

SB 548-1
(LC 642)
3/11/19 (HE/ps)

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 548**

1 In line 2 of the printed bill, after “towing;” delete the rest of the line and
2 insert “creating new provisions; amending ORS 646.608 and 822.215; repealing
3 ORS 98.864; and declaring an emergency.”.

4 Delete lines 4 through 11 and insert:

5 **“SECTION 1. State Board of Towing; membership; term; compen-**
6 **sation and expenses.** (1) **The State Board of Towing is established**
7 **within the Department of Transportation.**

8 **“(2) The State Board of Towing consists of nine members appointed**
9 **by the Governor as follows:**

10 **“(a) One tower who holds a towing business certificate issued under**
11 **ORS 822.205 and who represents a city in Oregon with a population of**
12 **100,000 or more;**

13 **“(b) One tower who holds a towing business certificate issued under**
14 **ORS 822.205 and who represents a city in Oregon with a population of**
15 **less than 100,000;**

16 **“(c) One tower who holds a towing business certificate issued under**
17 **ORS 822.205 and who has specialized knowledge in towing equipment**
18 **and vehicles with a gross vehicle weight rating of more than 8,000**
19 **pounds;**

20 **“(d) One tower who holds a towing business certificate issued under**
21 **ORS 822.205 and who has specialized knowledge in towing vehicles with**

1 a gross vehicle weight rating of 8,000 pounds or less;

2 “(e) One member who represents the insurance industry;

3 “(f) One member from a tow program within the Department of
4 State Police;

5 “(g) One member who is a chief of police;

6 “(h) One member who is a member of the public; and

7 “(i) One member who is a consumer advocate.

8 “(3) All members of the board must be residents of Oregon.

9 “(4) The term of office of each member of the board is four years,
10 but a member serves at the pleasure of the Governor. Before the ex-
11 piration of the term of a member, the Governor shall appoint a suc-
12 cessor whose term begins on July 1 next following. A member is
13 eligible for reappointment. If there is a vacancy for any cause, the
14 Governor shall make an appointment to become immediately effective
15 for the unexpired term.

16 “(5) A member of the board is entitled to compensation and ex-
17 penses as provided in ORS 292.495.

18 “SECTION 2. Initial terms of office. Notwithstanding the term of
19 office specified by section 1 of this 2019 Act, of the members first ap-
20 pointed to the State Board of Towing:

21 “(1) Two shall serve for a term ending July 1, 2020.

22 “(2) Two shall serve for a term ending July 1, 2021.

23 “(3) Two shall serve for a term ending July 1, 2022.

24 “(4) Three shall serve for a term ending July 1, 2023.

25 “SECTION 3. Officers; quorum; meetings. (1) The State Board of
26 Towing shall select one of its members as chairperson and another as
27 vice chairperson, for terms and with duties and powers necessary for
28 the performance of the functions of the offices as the board deter-
29 mines.

30 “(2) Except as provided in subsection (3) of this section, a majority

1 of the members of the board constitutes a quorum for the transaction
2 of business.

3 “(3) When the board is deliberating or voting on a matter before it,
4 four members of the board constitutes a quorum.

5 “(4) No more than two members who are towers may vote on any
6 matter. The chairperson shall assign a rotation of voting members
7 who are towers. If an assigned member who is a tower has an actual
8 or potential conflict of interest in a matter before the board, the
9 chairperson shall designate a different member who is a tower and
10 who does not have an actual or potential conflict of interest in the
11 matter before the board to deliberate and vote on that matter.

12 “(5) The board shall meet at least once a quarter at a time and place
13 determined by the board. The board shall also meet at such other
14 times and places as are specified by the call of the chairperson, vice
15 chairperson or administrative officer.

16 **“SECTION 4. Administrative officer for board; other employees. (1)**
17 **The State Board of Towing shall appoint an administrative officer to**
18 **serve at the pleasure of the Governor. The determination of quali-**
19 **fications of the administrative officer and appointment of the admin-**
20 **istrative officer shall be made by the board after consulting with the**
21 **Governor.**

22 “(2) The administrative officer may not be a member of the board.

23 “(3) The designation of the administrative officer must be by writ-
24 ten order, filed with the Secretary of State.

25 “(4) The administrative officer is in the unclassified service under
26 ORS chapter 240, and the board shall fix the salary of the officer in
27 accordance with the applicable provisions of ORS chapter 240.

28 “(5) Subject to any applicable provisions of ORS chapter 240, the
29 administrative officer shall appoint all subordinate officers and em-
30 ployees of the board, prescribe their duties and fix their compensation.

1 **“SECTION 5. Rulemaking authority; board seal.** (1) In accordance
2 with applicable provisions of ORS chapter 183, the State Board of
3 Towing may adopt rules:

4 “(a) Necessary for the administration of the laws that the board is
5 charged with administering.

6 “(b) To implement ORS 98.853 to 98.862.

7 “(2) The board may adopt a seal.

8 **“SECTION 6. State Board of Towing Account.** (1) The State Board
9 of Towing Account is established in the State Treasury, separate and
10 distinct from the General Fund.

11 “(2) The account consists of the following:

12 “(a) Moneys collected from civil penalties imposed under section 11
13 of this 2019 Act.

14 “(b) Moneys appropriated to the account by the Legislative Assem-
15 bly.

16 “(c) Moneys from any other source.

17 “(3) Moneys in the account are continuously appropriated to the
18 State Board of Towing to carry out the provisions of sections 1 to 12
19 of this 2019 Act.

20 **“SECTION 7. Administration of oaths; obtaining and taking evi-**
21 **dence at board proceedings; effect of failure to obey board subpoena.**
22 The State Board of Towing, acting through its chairperson or vice
23 chairperson, may administer oaths, take depositions and issue
24 subpoenas to compel the attendance of witnesses and the production
25 of documents or other written information necessary to carry out the
26 provisions of sections 1 to 12 of this 2019 Act. If any person fails to
27 comply with a subpoena issued under this section or refuses to testify
28 on matters on which the person lawfully may be interrogated, the
29 procedure set out in ORS 183.440 shall be followed to compel obedience.

30 **“SECTION 8. Denial, suspension, revocation or refusal of towing**

1 **business certificate. (1) As used in this section:**

2 **“(a) ‘Person’ includes individuals, public bodies as defined in ORS**
3 **174.109, corporations, firms, associations, partnerships, limited liability**
4 **companies, joint stock companies or any other business entity created**
5 **under law.**

6 **“(b) ‘Relative’ means an individual related within the third degree**
7 **as determined by the common law, a spouse, an individual related to**
8 **a spouse within the third degree as determined by the common law**
9 **or an individual in an adoptive relationship within the third degree as**
10 **determined by the common law.**

11 **“(2) In addition to any other penalty provided under ORS 822.215 and**
12 **subject to ORS chapter 183, the State Board of Towing may file a**
13 **written request directing the Department of Transportation to deny,**
14 **suspend, revoke or refuse to renew a towing business certificate issued**
15 **under ORS 822.205, if the person holding or applying for the certificate:**

16 **(a) Fails to comply with any rule adopted by the board;**

17 **(b) Violates any provision of, or rules or ordinances adopted under,**
18 **ORS 98.853, 98.854, 98.856, 98.858, 181A.350, 822.200, 822.215, 822.225,**
19 **822.230, 822.235 or 822.605;**

20 **“(c) Fails to comply with an order of the board, including but not**
21 **limited to the failure to pay a civil penalty as ordered by the board;**

22 **(d) Has performed work as a tow operator without the appropriate**
23 **certification or letter of appointment or has employed individuals to**
24 **perform work as a tow operator without appropriate certification or**
25 **letter of appointment;**

26 **(e) Has advertised or otherwise held themselves out as being a cer-**
27 **tified towing business without holding the appropriate certificate;**

28 **“(f) As a, or as a relative of a, partner, officer, member or employee**
29 **of a towing business, advertises or holds themselves out that the**
30 **towing business is certified if the business does not possess the ap-**

1 **propriate certificate;**

2 **(g) Has engaged in towing or recovering by any means, as part of**
3 **any business operation of the person, vehicles that are wrecked, dam-**
4 **aged, disabled or abandoned or replacement vehicles;**

5 **(h) Fails to meet any condition or requirement to obtain a certif-**
6 **icate or letter of appointment;**

7 **(i) Acts or has acted in a manner creating a serious danger to the**
8 **public health or safety; or**

9 **(j) Has been subject to a revocation, cancellation or suspension or-**
10 **der or to other disciplinary action related to towing or the towing in-**
11 **dustry by any other public body, as defined in ORS 174.109, or has**
12 **failed to pay a civil penalty imposed by the body.**

13 **“(3) A violation described in subsection (2) of this section for which**
14 **the board recommends the Department of Transportation deny, sus-**
15 **pend, revoke or refuse to renew a certificate to perform work or con-**
16 **duct business may be treated as a failure to be in conformance with**
17 **sections 1 to 12 of this 2019 Act.**

18 **“SECTION 9. Additional powers of the board. (1) In carrying out its**
19 **investigative and enforcement duties, functions and powers, and not-**
20 **withstanding any other provision of law, the State Board of Towing**
21 **may procure services and award a contract for the personal services**
22 **of a subject matter expert, on a case-by-case basis, in any manner**
23 **deemed practical or convenient. The price of such contracts, including**
24 **any amendments, may not exceed \$25,000.**

25 **“(2) If the board has reason to believe that any person has been**
26 **engaged or is engaging in any violation of ORS 98.853, 98.854, 98.856,**
27 **98.858, 181A.350, 822.200, 822.215, 822.225, 822.230, 822.235 or 822.605 or**
28 **sections 1 to 12 of this 2019 Act or any rule adopted under those stat-**
29 **utes, or any order issued by the board, the board may, without bond,**
30 **bring suit in the name and on behalf of the State of Oregon in the**

1 circuit court of any county of this state to enjoin the acts or practices
2 and to enforce compliance with ORS 98.853, 98.854, 98.856, 98.858,
3 181A.350, 822.200, 822.215, 822.225, 822.230, 822.235 or 822.605 or sections
4 1 to 12 of this 2019 Act or any rule adopted under those statutes, or
5 any order issued by the board. Upon a proper showing, a permanent
6 or temporary injunction, restraining order or writ of mandamus shall
7 be granted.

8 **“SECTION 10. Participation in the Department of State Police tow**
9 **rotation. (1) As used in this section:**

10 **“(a) ‘Person’ includes individuals, public bodies as defined in ORS**
11 **174.109, corporations, firms, associations, partnerships, limited liability**
12 **companies, joint stock companies or any other business entity created**
13 **under law.**

14 **(b) ‘Relative’ means an individual related within the third degree**
15 **as determined by the common law, a spouse, an individual related to**
16 **a spouse within the third degree as determined by the common law**
17 **or an individual in an adoptive relationship within the third degree as**
18 **determined by the common law.**

19 **“(2) Subject to ORS chapter 183, the State Board of Towing may**
20 **order the Department of State Police to deny, suspend, condition or**
21 **revoke a letter of appointment to participate on the rotational list of**
22 **towing businesses established under ORS 181A.350, if the person hold-**
23 **ing or applying for the letter of appointment:**

24 **(a) Fails to comply with any rule adopted by the board;**

25 **(b) Violates any provision of, or rules or ordinances adopted under,**
26 **ORS 98.853, 98.854, 98.856, 98.858, 181A.350, 822.200, 822.215 822.225,**
27 **822.230, 822.235 or 822.605;**

28 **“(c) Fails to comply with an order of the board, including but not**
29 **limited to the failure to pay a civil penalty as ordered by the board;**

30 **(d) Has performed work as a tow operator without the appropriate**

1 certification or letter of appointment or has employed individuals to
2 perform work as a tow operator without appropriate certification or
3 letter of appointment;

4 (e) Has advertised or otherwise held themselves out as being a cer-
5 tified tow operator without holding the appropriate certificate;

6 “(f) As a, or as a relative of a, partner, officer, member or employee
7 of a towing business, advertises or holds themselves out that the
8 towing business is certified if the business does not possess the ap-
9 propriate certificate;

10 “(g) Has engaged in towing or recovering by any means, as part of
11 any business operation of the person, vehicles that are wrecked, dam-
12 aged, disabled or abandoned or replacement vehicles;

13 (h) Fails to meet any condition or requirement to obtain a certif-
14 icate or letter of appointment;

15 (i) Acts or has acted in a manner creating a serious danger to the
16 public health or safety; or

17 (j) Has been subject to a revocation, cancellation or suspension or-
18 der or to other disciplinary action related to towing or the towing in-
19 dustry by any other public body, as defined in ORS 174.109, or has
20 failed to pay a civil penalty imposed by the body.

21 “(3) A violation described in subsection (2) of this section for which
22 the board orders the Department of State Police to deny, suspend,
23 condition or revoke a letter of appointment to participate on the ro-
24 tational list of towing business established under ORS 181A.350 may
25 be treated as a failure to be in conformance with sections 1 to 12 of
26 this 2019 Act.

27 **SECTION 11. Civil penalties.** (1) In addition to any other penalty
28 provided by law, any person who violates any provision of ORS 98.853,
29 98.854, 98.856, 98.858, 181A.350, 822.200, 822.215 822.225, 822.230, 822.235 or
30 822.605 or any rule adopted by the State Board of Towing is subject to

1 **payment of a civil penalty to the board.**

2 **“(2) The board may adopt rules establishing a schedule of civil**
3 **penalties that may be imposed under this section. Civil penalties im-**
4 **posed under this section may not exceed \$25,000 for each violation.**

5 **“(3) Civil penalties under this section shall be imposed as provided**
6 **in ORS 183.745.**

7 **“(4) Notwithstanding ORS 670.335, civil penalties collected by the**
8 **board under this section shall be deposited into the State Board of**
9 **Towing Account established under section 6 of this 2019 Act.**

10 **“SECTION 12. In imposing a penalty pursuant to the schedule**
11 **adopted pursuant to section 11 of this 2019 Act, the State Board of**
12 **Towing shall consider the following factors:**

13 **“(1) The past history of the person incurring a penalty in taking all**
14 **feasible steps or procedures necessary or appropriate to correct any**
15 **violation.**

16 **“(2) Any prior violations by the person incurring the penalty of**
17 **statutes, rules or orders pertaining to facilities.**

18 **“(3) The economic and financial conditions of the person incurring**
19 **the penalty.**

20 **“(4) The immediacy and extent to which the violation threatens the**
21 **public health or safety.**

22 **“SECTION 13. ORS 646.608 is amended to read:**

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

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

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

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

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

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

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

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

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

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

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

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

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

30 “(m) Performs service on or dismantles any goods or real estate if the

1 owner or apparent owner of the goods or real estate does not authorize the
2 service or dismantling.

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

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

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

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

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

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

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

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

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

28 “(w) Manufactures mercury fever thermometers.

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

- 1 “(A) Prescribed by a person licensed under ORS chapter 677; and
- 2 “(B) Supplied with instructions on the careful handling of the
- 3 thermometer to avoid breakage and on the proper cleanup of mercury should
- 4 breakage occur.
- 5 “(y) Sells a thermostat that contains mercury unless the thermostat is
- 6 labeled in a manner to inform the purchaser that mercury is present in the
- 7 thermostat and that the thermostat may not be disposed of until the mercury
- 8 is removed, reused, recycled or otherwise managed to ensure that the mer-
- 9 cury does not become part of the solid waste stream or wastewater. For
- 10 purposes of this paragraph, ‘thermostat’ means a device commonly used to
- 11 sense and, through electrical communication with heating, cooling or venti-
- 12 lation equipment, control room temperature.
- 13 “(z) Sells or offers for sale a motor vehicle manufactured after January
- 14 1, 2006, that contains mercury light switches.
- 15 “(aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 16 “(bb) Violates ORS 646A.070 (1).
- 17 “(cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 18 “(dd) Violates the provisions of ORS 128.801 to 128.898.
- 19 “(ee) Violates ORS 646.883 or 646.885.
- 20 “(ff) Violates ORS 646.569.
- 21 “(gg) Violates the provisions of ORS 646A.142.
- 22 “(hh) Violates ORS 646A.360.
- 23 “(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 24 “(jj) Violates ORS 646.563.
- 25 “(kk) Violates ORS 759.680 or any rule adopted pursuant thereto.
- 26 “(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any
- 27 rule adopted pursuant thereto.
- 28 “(mm) Violates ORS 646A.210 or 646A.214.
- 29 “(nn) Violates any provision of ORS 646A.124 to 646A.134.
- 30 “(oo) Violates ORS 646A.095.

1 “(pp) Violates ORS 822.046.
2 “(qq) Violates ORS 128.001.
3 “(rr) Violates ORS 646A.800 (2) to (4).
4 “(ss) Violates ORS 646A.090 (2) to (5).
5 “(tt) Violates ORS 87.686.
6 “(uu) Violates ORS 646A.803.
7 “(vv) Violates ORS 646A.362.
8 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or
9 646A.054.
10 “(xx) Violates ORS 180.440 (1) or 180.486 (1).
11 “(yy) Commits the offense of acting as a vehicle dealer without a certifi-
12 cate under ORS 822.005.
13 “(zz) Violates ORS 87.007 (2) or (3).
14 “(aaa) Violates ORS 92.405 (1), (2) or (3).
15 “(bbb) Engages in an unlawful practice under ORS 646.648.
16 “(ccc) Violates ORS 646A.365.
17 “(ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 [*or a rule adopted un-*
18 *der ORS 98.864*].
19 “(eee) Sells a gift card in violation of ORS 646A.276.
20 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.
21 “(ggg) Violates ORS 646A.430 to 646A.450.
22 “(hhh) Violates a provision of ORS 744.318 to 744.384.
23 “(iii) Violates a provision of ORS 646A.702 to 646A.720.
24 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning
25 or declaration described in ORS 646A.530 is issued for the children’s product,
26 as defined in ORS 646A.525, that is the subject of the violation.
27 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,
28 697.682, 697.692 or 697.707.
29 “(LLL) Violates the consumer protection provisions of the
30 Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on

1 January 1, 2010.

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

3 “(nnn) Violates ORS 646A.082.

4 “(ooo) Violates ORS 646.647.

5 “(ppp) Violates ORS 646A.115.

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

7 “(rrr) Violates ORS 646A.092.

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

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

10 “(uuu) Violates ORS 646A.564.

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

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

16 “(xxx) Violates ORS 646A.806.

17 “(yyy) Violates ORS 646A.810 (2).

18 “(zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws
19 2015.

20 “(aaaa) Violates ORS 443.376.

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

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

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

1 “(5) Notwithstanding any other provision of ORS 336.184 and 646.605 to
2 646.652, if an action or suit is brought under subsection (1)(xx) of this section
3 by a person other than a prosecuting attorney, relief is limited to an in-
4 junction and the prevailing party may be awarded reasonable attorney fees.

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

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

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

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

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

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

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

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

29 “(g) Represents that real estate, goods or services are of a particular
30 standard, quality, or grade, or that real estate or goods are of a particular

1 style or model, if the real estate, goods or services are of another.

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

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

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

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

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

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

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

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

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

30 “(q) Promises to deliver real estate, goods or services within a certain

1 period of time with intent not to deliver the real estate, goods or services
2 as promised.

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

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

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

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

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

14 “(w) Manufactures mercury fever thermometers.

15 “(x) Sells or supplies mercury fever thermometers unless the thermometer
16 is required by federal 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
19 thermometer to avoid breakage and on the proper cleanup of mercury should
20 breakage occur.

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

29 “(z) Sells or offers for sale a motor vehicle manufactured after January
30 1, 2006, that contains mercury light switches.

- 1 “(aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 2 “(bb) Violates ORS 646A.070 (1).
- 3 “(cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 4 “(dd) Violates the provisions of ORS 128.801 to 128.898.
- 5 “(ee) Violates ORS 646.883 or 646.885.
- 6 “(ff) Violates ORS 646.569.
- 7 “(gg) Violates the provisions of ORS 646A.142.
- 8 “(hh) Violates ORS 646A.360.
- 9 “(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 10 “(jj) Violates ORS 646.563.
- 11 “(kk) Violates ORS 759.680 or any rule adopted pursuant thereto.
- 12 “(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any
13 rule adopted pursuant thereto.
- 14 “(mm) Violates ORS 646A.210 or 646A.214.
- 15 “(nn) Violates any provision of ORS 646A.124 to 646A.134.
- 16 “(oo) Violates ORS 646A.095.
- 17 “(pp) Violates ORS 822.046.
- 18 “(qq) Violates ORS 128.001.
- 19 “(rr) Violates ORS 646A.800 (2) to (4).
- 20 “(ss) Violates ORS 646A.090 (2) to (5).
- 21 “(tt) Violates ORS 87.686.
- 22 “(uu) Violates ORS 646A.803.
- 23 “(vv) Violates ORS 646A.362.
- 24 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or
25 646A.054.
- 26 “(xx) Violates ORS 180.440 (1) or 180.486 (1).
- 27 “(yy) Commits the offense of acting as a vehicle dealer without a certif-
28 icate under ORS 822.005.
- 29 “(zz) Violates ORS 87.007 (2) or (3).
- 30 “(aaa) Violates ORS 92.405 (1), (2) or (3).

1 “(bbb) Engages in an unlawful practice under ORS 646.648.
2 “(ccc) Violates ORS 646A.365.
3 “(ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 [*or a rule adopted un-*
4 *der ORS 98.864*].
5 “(eee) Sells a gift card in violation of ORS 646A.276.
6 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.
7 “(ggg) Violates ORS 646A.430 to 646A.450.
8 “(hhh) Violates a provision of ORS 744.318 to 744.384.
9 “(iii) Violates a provision of ORS 646A.702 to 646A.720.
10 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning
11 or declaration described in ORS 646A.530 is issued for the children’s product,
12 as defined in ORS 646A.525, that is the subject of the violation.
13 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,
14 697.682, 697.692 or 697.707.
15 “(LLL) Violates the consumer protection provisions of the
16 Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on
17 January 1, 2010.
18 “(mmm) Violates a provision of ORS 646A.480 to 646A.495.
19 “(nnn) Violates ORS 646A.082.
20 “(ooo) Violates ORS 646.647.
21 “(ppp) Violates ORS 646A.115.
22 “(qqq) Violates a provision of ORS 646A.405.
23 “(rrr) Violates ORS 646A.092.
24 “(sss) Violates a provision of ORS 646.644.
25 “(ttt) Violates a provision of ORS 646A.295.
26 “(uuu) Violates ORS 646A.564.
27 “(vvv) Engages in the business of, or acts in the capacity of, an immi-
28 gration consultant, as defined in ORS 9.280, in this state and for compen-
29 sation, unless federal law authorizes the person to do so or unless the person
30 is an active member of the Oregon State Bar.

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

2 “(xxx) Violates ORS 646A.806.

3 “(yyy) Violates ORS 646A.810 (2).

4 “(zzz) Violates ORS 443.376.

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 15.** ORS 822.215 is amended to read:

20 “822.215. (1) The Department of Transportation may deny or refuse to is-
21 sue any towing business certificate under ORS 822.205 or may suspend, re-
22 voke or refuse to renew any towing business certificate issued upon proof
23 that the applicant for or holder of the certificate has done any of the fol-
24 lowing:

25 “[1] (a) Used fraud or deception in securing the certificate.

26 “[2] (b) Received in any manner or by any device any rebate or other
27 additional fee for towing or recovery from a person who performs repairs on
28 a vehicle who does not also own the vehicle. This subsection does not pro-
29 hibit the payment of the towing fee by a person who performs repairs on a
30 vehicle if the fee is included in the charges by that person for repairs on the

1 vehicle.

2 “[3] (c) Used vehicles for the purposes of towing or recovering services
3 that did not meet the minimum safety standards established by the depart-
4 ment.

5 “[4] (d) Failed to display special towing business registration plates,
6 stickers or indicia or identification devices for proportionally registered tow
7 vehicles authorized under ORS 805.200 on each vehicle used to tow or recover
8 vehicles.

9 “[5] (e) Failed to maintain the amounts and types of insurance required
10 to qualify for issuance of a towing business certificate under ORS 822.205.

11 “[6] (f) Failed to obtain any permits or authority required under any
12 provision of ORS chapter 825 or rules adopted thereunder.

13 “[7] (g) Violated any provision of ORS 98.853, 98.854, 98.856 or 98.858 or
14 a rule adopted under [ORS 98.864] **section 5 of this 2019 Act.**

15 **“(2) After receiving a written request from the State Board of**
16 **Towing under section 8 of this 2019 Act, the department shall impose**
17 **the disciplinary action requested by the board.**

18 **“SECTION 16. ORS 98.864 is repealed.**

19 **“SECTION 17. Section captions. The section captions used in this**
20 **2019 Act are provided only for the convenience of the reader and do**
21 **not become part of the statutory law of this state or express any leg-**
22 **islative intent in the enactment of this 2019 Act.**

23 **“SECTION 18. Effective date. This 2019 Act being necessary for the**
24 **immediate preservation of the public peace, health and safety, an**
25 **emergency is declared to exist, and this 2019 Act takes effect on its**
26 **passage.”.**

27