)(a)** A person’s violation of a provision of ORS 646A.600 to
10 646A.628 is an unlawful practice under ORS 646.607.

11 “(b) The rights and remedies available under this section are cumulative
12 and are in addition to any other rights or remedies that are available under
13 law.

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

15 “646A.606. (1) A consumer may elect to place a security freeze on the
16 consumer’s consumer report or, if the consumer is a representative, on a
17 protected consumer’s consumer report or protective record by sending a
18 written request to a consumer reporting agency at an address the agency
19 designates to receive such requests, or a secure electronic request at a
20 website the agency designates to receive such requests if the consumer re-
21 porting agency, at the agency’s discretion, makes a secure electronic method
22 available.

23 “(2) If the consumer or protected consumer is the victim of identity theft
24 or has reported a theft of personal information to a law enforcement agency,
25 the consumer or representative may include a copy of the police report, in-
26 cident report or identity theft declaration.

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

29 “(b)(A) In addition to the information [*and fee*] described in paragraph (a)
30 of this subsection, a representative who seeks to place a security freeze on

1 a protected consumer's consumer report or protective record shall provide
2 sufficient proof of the representative's authority to act on the protected
3 consumer's behalf.

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

6 “(i) A court order that identifies or describes the relationship between the
7 representative and the protected consumer;

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

10 “(iii) A written affidavit that the representative signs and has notarized
11 in which the representative expressly describes the relationship between the
12 representative and the protected consumer and the representative's authority
13 to act on the protected consumer's behalf.

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

17 “(b) Information from a protective record may not be released until the
18 protected consumer for whom the consumer reporting agency created the
19 protective record, or a representative of the protected consumer, removes the
20 security freeze.

21 “(5) This section does not prevent a consumer reporting agency from ad-
22 vising a third party that a security freeze is in effect with respect to the
23 consumer report or protective record.

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

25 “646A.608. (1)(a) A consumer reporting agency shall place a security
26 freeze on a consumer report not later than five business days after receiving
27 from a consumer:

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

29 “(B) Proper identification.[]; *and*]

30 “[*(C) A fee, if applicable.*]

1 “(b) If a consumer report does not exist for a protected consumer on be-
2 half of whom a representative seeks to place a security freeze, a consumer
3 reporting agency shall create a protective record after receiving from the
4 representative the request described in ORS 646A.606 (1), proper identifica-
5 tion for both the representative and the protected consumer and sufficient
6 proof of authority, as described in ORS 646A.606 (3)(b). After creating a
7 protective record for a protected consumer under this paragraph, the con-
8 sumer reporting agency shall place the security freeze that the representative
9 requested on the protected consumer’s protective record.

10 “(c) The protective record that the consumer reporting agency creates
11 under paragraph (b) of this subsection does not need to contain any infor-
12 mation other than the protected consumer’s personal information, if other
13 information for the protected consumer is not available. Except as provided
14 in ORS 646A.614, a consumer reporting agency may not use or release to
15 another person the information in a protective record for the purpose of as-
16 sessing a protected consumer’s eligibility or capacity for an extension of
17 credit, as a basis for evaluating a protected consumer’s character, reputation
18 or personal characteristics or for other purposes that are not related to
19 protecting the protected consumer from identity theft.

20 “(2)(a) [*The*] **A** consumer reporting agency shall send a written confirma-
21 tion of a security freeze on a consumer’s consumer report to the consumer
22 at the last known address for the consumer shown in the consumer report
23 that the consumer reporting agency maintains, within 10 business days after
24 placing the security freeze and, with the confirmation, shall provide the
25 consumer with a unique personal identification number or password or sim-
26 ilar device the consumer must use to authorize the consumer reporting
27 agency to release the consumer’s consumer report for a specific period of
28 time or to permanently remove the security freeze. The consumer reporting
29 agency shall include with the written confirmation information that de-
30 scribes how to remove a security freeze and how to temporarily lift a secu-

1 rity freeze on a consumer report, other than a consumer report for a
2 protected consumer, in order to allow access to information from the
3 consumer's consumer report for a period of time while the security freeze is
4 in place.

5 “(b) This subsection does not require a consumer reporting agency to
6 provide a consumer or representative with a personal identification number
7 or password for the consumer or representative to use to authorize the con-
8 sumer reporting agency to release information from a protective record.

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

14 “(A) Proper identification;

15 “(B) The unique personal identification number or password or similar
16 device the consumer reporting agency provided under subsection (2) of this
17 section; **and**

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

20 “[*D*] A fee, if applicable.]

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

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

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

30 “(a) Proper identification;

1 “(b) The unique personal identification number or password or similar
2 device the consumer reporting agency provided under subsection (2) of this
3 section; **and**

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

6 “[*d*) A fee, if applicable.]

7 “(5)(a) A security freeze for a consumer report must remain in place until
8 the consumer requests, using a point of contact the consumer reporting
9 agency designates, that the security freeze be removed. A consumer reporting
10 agency shall remove a security freeze within three business days after re-
11 ceiving a request for removal from the consumer, who provides:

12 “(A) Proper identification; **and**

13 “(B) The unique personal identification number or password or similar
14 device the consumer reporting agency provided under subsection (2) of this
15 section.[; *and*]

16 “[*C*) A fee, if applicable.]

17 “(b) A security freeze for a protective record must remain in place until
18 the protected consumer or a representative requests, using a point of contact
19 the consumer reporting agency designates, that the security freeze be re-
20 moved or that the protective record be deleted. The consumer reporting
21 agency does not have an affirmative duty to notify the protected consumer
22 or the representative that a security freeze is in place or to remove the se-
23 curity freeze or delete the protective record once the protected consumer is
24 no longer a protected consumer. A protected consumer or a representative
25 has the affirmative duty to request that the consumer reporting agency re-
26 move the security freeze or delete the protective record. A consumer report-
27 ing agency shall remove a security freeze or delete a protective record within
28 30 business days after receiving a request for removal or deletion from the
29 protected consumer or a representative, who provides:

30 “(A) Proper identification;

1 “(B) Sufficient proof of authority, as described in ORS 646A.606 (3)(b), if
2 the representative seeks to remove the security freeze or delete the protec-
3 tive record; **and**

4 “(C) Proof that the representative’s authority to act on the protected
5 consumer’s behalf is no longer valid or applicable, if the protected consumer
6 seeks to remove the security freeze or delete the protective record.]; *and*]

7 “[*(D) A fee, if applicable.*]

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

9 “646A.610. *[(1) A consumer reporting agency may not charge a fee to a*
10 *consumer or a protected consumer who is the victim of identity theft or to a*
11 *consumer who has reported or a protected consumer for whom a representative*
12 *has reported to a law enforcement agency the theft of personal information,*
13 *provided the consumer or the representative has submitted to the consumer*
14 *reporting agency a copy of a valid police report, incident report or identity theft*
15 *declaration.]*

16 “[*(2)(a) A consumer reporting agency may charge a reasonable fee of not*
17 *more than \$10 to a consumer, other than a consumer described in subsection*
18 *(1) of this section, for each placement of a security freeze, temporary lift of the*
19 *security freeze, removal of the security freeze or replacing a lost personal*
20 *identification number or password previously provided to the consumer.]*

21 “[*(b)(A) Except as provided in subsection (1) of this section and in sub-*
22 *paragraph (B) of this paragraph, a consumer reporting agency may charge a*
23 *reasonable fee of not more than \$10 to place or remove a security freeze for a*
24 *protected consumer’s consumer report or protective record or to create or delete*
25 *a protective record for a protected consumer.]*

26 “[*(B) A consumer reporting agency may not charge a fee to place or remove*
27 *a security freeze on an existing consumer report or protective record for a*
28 *protected consumer who is under 16 years of age at the time a representative*
29 *requests the consumer reporting agency to place or remove the security*
30 *freeze.]*

1 **“A consumer reporting agency may not charge a consumer a fee**
2 **or collect from a consumer any money or item of value for:**

3 **“(1) Placing, temporarily lifting or removing a security freeze on**
4 **the consumer’s consumer report.**

5 **“(2) Creating or deleting a protective record.**

6 **“(3) Placing or removing a security freeze on a protective record for**
7 **a protected consumer.**

8 **“(4) Replacing a lost personal identification number, password or**
9 **similar device the consumer reporting agency previously provided to**
10 **the consumer.**

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

12 **“646A.622. (1) A person that owns, maintains or otherwise possesses, or**
13 **has control over or access to,** data that includes [*a consumer’s*] personal
14 information that the person uses in the course of the person’s business, vo-
15 cation, occupation or volunteer activities shall develop, implement and
16 maintain reasonable safeguards to protect the security, confidentiality and
17 integrity of the personal information, including safeguards that protect the
18 personal information when the person disposes of the personal information.

19 **“(2) A person complies with subsection (1) of this section if the person:**

20 **“(a) Complies with a state or federal law that provides greater protection**
21 **to personal information than the protections that this section provides.**

22 **“(b) Complies with regulations promulgated under Title V of the Gramm-**
23 **Leach-Bliley Act of 1999 (15 U.S.C. 6801 to 6809) as in effect on [*January 1,***
24 **2016] the effective date of this 2018 Act,** if the person is subject to the
25 Act.

26 **“(c) Complies with regulations that implement the Health Insurance Por-**
27 **tability and Accountability Act of 1996 (45 C.F.R. parts 160 and 164) as in**
28 **effect on [*January 1, 2016] the effective date of this 2018 Act,*** if the person
29 is subject to the Act.

30 **“(d) Implements an information security program that includes:**

1 “(A) Administrative safeguards such as:

2 “(i) Designating one or more employees to coordinate the security pro-

3 gram;

4 “(ii) Identifying reasonably foreseeable internal and external risks **with**

5 **reasonable regularity**;

6 “(iii) Assessing whether existing safeguards adequately control the iden-

7 tified risks;

8 “(iv) Training and managing employees in security program practices and

9 procedures **with reasonable regularity**;

10 “(v) Selecting service providers that are capable of maintaining appro-

11 priate safeguards **and adhering to procedures and protocols to which the**

12 **person and the service provider agree**, and requiring the service providers

13 by contract to maintain the safeguards, **procedures and protocols**; [*and*]

14 “(vi) Adjusting the security program in light of business changes, **po-**

15 **tential threats** or new circumstances;

16 “(vii) **Monitoring, verifying, logging and disseminating information**

17 **about security updates and upgrades to software that might be at risk**

18 **of or vulnerable to a breach of security**; and

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

20 “(B) Technical safeguards such as:

21 “(i) Assessing risks **and vulnerabilities** in network and software design

22 **and in information collection, processing, transmission, retention, ac-**

23 **cess, storage and disposal and taking timely action to address the risks**

24 **and vulnerabilities with reasonable regularity**;

25 “[(ii) *Assessing risks in information processing, transmission and*

26 *storage*;]

27 “(ii) **Applying security updates and upgrades to software that might**

28 **be at risk of or vulnerable to a breach of security**;

29 “(iii) **Monitoring**, detecting, preventing and responding to attacks or

30 system failures; [*and*]

1 “(iv) Testing and monitoring regularly the effectiveness of key controls,
2 systems and procedures **and taking action to reduce or eliminate weak-**
3 **nesses, deficiencies and risks in the controls, systems and procedures;**
4 and

5 “(v) **Isolating and segregating personal information from other in-**
6 **formation and ensuring that only authorized individuals have access**
7 **to the personal information; and**

8 “(C) Physical safeguards such as:

9 “(i) Assessing **known and potential** risks of information **collection,**
10 **storage, usage, retention, access** and disposal **and implementing meth-**
11 **ods to remedy or mitigate identified risks;**

12 “(ii) **Monitoring,** detecting, preventing, **isolating** and responding to in-
13 **trusions timely and with reasonable regularity;**

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

17 “(iv) Disposing of personal information, **whether on or off the person’s**
18 **premises or property,** after the person no longer needs the personal infor-
19 mation for business purposes or as required by local, state or federal law by
20 burning, pulverizing, shredding or modifying a physical record and by de-
21 stroying or erasing electronic media so that the information cannot be read
22 or reconstructed.

23 “(3) A person complies with subsection (2)(d)(C)(iv) of this section if the
24 person contracts with another person engaged in the business of record de-
25 struction to dispose of personal information in a manner that is consistent
26 with subsection (2)(d)(C)(iv) of this section.

27 “(4) Notwithstanding subsection (2) of this section, a person that is an
28 owner of a small business as defined in ORS 285B.123 (2) complies with
29 subsection (1) of this section if the person’s information security and disposal
30 program contains administrative, technical and physical safeguards and dis-

1 posal measures that are appropriate for the size and complexity of the small
2 business, the nature and scope of the small business’s activities, and the
3 sensitivity of the personal information the small business collects from or
4 about consumers.

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

7 “646.608. (1) A person engages in an unlawful practice if in the course of
8 the person’s business, vocation or occupation the person does any of the
9 following:

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

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

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

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

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

24 “(f) Represents that real estate or goods are original or new if the real
25 estate or goods are deteriorated, altered, reconditioned, reclaimed, used or
26 secondhand.

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

30 “(h) Disparages the real estate, goods, services, property or business of a

1 customer or another by false or misleading representations of fact.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 “(w) Manufactures mercury fever thermometers.

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

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

16 “(B) Supplied with instructions on the careful handling of the
17 thermometer to avoid breakage and on the proper cleanup of mercury should
18 breakage occur.

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

27 “(z) Sells or offers for sale a motor vehicle manufactured after January
28 1, 2006, that contains mercury light switches.

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

30 “(bb) Violates ORS 646A.070 (1).

- 1 “(cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 2 “(dd) Violates the provisions of ORS 128.801 to 128.898.
- 3 “(ee) Violates ORS 646.883 or 646.885.
- 4 “(ff) Violates ORS 646.569.
- 5 “(gg) Violates the provisions of ORS 646A.142.
- 6 “(hh) Violates ORS 646A.360.
- 7 “(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 8 “(jj) Violates ORS 646.563.
- 9 “(kk) Violates ORS 759.680 or any rule adopted pursuant thereto.
- 10 “(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any
11 rule adopted pursuant thereto.
- 12 “(mm) Violates ORS 646A.210 or 646A.214.
- 13 “(nn) Violates any provision of ORS 646A.124 to 646A.134.
- 14 “(oo) Violates ORS 646A.095.
- 15 “(pp) Violates ORS 822.046.
- 16 “(qq) Violates ORS 128.001.
- 17 “(rr) Violates ORS 646A.800 (2) to (4).
- 18 “(ss) Violates ORS 646A.090 (2) to (5).
- 19 “(tt) Violates ORS 87.686.
- 20 “(uu) Violates ORS 646A.803.
- 21 “(vv) Violates ORS 646A.362.
- 22 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or
23 646A.054.
- 24 “(xx) Violates ORS 180.440 (1) or 180.486 (1).
- 25 “(yy) Commits the offense of acting as a vehicle dealer without a certif-
26 icate under ORS 822.005.
- 27 “(zz) Violates ORS 87.007 (2) or (3).
- 28 “(aaa) Violates ORS 92.405 (1), (2) or (3).
- 29 “(bbb) Engages in an unlawful practice under ORS 646.648.
- 30 “(ccc) Violates ORS 646A.365.

1 “(ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted un-
2 der ORS 98.864.

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

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

5 “(ggg) Violates ORS 646A.430 to 646A.450.

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

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

8 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning
9 or declaration described in ORS 646A.530 is issued for the children’s product,
10 as defined in ORS 646A.525, that is the subject of the violation.

11 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,
12 697.682, 697.692 or 697.707.

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

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

17 “(nnn) Violates ORS 646A.082.

18 “(ooo) Violates ORS 646.647.

19 “(ppp) Violates ORS 646A.115.

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

21 “(rrr) Violates ORS 646A.092.

22 “(sss) Violates a provision of ORS 646.644.

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

24 “(uuu) Violates ORS 646A.564.

25 “(vvv) Engages in the business of, or acts in the capacity of, an immi-
26 gration consultant, as defined in ORS 9.280, in this state and for compen-
27 sation, unless federal law authorizes the person to do so or unless the person
28 is an active member of the Oregon State Bar.

29 “(www) Violates ORS 702.012, 702.029 or 702.054.

30 “(xxx) Violates ORS 646A.806.

1 “(yyy) Violates ORS 646A.810 (2).

2 “(zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws
3 2015.

4 “(aaaa) **Violates a provision of ORS 646A.600 to 646A.628.**

5 “(2) A representation under subsection (1) of this section or ORS 646.607
6 may be any manifestation of any assertion by words or conduct, including,
7 but not limited to, a failure to disclose a fact.

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

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

15 “(5) Notwithstanding any other provision of ORS 336.184 and 646.605 to
16 646.652, if an action or suit is brought under subsection (1)(xx) of this section
17 by a person other than a prosecuting attorney, relief is limited to an in-
18 junction and the prevailing party may be awarded reasonable attorney fees.

19 “**SECTION 8.** ORS 646.608 is amended to read:

20 “646.608. (1) A person engages in an unlawful practice if in the course of
21 the person’s business, vocation or occupation the person does any of the
22 following:

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

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

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

30 “(d) Uses deceptive representations or designations of geographic origin

1 in connection with real estate, goods or services.

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

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

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

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

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

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

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

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

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

30 “(n) Solicits potential customers by telephone or door to door as a seller

1 unless the person provides the information required under ORS 646.611.

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

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

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

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

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

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

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

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

25 “(w) Manufactures mercury fever thermometers.

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

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

29 “(B) Supplied with instructions on the careful handling of the
30 thermometer to avoid breakage and on the proper cleanup of mercury should

1 breakage occur.

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

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

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

13 “(bb) Violates ORS 646A.070 (1).

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

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

16 “(ee) Violates ORS 646.883 or 646.885.

17 “(ff) Violates ORS 646.569.

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

19 “(hh) Violates ORS 646A.360.

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

21 “(jj) Violates ORS 646.563.

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

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

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

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

27 “(oo) Violates ORS 646A.095.

28 “(pp) Violates ORS 822.046.

29 “(qq) Violates ORS 128.001.

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

1 “(ss) Violates ORS 646A.090 (2) to (5).
2 “(tt) Violates ORS 87.686.
3 “(uu) Violates ORS 646A.803.
4 “(vv) Violates ORS 646A.362.
5 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or
6 646A.054.
7 “(xx) Violates ORS 180.440 (1) or 180.486 (1).
8 “(yy) Commits the offense of acting as a vehicle dealer without a certifi-
9 cate under ORS 822.005.
10 “(zz) Violates ORS 87.007 (2) or (3).
11 “(aaa) Violates ORS 92.405 (1), (2) or (3).
12 “(bbb) Engages in an unlawful practice under ORS 646.648.
13 “(ccc) Violates ORS 646A.365.
14 “(ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted un-
15 der 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 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 ORS 443.376.
18 “**(bbbb) Violates a provision of ORS 646A.600 to 646A.628.**
19 “(2) A representation under subsection (1) of this section or ORS 646.607
20 may be any manifestation of any assertion by words or conduct, including,
21 but not limited to, a failure to disclose a fact.
22 “(3) In order to prevail in an action or suit under ORS 336.184 and 646.605
23 to 646.652, a prosecuting attorney need not prove competition between the
24 parties or actual confusion or misunderstanding.
25 “(4) An action or suit may not be brought under subsection (1)(u) of this
26 section unless the Attorney General has first established a rule in accord-
27 ance with the provisions of ORS chapter 183 declaring the conduct to be
28 unfair or deceptive in trade or commerce.
29 “(5) Notwithstanding any other provision of ORS 336.184 and 646.605 to
30 646.652, if an action or suit is brought under subsection (1)(xx) of this section

1 by a person other than a prosecuting attorney, relief is limited to an in-
2 junction and the prevailing party may be awarded reasonable attorney fees.

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

7 “646.608. (1) A person engages in an unlawful practice if in the course of
8 the person’s business, vocation or occupation the person does any of the
9 following:

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

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

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

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

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

24 “(f) Represents that real estate or goods are original or new if the real
25 estate or goods are deteriorated, altered, reconditioned, reclaimed, used or
26 secondhand.

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

30 “(h) Disparages the real estate, goods, services, property or business of a

1 customer or another by false or misleading representations of fact.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 “(w) Manufactures mercury fever thermometers.

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

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

16 “(B) Supplied with instructions on the careful handling of the
17 thermometer to avoid breakage and on the proper cleanup of mercury should
18 breakage occur.

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

27 “(z) Sells or offers for sale a motor vehicle manufactured after January
28 1, 2006, that contains mercury light switches.

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

30 “(bb) Violates ORS 646A.070 (1).

- 1 “(cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 2 “(dd) Violates the provisions of ORS 128.801 to 128.898.
- 3 “(ee) Violates ORS 646.883 or 646.885.
- 4 “(ff) Violates ORS 646.569.
- 5 “(gg) Violates the provisions of ORS 646A.142.
- 6 “(hh) Violates ORS 646A.360.
- 7 “(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 8 “(jj) Violates ORS 646.563.
- 9 “(kk) Violates ORS 759.680 or any rule adopted pursuant thereto.
- 10 “(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any
11 rule adopted pursuant thereto.
- 12 “(mm) Violates ORS 646A.210 or 646A.214.
- 13 “(nn) Violates any provision of ORS 646A.124 to 646A.134.
- 14 “(oo) Violates ORS 646A.095.
- 15 “(pp) Violates ORS 822.046.
- 16 “(qq) Violates ORS 128.001.
- 17 “(rr) Violates ORS 646A.800 (2) to (4).
- 18 “(ss) Violates ORS 646A.090 (2) to (5).
- 19 “(tt) Violates ORS 87.686.
- 20 “(uu) Violates ORS 646A.803.
- 21 “(vv) Violates ORS 646A.362.
- 22 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or
23 646A.054.
- 24 “(xx) Violates ORS 180.440 (1) or 180.486 (1).
- 25 “(yy) Commits the offense of acting as a vehicle dealer without a certif-
26 icate under ORS 822.005.
- 27 “(zz) Violates ORS 87.007 (2) or (3).
- 28 “(aaa) Violates ORS 92.405 (1), (2) or (3).
- 29 “(bbb) Engages in an unlawful practice under ORS 646.648.
- 30 “(ccc) Violates ORS 646A.365.

1 “(ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted un-
2 der ORS 98.864.

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

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

5 “(ggg) Violates ORS 646A.430 to 646A.450.

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

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

8 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning
9 or declaration described in ORS 646A.530 is issued for the children’s product,
10 as defined in ORS 646A.525, that is the subject of the violation.

11 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,
12 697.682, 697.692 or 697.707.

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

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

17 “(nnn) Violates ORS 646A.082.

18 “(ooo) Violates ORS 646.647.

19 “(ppp) Violates ORS 646A.115.

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

21 “(rrr) Violates ORS 646A.092.

22 “(sss) Violates a provision of ORS 646.644.

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

24 “(uuu) Violates ORS 646A.564.

25 “(vvv) Engages in the business of, or acts in the capacity of, an immi-
26 gration consultant, as defined in ORS 9.280, in this state and for compen-
27 sation, unless federal law authorizes the person to do so or unless the person
28 is an active member of the Oregon State Bar.

29 “(www) Violates ORS 702.012, 702.029 or 702.054.

30 “(xxx) Violates ORS 646A.806.

1 “(yyy) Violates ORS 646A.810 (2).

2 “(zzz) Violates ORS 443.376.

3 **“(aaaa) Violates a provision of ORS 646A.600 to 646A.628.**

4 “(2) A representation under subsection (1) of this section or ORS 646.607
5 may be any manifestation of any assertion by words or conduct, including,
6 but not limited to, a failure to disclose a fact.

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

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

14 “(5) Notwithstanding any other provision of ORS 336.184 and 646.605 to
15 646.652, if an action or suit is brought under subsection (1)(xx) of this section
16 by a person other than a prosecuting attorney, relief is limited to an in-
17 junction and the prevailing party may be awarded reasonable attorney fees.

18 **“SECTION 10. The amendments to ORS 646.608, 646A.602, 646A.604,
19 646A.606, 646A.608, 646A.610 and 646A.622 by sections 1 to 9 of this 2018
20 Act apply to contracts into which a person enters with another person
21 on or after the effective date of this 2018 Act.**

22 **“SECTION 11. This 2018 Act takes effect on the 91st day after the
23 date on which the 2018 regular session of the Seventy-ninth Legislative
24 Assembly adjourns sine die.”**

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