

Senate Bill 728

Sponsored by COMMITTEE ON JUDICIARY (at the request of Danny Lang)

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 **as introduced**.

Includes insurance in definition of real estate, goods and services that are subject to penalties for unlawful trade practices.

Permits person to obtain, and court to award, appropriate equitable relief in addition to monetary damages under Unlawful Trade Practices Act.

Requires Director of Department of Consumer and Business Services to request action before prosecuting attorney may take action under Unlawful Trade Practices Act against act or practice related to insurance.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to unlawful trade practices; creating new provisions; amending ORS 646.605, 646.608,
3 646.612, 646.636, 646.638 and 646.648; and declaring an emergency.

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

5 **SECTION 1.** ORS 646.605 is amended to read:

6 646.605. As used in ORS 336.184 and 646.605 to 646.652:

7 (1) "Appropriate court" means the circuit court of a county:

8 (a) [*Where one or more of the defendants reside*] **In which a defendant resides;**

9 (b) [*Where one or more of the defendants maintain*] **In which a defendant maintains** a principal
10 place of business;

11 (c) [*Where one or more of the defendants are*] **In which a defendant is** alleged to have committed
12 an act prohibited by ORS 336.184 and 646.605 to 646.652; or

13 (d) With [*the*] **a** defendant's consent, [*where*] **in which** the prosecuting attorney maintains an
14 office.

15 (2) "Documentary material" means the original or a copy of any book, record, report, memo-
16 randum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or
17 other tangible document or recording, wherever [*situate*] **located**.

18 (3) "Examination" [*of documentary material includes inspection, study*] **means inspecting,**
19 **studying** or copying [*of any such*] **documentary** material[,] and taking testimony under oath or ac-
20 knowledgment [*regarding any documentary material or copy thereof*] **about the documentary ma-**
21 **terial or a copy of the documentary material.**

22 (4) "Person" means **a** natural [*persons, corporations, trusts, partnerships,*] **person, a corporation,**
23 **a trust, a partnership, an** incorporated or unincorporated [*associations*] **association** and any other
24 legal entity except [*bodies or officers*] **a body or officer that is** acting under **the** statutory authority
25 of this state or the United States.

26 (5) "Prosecuting attorney" means the Attorney General or the district attorney of any county
27 in which a violation of ORS 336.184 and 646.605 to 646.652 is alleged to have occurred.

28 (6)(a) "Real estate, goods or services" means [*those*] **real estate, goods or services, including**

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 **insurance**, that are or may be obtained primarily for personal, family or household purposes **that**,
 2 **with respect to insurance, are or may be obtained for purposes other than personal, family**
 3 **or household purposes**, or that are or may be obtained for any purposes as a result of a telephone
 4 solicitation, and includes loans and extensions of credit[, and franchises, distributorships and other
 5 similar business opportunities[, *but does not include insurance*].

6 (b) Notwithstanding paragraph (a) of this subsection[:],

7 [(A) “*Real estate*” does not cover conduct covered by ORS chapter 90.]

8 [(B)] “loans and extensions of credit” does not include transactions [*involving*] **that involve** a
 9 pawnbroker, as defined in ORS 726.010, that [*is required to*] **must** be licensed under ORS chapter
 10 726.

11 (7) “Telephone solicitation” means a solicitation [*where*] **in which** a person, in the course of the
 12 person’s business, vocation or occupation, uses a telephone or an automatic dialing-announcing de-
 13 vice to initiate telephonic contact with a potential customer and the person is not one of the fol-
 14 lowing:

15 (a) [A *person who is*] A broker-dealer or salesperson licensed under ORS 59.175, or a mortgage
 16 banker or mortgage broker licensed under ORS 86A.106, [*when*] **if** the solicitation is for a security
 17 qualified for sale [*pursuant to*] **under** ORS 59.055.

18 (b) A real estate licensee or a person who is otherwise authorized to engage in professional real
 19 estate activity [*pursuant to*] **under** ORS chapter 696, [*when*] **if** the solicitation involves professional
 20 real estate activity.

21 (c) A person licensed or exempt from licensure as a builder [*pursuant to*] **under** ORS chapter
 22 701, [*when*] **if** the solicitation involves [*the construction, alteration, repair, improvement or demolition*
 23 *of*] **constructing, altering, repairing, improving or demolishing** a structure.

24 [(d) A *person licensed or otherwise authorized to sell insurance as an insurance producer pursuant*
 25 *to ORS chapter 744, when the solicitation involves insurance.*]

26 [(e)] (d) A person [*soliciting*] **that solicits** the sale of a newspaper of general circulation, a
 27 magazine or membership in a book or record club who complies with ORS 646.611, [*when*] **if** the
 28 solicitation involves newspapers, magazines or membership in a book or record club.

29 [(f)] (e) A person [*soliciting*] **that solicits**, without the intent to complete, and who does not
 30 complete [*the*] a sales presentation during the telephone solicitation and [*who*] **that** only completes
 31 the sales presentation at a later face-to-face meeting between the [*solicitor*] **person** and the pro-
 32 spective purchaser.

33 [(g)] (f) A supervised financial institution or parent, subsidiary or affiliate [*thereof*] **of a super-**
 34 **vised financial institution**. As used in this paragraph, “supervised financial institution” means any
 35 financial institution or trust company, as those terms are defined in ORS 706.008, or any personal
 36 property broker, consumer finance lender, commercial finance lender or insurer that is subject to
 37 regulation by an official or agency of this state or of the United States.

38 [(h)] (g) A person [*who*] **that** is authorized to conduct prearrangement or preconstruction fu-
 39 neral or cemetery sales[, *pursuant to*] **under** ORS chapter 692, [*when*] **if** the solicitation involves
 40 prearrangement or preconstruction funeral or cemetery plans.

41 [(i)] (h) A person [*who*] **that** solicits the services [*provided by*] **that** a cable television system
 42 licensed or franchised [*pursuant to*] **under** state, local or federal law **provides**, [*when*] **if** the sol-
 43 icitation involves cable television services.

44 [(j)] (i) A person or affiliate of a person whose business is regulated by the Public Utility Com-
 45 mission [*of Oregon*].

1 [(k)] (j) A person who sells farm products, as defined [by] in ORS 576.006, if the [solicitation
2 neither intends to nor actually results] **person does not intend to complete a sale and the solici-**
3 **itation does not actually result** in a sale that costs the purchaser in excess of \$100.

4 [(L)] (k) An issuer or subsidiary of an issuer that has a class of securities that is subject to
5 section 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from reg-
6 istration under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

7 [(m)] (L) A person [soliciting exclusively] **that solicits only** the sale of telephone answering
8 services [to be provided by] that **the person or [that] the person's employer [when] will provide, if**
9 the solicitation involves answering services.

10 [(n)] (m) A telecommunications utility with access lines of 15,000 or less or a cooperative tele-
11 phone association, [when] **if** the solicitation involves regulated goods or services.

12 (8) "Trade" and "commerce" mean advertising, offering or distributing, whether by sale, rental
13 or otherwise, any real estate, goods or services, and include any trade or commerce **that** directly
14 or indirectly [affecting] **affects** the people of this state.

15 (9) "Unconscionable tactics" **means actions that** include, but are not limited to, actions [by]
16 **in** which a person:

17 (a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or ina-
18 bility to understand the language of the agreement;

19 (b) Knowingly permits a customer to enter into a transaction from which the customer will
20 derive no material benefit;

21 (c) Permits a customer to enter into a transaction [with knowledge that there is no reasonable
22 probability of payment of the attendant financial obligation in full by the customer when due] **knowing**
23 **that the customer does not have a reasonable probability of paying the attendant financial**
24 **obligation in full when due;** or

25 (d) Knowingly takes advantage of a customer who is a disabled veteran, a disabled
26 servicemember or a servicemember in active service, or the spouse of a disabled veteran, disabled
27 servicemember or servicemember in active service. For purposes of this paragraph:

28 (A) "Disabled veteran" has the meaning given that term in ORS 408.225.

29 (B) "Disabled servicemember" means a servicemember, as defined in 50 U.S.C. App. 511 as in
30 effect on [January 1, 2010] **the effective date of this 2019 Act**, who may be entitled to disability
31 compensation under laws administered by the United States Department of Veterans Affairs.

32 (C) "Servicemember in active service" means:

33 (i) A servicemember called into active service under Title 10 or Title 32 of the United States
34 Code as in effect on [January 1, 2010] **the effective date of this 2019 Act;** or

35 (ii) A servicemember on state active duty, as defined in the Oregon Code of Military Justice.

36 (10) [A willful violation occurs when the person committing the violation knew or should have
37 known that the conduct of the person was a violation] **"Willful" means a state of mind in which**
38 **a person that commits a violation knew or should have known that the person's conduct was**
39 **a violation.**

40 [(11) A loan is made "in close connection with the sale of a manufactured dwelling" if:]

41 [(a) The lender directly or indirectly controls, is controlled by or is under common control with the
42 seller, unless the relationship is remote and is not a factor in the transaction;]

43 [(b) The lender gives a commission, rebate or credit in any form to a seller who refers the borrower
44 to the lender, other than payment of the proceeds of the loan jointly to the seller and the borrower;]

45 [(c) The lender is related to the seller by blood or marriage;]

1 *[(d) The seller directly and materially assists the borrower in obtaining the loan;]*

2 *[(e) The seller prepares documents that are given to the lender and used in connection with the*
3 *loan; or]*

4 *[(f) The lender supplies documents to the seller used by the borrower in obtaining the loan.]*

5 **SECTION 2.** ORS 646.608 is amended to read:

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

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

9 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
10 approval, or certification of real estate, goods or services.

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
2 cize a product, business or service.
- 3 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
4 not to deliver the real estate, goods or services as promised.
- 5 (r) Organizes or induces or attempts to induce membership in a pyramid club.
- 6 (s) Makes false or misleading representations of fact concerning the offering price of, or the
7 person's cost for real estate, goods or services.
- 8 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
9 known material defect or material nonconformity.
- 10 (u) Engages in any other unfair or deceptive conduct in trade or commerce.
- 11 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,
12 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-
13 ation.
- 14 (w) Manufactures mercury fever thermometers.
- 15 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
16 law, or is:
- 17 (A) Prescribed by a person licensed under ORS chapter 677; and
18 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
19 on the proper cleanup of mercury should breakage occur.
- 20 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
21 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
22 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
23 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
24 graph, "thermostat" means a device commonly used to sense and, through electrical communication
25 with heating, cooling or ventilation equipment, control room temperature.
- 26 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
27 mercury light switches.
- 28 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 29 (bb) Violates ORS 646A.070 (1).
- 30 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 31 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 32 (ee) Violates ORS 646.883 or 646.885.
- 33 (ff) Violates ORS 646.569.
- 34 (gg) Violates the provisions of ORS 646A.142.
- 35 (hh) Violates ORS 646A.360.
- 36 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 37 (jj) Violates ORS 646.563.
- 38 (kk) Violates ORS 759.680 or any rule adopted pursuant thereto.
- 39 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
40 thereto.
- 41 (mm) Violates ORS 646A.210 or 646A.214.
- 42 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 43 (oo) Violates ORS 646A.095.
- 44 (pp) Violates ORS 822.046.
- 45 (qq) Violates ORS 128.001.

- 1 (rr) Violates ORS 646A.800 (2) to (4).
2 (ss) Violates ORS 646A.090 (2) to (5).
3 (tt) Violates ORS 87.686.
4 (uu) Violates ORS 646A.803.
5 (vv) Violates ORS 646A.362.
6 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 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 certificate under ORS 822.005.
9 (zz) Violates ORS 87.007 (2) or (3).
10 (aaa) Violates ORS 92.405 (1), (2) or (3).
11 (bbb) Engages in an unlawful practice under ORS 646.648.
12 (ccc) Violates ORS 646A.365.
13 (ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted under ORS 98.864.
14 (eee) Sells a gift card in violation of ORS 646A.276.
15 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
16 (ggg) Violates ORS 646A.430 to 646A.450.
17 (hhh) Violates a provision of ORS 744.318 to 744.384.
18 (iii) Violates a provision of ORS 646A.702 to 646A.720.
19 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
20 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
21 subject of the violation.
22 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
23 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
24 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
25 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
26 (nnn) Violates ORS 646A.082.
27 (ooo) Violates ORS 646.647.
28 (ppp) Violates ORS 646A.115.
29 (qqq) Violates a provision of ORS 646A.405.
30 (rrr) Violates ORS 646A.092.
31 (sss) Violates a provision of ORS 646.644.
32 (ttt) Violates a provision of ORS 646A.295.
33 (uuu) Violates ORS 646A.564.
34 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
35 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
36 do so or unless the person is an active member of the Oregon State Bar.
37 (www) Violates ORS 702.012, 702.029 or 702.054.
38 (xxx) Violates ORS 646A.806.
39 (yyy) Violates ORS 646A.810 (2).
40 (zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws 2015.
41 (aaaa) Violates ORS 443.376.
42 **(bbbb) Violates a provision of ORS 746.230.**
43 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
44 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
45 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-

1 cutting attorney need not prove competition between the parties or actual confusion or misunder-
2 standing.

3 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
4 torney General has first established a rule in accordance with the provisions of ORS chapter 183
5 declaring the conduct to be unfair or deceptive in trade or commerce. **The Attorney General may**
6 **not adopt a rule under this subsection with respect to conduct that is subject to the Insur-**
7 **ance Code unless the Attorney General first submits the proposed rule to the Director of the**
8 **Department of Consumer and Business Services for review and approval.**

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

13 **SECTION 3.** ORS 646.608, as amended by section 10, chapter 523, Oregon Laws 2015, section
14 15, chapter 113, Oregon Laws 2017, section 3, chapter 241, Oregon Laws 2017, section 16, chapter
15 480, Oregon Laws 2017, and section 6, chapter 656, Oregon Laws 2017, is amended to read:

16 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,
17 vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

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

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

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

42 (ee) Violates ORS 646.883 or 646.885.

43 (ff) Violates ORS 646.569.

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

45 (hh) Violates ORS 646A.360.

- 1 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 2 (jj) Violates ORS 646.563.
- 3 (kk) Violates ORS 759.680 or any rule adopted pursuant thereto.
- 4 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 5 thereto.
- 6 (mm) Violates ORS 646A.210 or 646A.214.
- 7 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 8 (oo) Violates ORS 646A.095.
- 9 (pp) Violates ORS 822.046.
- 10 (qq) Violates ORS 128.001.
- 11 (rr) Violates ORS 646A.800 (2) to (4).
- 12 (ss) Violates ORS 646A.090 (2) to (5).
- 13 (tt) Violates ORS 87.686.
- 14 (uu) Violates ORS 646A.803.
- 15 (vv) Violates ORS 646A.362.
- 16 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 17 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 18 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 19 (zz) Violates ORS 87.007 (2) or (3).
- 20 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 21 (bbb) Engages in an unlawful practice under ORS 646.648.
- 22 (ccc) Violates ORS 646A.365.
- 23 (ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted under ORS 98.864.
- 24 (eee) Sells a gift card in violation of ORS 646A.276.
- 25 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 26 (ggg) Violates ORS 646A.430 to 646A.450.
- 27 (hhh) Violates a provision of ORS 744.318 to 744.384.
- 28 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 29 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 30 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 31 subject of the violation.
- 32 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 33 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 34 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 35 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 36 (nnn) Violates ORS 646A.082.
- 37 (ooo) Violates ORS 646.647.
- 38 (ppp) Violates ORS 646A.115.
- 39 (qqq) Violates a provision of ORS 646A.405.
- 40 (rrr) Violates ORS 646A.092.
- 41 (sss) Violates a provision of ORS 646.644.
- 42 (ttt) Violates a provision of ORS 646A.295.
- 43 (uuu) Violates ORS 646A.564.
- 44 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
- 45 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to

1 do so or unless the person is an active member of the Oregon State Bar.

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

3 (xxx) Violates ORS 646A.806.

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

5 (zzz) Violates ORS 443.376.

6 **(aaaa) Violates a provision of ORS 746.230.**

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

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

12 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
13 torney General has first established a rule in accordance with the provisions of ORS chapter 183
14 declaring the conduct to be unfair or deceptive in trade or commerce. **The Attorney General may**
15 **not adopt a rule under this subsection with respect to conduct that is subject to the Insur-**
16 **ance Code unless the Attorney General first submits the proposed rule to the Director of the**
17 **Department of Consumer and Business Services for review and approval.**

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

22 **SECTION 4.** ORS 646.612 is amended to read:

23 646.612. ORS 646.607 and 646.608 do not apply to:

24 (1) Conduct [*in compliance*] **that complies** with [*the*] orders, [*or*] rules [*of,*] or a statute [*admin-*
25 *istered by*] **that** a federal, state or local governmental agency **administers**.

26 (2) Acts [*done by the*] **that** a publisher, owner, agent or employee of a newspaper, periodical,
27 telephone directory or radio or television station [*in the publication or dissemination of*] **does in**
28 **publishing or disseminating** an advertisement, [*when*] **if** the publisher, owner, agent or employee
29 did not [*have knowledge of*] **know** the false, misleading or deceptive character of the advertisement.

30 **(3) Conduct for which ORS chapter 90 provides a remedy.**

31 **SECTION 5.** ORS 646.636 is amended to read:

32 646.636. [*The*] **A** court may make [*such*] additional orders or judgments [*as may be*] **that the**
33 **court deems** necessary to restore to any person in interest any moneys or property, real or per-
34 sonal, of which the person was deprived by means of any practice declared to be unlawful in ORS
35 646.607 or 646.608, [*or as may be necessary*] to ensure cessation of unlawful trade practices **and to**
36 **provide any other equitable relief to the person in interest that the court deems**
37 **appropriate.**

38 **SECTION 6.** ORS 646.638 is amended to read:

39 646.638. (1) Except as provided in subsections (8) and (9) of this section, a person that suffers
40 an ascertainable loss of money or property, real or personal, as a result of another person's willful
41 use or employment of a method, act or practice declared unlawful under ORS 646.608, may bring an
42 individual action in an appropriate court to recover actual damages or statutory damages of \$200,
43 whichever is greater, **and to obtain appropriate equitable relief.** The court or the jury may award
44 punitive damages and the court may provide any equitable relief the court considers necessary or
45 proper.

1 (2) A person that brings an action under subsection (1) of this section shall mail a copy of the
 2 complaint or other initial pleading to the Attorney General at the time the action commences and,
 3 upon entry of any judgment in the action, shall mail a copy of the judgment to the Attorney General.
 4 Failure to mail a copy of the complaint is not a jurisdictional defect, but a court may not enter
 5 judgment for the plaintiff until proof of mailing is filed with the court. Proof of mailing may be by
 6 affidavit or by return receipt of mailing. **As soon as is practicable, the Attorney General shall**
 7 **provide the Director of the Department of Consumer and Business Services with a copy of**
 8 **any complaint or other initial pleading, and any judgment, that the Attorney General re-**
 9 **ceives under this subsection in connection with an action that is related to insurance or in-**
 10 **volves a method, act or practice that is also subject to the Insurance Code.**

11 (3) The court may award reasonable attorney fees and costs at trial and on appeal to a pre-
 12 vailing plaintiff in an action under this section. The court may award reasonable attorney fees and
 13 costs at trial and on appeal to a prevailing defendant only if the court finds that an objectively
 14 reasonable basis for bringing the action or asserting the ground for appeal did not exist.

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

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

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

28 (7) Notwithstanding subsection (6) of this section, in any action that a seller or lessor brings
 29 against a purchaser or lessee of real estate, goods or services, the purchaser or lessee may assert
 30 any counterclaim that the purchaser or lessee has arising out of a violation of ORS 336.184 and
 31 646.605 to 646.652.

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

33 (a) Statutory damages under subsection (1) of this section may be recovered on behalf of class
 34 members only if the plaintiffs in the action establish that the members have sustained an
 35 ascertainable loss of money or property as a result of a reckless or knowing use or employment by
 36 the defendant of a method, act or practice declared unlawful by ORS 646.608;

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

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

39 (9) This section does not apply to:

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

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

43 **SECTION 7.** ORS 646.648 is amended to read:

44 646.648. (1) As used in this section:

45 (a) "Buyer" means a person who buys or agrees to buy a manufactured dwelling from a manu-

1 factured dwelling dealer.

2 (b) "Cash sale price" means the price for which a manufactured dwelling dealer would sell to
3 a buyer, and the buyer would buy from a dealer, a manufactured dwelling that is covered by a
4 purchase agreement, if the sale were a sale for cash instead of a retail installment sale.

5 (c) "Manufactured dwelling" has the meaning given that term in ORS 446.003.

6 (d) "Manufactured dwelling dealer" means a person licensed under ORS 446.691 or 446.696 or a
7 temporary manufactured structure dealer licensee under ORS 446.701.

8 (e) **"Person" means a natural person, a corporation, a trust, a partnership, an incorpo-**
9 **rated or unincorporated association or any other legal entity.**

10 [(e)] (f) "Retail installment sale" has the meaning given that term in ORS 83.510.

11 (2) A manufactured dwelling dealer engages in an unlawful practice when, in a sale of a manu-
12 factured dwelling, the dealer does any of the following:

13 (a) Misrepresents to a buyer that, as a condition of financing, the buyer must purchase:

- 14 (A) Credit life insurance;
- 15 (B) Credit disability insurance;
- 16 (C) Credit unemployment insurance;
- 17 (D) Credit property insurance;
- 18 (E) Health insurance;
- 19 (F) Life insurance; or
- 20 (G) An extended warranty.

21 (b) In close connection with the sale, misrepresents to a lender:

- 22 (A) The cash sale price;
- 23 (B) The amount of the buyer's down payment; or
- 24 (C) The buyer's credit or employment history.

25 (3) **For purposes of subsection (2)(b) of this section, a loan is made in close connection**
26 **with the sale of a manufactured dwelling if:**

27 (a) **The lender directly or indirectly controls, is controlled by or is under common control**
28 **with the seller, unless the relationship is remote and is not a factor in the transaction;**

29 (b) **The lender gives a commission, rebate or credit in any form to a seller who refers the**
30 **borrower to the lender, other than paying the proceeds of the loan jointly to the seller and**
31 **the borrower;**

32 (c) **The lender is related to the seller by blood or marriage;**

33 (d) **The seller directly and materially assists the borrower in obtaining the loan;**

34 (e) **The seller prepares documents that are given to the lender and used in connection**
35 **with the loan; or**

36 (f) **The lender supplies documents to the seller that the borrower uses in obtaining the**
37 **loan.**

38 **SECTION 8. Section 9 of this 2019 Act is added to and made a part of ORS 646.605 to**
39 **646.652.**

40 **SECTION 9. A prosecuting attorney may not take action under ORS 646.618 or 646.632**
41 **with respect to an act or practice declared to be unlawful under ORS 646.607 or 646.608 if the**
42 **act or practice is related to insurance and otherwise subject to the Insurance Code unless**
43 **the Director of the Department of Consumer and Business Services first requests the pros-**
44 **ecuting attorney to take action. The director may elect to be named as a party in any action**
45 **or proceeding that the prosecuting attorney commences at the director's request.**

1 **SECTION 10.** Section 9 of this 2019 Act and the amendments to ORS 646.605, 646.608,
2 **646.612, 646.636, 646.638 and 646.648** by sections 1 to 7 of this 2019 Act apply to proceedings
3 **that begin on or after the effective date of this 2019 Act.**

4 **SECTION 11.** This 2019 Act being necessary for the immediate preservation of the public
5 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
6 **on its passage.**

7
