

Enrolled Senate Bill 397

Sponsored by Senators PROZANSKI, RILEY, Representatives SOLLMAN, STARK; Senators DEMBROW, FREDERICK, GORSEK, KENNEMER, LIEBER, Representatives DEXTER, HUDSON, MORGAN, WILDE (at the request of Nike, Inc. and Metropolitan Public Defender) (Pre-session filed.)

CHAPTER

AN ACT

Relating to expungement; creating new provisions; and amending ORS 135.418, 137.223, 137.225 and 646.607.

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

SECTION 1. ORS 137.225 is amended to read:

137.225. (1)(a) *[Except as provided in paragraph (c) of this subsection,]* At any time after the *[lapse of three years from the date of pronouncement of judgment]* **person becomes eligible as described in paragraph (b) of this subsection**, any *[defendant]* **person convicted of an offense** who has fully complied with and performed the sentence of the court **for the offense**, and whose conviction is described in subsection (5) of this section, by motion may apply to the court where the conviction was entered for entry of an order setting aside the conviction. A person who is still under supervision, *or who is still incarcerated,* as part of the sentence for the offense that is the subject of the motion has not fully complied with or performed the sentence of the court.

(b) A person is eligible to file a motion under paragraph (a) of this subsection:

(A) For a Class B felony, seven years from the date of conviction or the release of the person from imprisonment for the conviction sought to be set aside, whichever is later.

(B) For a Class C felony, five years from the date of conviction or the release of the person from imprisonment for the conviction sought to be set aside, whichever is later.

(C) For a Class A misdemeanor, three years from the date of conviction or the release of the person from imprisonment for the conviction sought to be set aside, whichever is later.

(D) For a Class B or Class C misdemeanor, a violation or the finding of a person in contempt of court, one year from the date of conviction or finding or the release of the person from imprisonment for the conviction or finding sought to be set aside, whichever is later.

[(b) At any time after the lapse of one year from the date of any arrest, issuance of a criminal citation or criminal charge, if no accusatory instrument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested, cited or charged person may apply to the court that would have jurisdiction over the crime for which the person was arrested, cited or charged, for entry of an order setting aside the record of the arrest, citation or charge. For the purpose of computing the one-year period, time during which the person has secreted himself or herself within or without this state is not included.]

(c) If no accusatory instrument is filed, at any time after 60 days from the date the prosecuting attorney indicates that the state has elected not to proceed with a prosecution or contempt proceeding, an arrested, cited or charged person may apply to the court in the county in which the person was arrested, cited or charged, for entry of an order setting aside the record of the arrest, citation or charge.

(d) At any time after an acquittal or a dismissal other than a dismissal described in subsection (c) of this section, an arrested, cited or charged person may apply to the court in the county in which the person was arrested, cited or charged, for entry of an order setting aside the record of the arrest, citation or charge.

~~[(c)]~~ (e) Notwithstanding paragraph (b) of this subsection, a person whose sentence of probation was revoked may not apply to the court for entry of an order setting aside the conviction for which the person was sentenced to probation for a period of ~~[10] three~~ years from the date of revocation or until the person becomes eligible as described in paragraph (b) of this subsection, whichever occurs later.

(f) A person filing a motion under this section is not required to pay the filing fee established under ORS 21.135.

(2)(a) A copy of the motion ~~[and a full set of the defendant's fingerprints]~~ shall be served upon the office of the prosecuting attorney who prosecuted the ~~[crime or violation]~~ offense, or who had authority to prosecute the charge if there was no accusatory instrument filed~~], and opportunity shall be given to contest the motion. The fingerprint card with the notation "motion for setting aside conviction," or "motion for setting aside arrest, citation or charge record" as the case may be, shall be forwarded to the Department of State Police. Information resulting from the fingerprint search along with the fingerprint card shall be returned to the prosecuting attorney].~~ The prosecuting attorney may object to a motion filed under subsection (1)(a) of this section and shall notify the court and the person of the objection within 120 days of the date the motion was filed with the court.

(b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction under subsection (1)(a) of this section, the prosecuting attorney shall provide a copy of the motion and notice of the hearing date to the victim, if any, of the ~~[crime]~~ offense by mailing a copy of the motion and notice to the victim's last-known address.

(c) When a person makes a motion under this section, the person shall forward to the Department of State Police a full set of the person's fingerprints on a fingerprint card or in any other manner specified by the department.

~~[(c)]~~ (d) When a person makes a motion under subsection (1)(a) of this section, the person must pay a fee ~~[of \$80]~~ to the Department of State Police for the purpose of the department performing a criminal record check. ~~[The person shall attach a certified check payable to the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fingerprint card to the Department of State Police.]~~ The department shall establish a fee in an amount not to exceed the actual cost of performing the criminal record check. If the department is required to perform only one criminal record check for the person, the department may only charge one fee, regardless of the number of counties in which the person is filing a motion to set aside a conviction, arrest, charge or citation under this section. The department shall provide a copy of the results of the criminal record check to the prosecuting attorney.

~~[(d)]~~ In addition to the fee established under paragraph (c) of this subsection, when a person makes a motion under subsection (1)(a) of this section the person must pay the filing fee established under ORS 21.135.]

~~[(e)]~~ (e) The prosecuting attorney may not charge the ~~[defendant]~~ person a fee for performing the requirements described in this section.

~~[(3)]~~ Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as the court deems proper. The court shall allow the victim to make a statement at the hearing. Except as otherwise provided in subsection (12) of this section, if the court deter-

mines that the circumstances and behavior of the applicant from the date of conviction, or from the date of arrest, citation or charge as the case may be, to the date of the hearing on the motion warrant setting aside the conviction, or the arrest, citation or charge record as the case may be, the court shall enter an appropriate order that shall state the original arrest or citation charge and the conviction charge, if any and if different from the original, date of charge, submitting agency and disposition. The order shall further state that positive identification has been established by the Department of State Police and further identified as to Department of State Police number or submitting agency number. Upon the entry of the order, the applicant for purposes of the law shall be deemed not to have been previously convicted, or arrested, cited or charged as the case may be, and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest, citation or charge whether or not the arrest, citation or charge resulted in a further criminal proceeding.]

(3)(a) If an objection is received to a motion filed under subsection (1)(a) of this section, the court shall hold a hearing, and may require the filing of such affidavits and may require the taking of such proofs as the court deems proper. The court shall allow the victim to make a statement at the hearing. If the person is otherwise eligible for relief under this section, the court shall grant the motion and enter an order as described in paragraph (b) of this subsection unless the court makes written findings, by clear and convincing evidence, that the circumstances and behavior of the person, from the date of the conviction the person is seeking to set aside to the date of the hearing on the motion, do not warrant granting the motion due to the circumstances and behavior creating a risk to public safety. When determining whether the person's circumstances and behavior create a risk to public safety, the court may only consider criminal behavior, or violations of regulatory law or administrative rule enforced by civil penalty or other administrative sanction that relate to the character of the conviction sought to be set aside. The court may not consider non-punitive civil liability, monetary obligations and motor vehicle violations. Upon granting the motion, the court shall enter an appropriate order containing the original arrest or citation charge, the conviction charge, if different from the original, the date of charge, the submitting agency and the disposition of the charge. Upon the entry of the order, the person for purposes of the law shall be deemed not to have been previously convicted, and the court shall issue an order sealing the record of conviction and other official records in the case, including the records of arrest, citation or charge.

(b) The court shall grant a motion filed under subsection (1)(c) or (d) of this section, or under subsection (1)(a) of this section if no objection to the motion is received, and shall enter an appropriate order containing the original arrest or citation charge, the conviction charge, if applicable and different from the original, the date of charge, the submitting agency and the disposition of the charge. Upon the entry of the order, the person for purposes of the law shall be deemed not to have been previously convicted, arrested, cited or charged, and the court shall issue an order sealing all official records in the case, including the records of arrest, citation or charge, whether or not the arrest, citation or charge resulted in a further criminal proceeding.

(4) The clerk of the court shall forward a certified copy of the order to such agencies as directed by the court. A certified copy must be sent to the Department of Corrections when the person has been in the custody of the Department of Corrections. Upon entry of the order, the conviction, arrest, citation, charge or other proceeding shall be deemed not to have occurred, and the [applicant] **person** may answer accordingly any questions relating to its occurrence.

(5) The provisions of subsection (1)(a) of this section apply to a conviction for:

(a) A Class B felony, except for a violation of ORS 166.429 or any crime classified as a person felony as [that term is] defined in the rules of the Oregon Criminal Justice Commission., *only if:*

[(A)(i) Twenty years or more have elapsed from the date of the conviction sought to be set aside or of the release of the person from imprisonment for the conviction sought to be set aside, whichever is later; and]

[(ii) The person has not been convicted of, arrested or criminally cited for or charged with any other offense, excluding motor vehicle violations, after the date the person was convicted of the offense sought to be set aside. Notwithstanding subsection (1) of this section, a conviction, arrest, citation or charge that has been set aside under this section shall be considered for the purpose of determining whether this subparagraph is applicable; or]

[(B) The Class B felony is described in paragraphs (b) to (d) of this subsection.]

(b) Any misdemeanor, Class C felony or felony punishable as a misdemeanor pursuant to ORS 161.705.

(c) An offense constituting a violation under state law or local ordinance.

(d) An offense committed before January 1, 1972, that, if committed after that date, would qualify for an order under this section.

(e) The finding of a person in contempt of court.

(6) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this section do not apply to a conviction for:

(a) Criminal mistreatment in the second degree under ORS 163.200 if the victim at the time of the crime was 65 years of age or older.

(b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time of the crime was 65 years of age or older, or when the offense constitutes child abuse as defined in ORS 419B.005.

(c) Endangering the welfare of a minor under ORS 163.575 (1)(a), when the offense constitutes child abuse as defined in ORS 419B.005.

(d) Criminally negligent homicide under ORS 163.145, when that offense was punishable as a Class C felony.

(e) Assault in the third degree under ORS 163.165 (1)(h).

(f) Any sex crime, unless:

(A) The sex crime is listed in ORS 163A.140 (1)(a) and:

(i) The person has been relieved of the obligation to report as a sex offender pursuant to a court order entered under ORS 163A.145 or 163A.150; and

(ii) The person has not been convicted of, found guilty except for insanity of or found to be within the jurisdiction of the juvenile court based on a crime for which the court is prohibited from setting aside the conviction under this section; or

(B) The sex crime constitutes a Class C felony and:

(i) The person was under 16 years of age at the time of the offense;

(ii) The person is:

(I) Less than two years and 180 days older than the victim; or

(II) At least two years and 180 days older, but less than three years and 180 days older, than the victim and the court finds that setting aside the conviction is in the interests of justice and of benefit to the person and the community;

(iii) The victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age;

(iv) The victim was at least 12 years of age at the time of the offense;

(v) The person has not been convicted of, found guilty except for insanity of or found to be within the jurisdiction of the juvenile court based on a crime for which the court is prohibited from setting aside the conviction under this section; and

(vi) Each conviction or finding described in this subparagraph involved the same victim.

(7) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section do not apply to:

(a) A conviction for a state or municipal traffic offense.

(b) A person convicted, within the [10-year] **following applicable time** period immediately preceding the filing of the motion pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations, whether or not the other conviction is for conduct associated with

the same criminal episode that caused the arrest, citation, charge or conviction that is sought to be set aside[.]:

(A) For a motion concerning a Class B felony, seven years.

(B) For a motion concerning a Class C felony, five years.

(C) For a motion concerning a Class A misdemeanor, three years.

(D) For a motion concerning a Class B or Class C misdemeanor a violation or a finding of contempt of court, one year.

(c) A single violation, other than a motor vehicle violation, within the [last 10 years] **time period specified in paragraph (b) of this subsection** is not a conviction under this subsection. Notwithstanding subsection (1) of this section, a conviction that has been set aside under this section shall be considered for the purpose of determining whether [this] paragraph **(b) of this subsection** is applicable.

[(c)] **(d)** A person who at the time the motion authorized by subsection (1) of this section is pending before the court is under charge of commission of any crime.

(8) The provisions of subsection [(1)(b)] **(1)(c) or (d)** of this section do not apply to[.]

[(a) A person arrested or criminally cited for or charged with an offense within the three-year period immediately preceding the filing of the motion for any offense, excluding motor vehicle violations, and excluding arrests, citations or charges for conduct associated with the same criminal episode that caused the arrest, citation or charge that is sought to be set aside. An arrest, citation or charge that has been set aside under this section may not be considered for the purpose of determining whether this paragraph is applicable.]

[(b)] an arrest or citation for driving while under the influence of intoxicants if the charge is dismissed as a result of the person's successful completion of a diversion agreement described in ORS 813.200.

(9) The provisions of subsection (1) of this section apply to convictions, arrests, citations and charges that occurred before, as well as those that occurred after, September 9, 1971. There is no time limit for making an application.

(10) For purposes of any civil action in which truth is an element of a claim for relief or affirmative defense, the provisions of subsection (3) of this section providing that the conviction, arrest, citation, charge or other proceeding be deemed not to have occurred do not apply and a party may apply to the court for an order requiring disclosure of the official records in the case as may be necessary in the interest of justice.

(11)**(a)** Upon motion of any prosecutor or defendant in a case involving records sealed under this section, supported by affidavit showing good cause, the court with jurisdiction may order the reopening and disclosure of any records sealed under this section for the limited purpose of assisting the investigation of the movant. However, such an order has no other effect on the orders setting aside the conviction or the arrest, citation or charge record.

(b) Notwithstanding paragraph (a) of this subsection, when an arrest, citation or charge described in subsection (1)(c) of this section is set aside, a prosecuting attorney may, for the purpose of initiating a criminal proceeding within the statute of limitations, unseal the records sealed under this section by notifying the court with jurisdiction over the charge, record of arrest or citation. The prosecuting attorney shall notify the person who is the subject of the records of the unsealing under this paragraph by sending written notification to the person's last known address.

[(12) Unless the court makes written findings by clear and convincing evidence that granting the motion would not be in the best interests of justice, the court shall grant the motion and enter an order as provided in subsection (3) of this section if the defendant has been convicted of one of the following crimes and is otherwise eligible for relief under this section:]

[(a) Abandonment of a child, ORS 163.535.]

[(b) Attempted assault in the second degree, ORS 163.175.]

[(c) Assault in the third degree, ORS 163.165.]

[(d) Coercion, ORS 163.275.]

- [(e) *Criminal mistreatment in the first degree, ORS 163.205.*]
- [(f) *Attempted escape in the first degree, ORS 162.165.*]
- [(g) *Incest, ORS 163.525, if the victim was at least 18 years of age.*]
- [(h) *A bias crime in the first degree, ORS 166.165.*]
- [(i) *Attempted kidnapping in the second degree, ORS 163.225.*]
- [(j) *Attempted robbery in the second degree, ORS 164.405.*]
- [(k) *Robbery in the third degree, ORS 164.395.*]
- [(L) *Supplying contraband, ORS 162.185.*]
- [(m) *Unlawful use of a weapon, ORS 166.220.*]

(12) The State Court Administrator shall create forms to be used throughout the state for motions and proposed orders described in this section.

(13) As used in this section[,]:

(a) "Affidavit" includes a declaration under penalty of perjury.

(b) "Sex crime" has the meaning given that term in ORS 163A.005.

SECTION 2. ORS 137.223 is amended to read:

137.223. (1) A person who has been found guilty except for insanity of an offense for which, if convicted, the person could apply for entry of an order setting aside the conviction pursuant to ORS 137.225, may by motion apply to the court for entry of an order setting aside the judgment finding the person guilty except for insanity of the offense.

(2)(a) A person described in subsection (1) of this section may file the motion to set aside a judgment of guilty except for insanity any time after [*three years from the date of entry of the judgment of guilty except for insanity, provided that:*]

[(a) *The person is no longer under the jurisdiction of the Psychiatric Security Review Board; and*]

[(b) *The person has no other findings of guilty except for insanity within the 10 years prior to filing the motion and no convictions for offenses other than motor vehicle violations within the 10 years prior to filing the motion.*] **the following time periods:**

(A) For a judgment of guilty except for insanity on a Class B felony, seven years from the date of entry of the judgment or the date the person is no longer under the jurisdiction of the Psychiatric Security Review Board, whichever is later.

(B) For a judgment of guilty except for insanity on a Class C felony, five years from the date of entry of the judgment or the date the person is no longer under the jurisdiction of the board, whichever is later.

(C) For a judgment of guilty except for insanity on a Class A misdemeanor, three years from the date of entry of the judgment or the date the person is no longer under the jurisdiction of the board, whichever is later.

(D) For a judgment of guilty except for insanity on a Class B or Class C misdemeanor, one year from the date of entry of the judgment or the date the person is no longer under the jurisdiction of the board, whichever is later.

(b) A person is eligible to have a judgment of guilty except for insanity set aside under this section if the person has no other findings of guilty except for insanity and no convictions for offenses other than motor vehicle violations within the following time periods prior to filing the motion:

(A) For a motion concerning a judgment of guilty except for insanity on a Class B felony, seven years.

(B) For a motion concerning a judgment of guilty except for insanity on a Class C felony, five years.

(C) For a motion concerning a judgment of guilty except for insanity on a Class A misdemeanor, three years.

(D) For a motion concerning a judgment of guilty except for insanity on a Class B or Class C misdemeanor, one year.

(3)(a) A copy of the motion [*and a full set of the defendant's fingerprints*] shall be served upon the office of the prosecuting attorney who prosecuted the offense. [*and opportunity shall be given to contest the motion. The fingerprint card with the notation "motion for setting aside judgment of guilty except for insanity" shall be forwarded to the Department of State Police. Information resulting from the fingerprint search along with the fingerprint card shall be returned to the prosecuting attorney.*] **The prosecuting attorney may object to the motion filed and shall notify the court and the person of the objection within 120 days of receiving the motion.**

(b) When a prosecuting attorney is served with a copy of a motion to set aside a judgment of guilty except for insanity under this section, the prosecuting attorney shall provide a copy of the motion and notice of the hearing date to the victim, if any, of the offense by mailing a copy of the motion and notice to the victim's last-known address.

(c) When a person files a motion under this section, the person must pay a fee [*of \$80*] to the Department of State Police **for the purpose of the department performing a criminal record check, and shall forward to the department a full set of the person's fingerprints on a fingerprint card or in any other manner specified by the department.** [*The person shall attach a certified check payable to the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fingerprint card to the Department of State Police.*] **The department shall establish a fee in an amount not to exceed the actual cost of performing the criminal record check. If the department is required to perform only one criminal record check for the person, the department may only charge one fee, regardless of the number of counties in which the person is filing a motion to set aside a conviction, arrest, charge or citation under this section. The department shall provide a copy of the results of the criminal record check to the prosecuting attorney.**

(d) [*In addition to the fee established under paragraph (c) of this subsection, the person must pay the filing fee established under ORS 21.135.*] **A person filing a motion under this section is not required to pay the filing fee established under ORS 21.135.**

[(4)(a) *Upon hearing the motion, the court may require the filing of such affidavits and may require the taking of such proofs as the court deems proper. The court shall allow the victim, if any, to make a statement at the hearing.*]

[(b) *Except as otherwise provided in paragraph (c) of this subsection, if the court determines that the circumstances and behavior of the person from the date of the judgment of guilty except for insanity to the date of the hearing on the motion warrant the court granting the motion, the court shall enter an order setting aside the judgment of guilty except for insanity.*]

[(c) *Unless the court makes written findings by clear and convincing evidence that granting the motion would not be in the best interests of justice, the court shall grant the motion and enter an order as provided in paragraph (b) of this subsection if the defendant was found guilty except for insanity of an offense described in ORS 137.225 (12) and is otherwise eligible for relief under this section.*]

(4)(a) If an objection is received to a motion filed under this section, the court shall hold a hearing, and may require the filing of such affidavits and may require the taking of such proofs as the court deems proper. The court shall allow the victim to make a statement at the hearing. If the person is otherwise eligible for relief under this section, the court shall grant the motion and enter an order as described in paragraph (b) of this subsection unless the court makes written findings, by clear and convincing evidence, that the circumstances and behavior of the person, from the date of the judgment the person is seeking to set aside to the date of the hearing on the motion, do not warrant granting the motion due to the circumstances and behavior creating a risk to public safety. When determining whether the person's circumstances and behavior create a risk to public safety, the court may only consider criminal behavior, or violations of regulatory law or administrative rule enforced by civil penalty or other administrative sanction that relate to the character of the conviction sought to be set aside. The court may not consider non-punitive civil liability, monetary obligations and motor vehicle violations.

[(d)] (b) An order entered under this subsection shall state the original arrest charge and the charge for which the person was found guilty except for insanity. The order shall further state that positive identification has been established by the Department of State Police and further identified as to Department of State Police number or submitting agency number.

(5)(a) Upon the entry of an order under subsection (4) of this section:

(A) The person, for purposes of the law, shall be deemed not to have been previously found guilty except for insanity, and the court shall issue an order sealing the records of the case, including the records of arrest, whether or not the arrest resulted in a further criminal proceeding.

(B) The court shall inform the person that the person's right to possess, purchase or otherwise acquire a firearm remains prohibited under federal law.

(b) For purposes of this subsection, records of the case do not include medical records that are in the possession of the Psychiatric Security Review Board, including medical evaluations and reports submitted from other agencies concerning the status or compliance of the person.

(6) The clerk of the court shall forward a certified copy of the order entered under subsection (5) of this section to such agencies as directed by the court. A certified copy shall be sent to the Psychiatric Security Review Board. Upon entry of the order, the judgment of guilty except for insanity shall be deemed not to have been entered, and the person may answer accordingly any questions relating to its occurrence.

(7) For purposes of any civil action in which truth is an element of a claim for relief or affirmative defense, the provisions of subsection (6) of this section providing that the judgment of guilty except for insanity be deemed not to have been entered do not apply and a party may apply to the court for an order requiring disclosure of the official records in the case as may be necessary in the interests of justice.

(8) Upon motion of any prosecutor or defendant in a case involving records sealed under this section, supported by affidavit showing good cause, the court with jurisdiction may order the reopening and disclosure of any records sealed under this section for the limited purpose of assisting the investigation of the movant. However, such an order has no other effect on the orders setting aside the judgment of guilty except for insanity.

(9) A prosecuting attorney may not condition an agreement not to object to the entry of a judgment of guilty except for insanity on an agreement by a person to waive the ability to set aside the judgment under this section.

(10) As used in this section, "affidavit" includes a declaration under penalty of perjury.

SECTION 3. ORS 135.418 is amended to read:

135.418. (1) A prosecuting attorney may not condition a defendant's plea offer on:

(a) The defendant's waiver of:

(A) The disclosure obligation of ORS 135.815 (1)(g).

(B) The ability to receive the audio recording of grand jury proceedings as permitted under ORS 132.270, if the indictment has been indorsed "a true bill."

(C) Eligibility for transitional leave under ORS 421.168.

(D) Eligibility for a reduction in the term of incarceration under ORS 421.120 or 421.121.

(E) Eligibility for any reduction in sentence, leave or release from custody or any other program for which the executing or releasing authority may consider the defendant, including programs for which the executing or releasing authority determines eligibility and programs for which consideration must be ordered by the sentencing court under ORS 137.750.

(F) The ability to set aside the conviction under ORS 137.225.

(b) A requirement that the defendant or the defense attorney stipulate to the unconstitutionality of an existing law.

(2)(a) A plea agreement may not contain a provision prohibited by subsection (1) of this section.

(b) A prohibited provision described in subsection (1) of this section in a plea agreement is contrary to public policy and is void and unenforceable.

(3) As used in this section, "executing or releasing authority" has the meaning given that term in ORS 137.750.

SECTION 4. (1) A criminal history data provider is prohibited from including criminal history information in a criminal history report if the criminal history information fails to reflect material changes to the official record of a person's criminal history occurring more than 60 days before the date the criminal history report is delivered.

(2) As used in this section, "material changes" include, but are not limited to:

(a) The setting aside of a conviction arrest, record of acquittal or dismissal, or the issuance of a criminal citation or criminal charge, if no accusatory instrument is filed;

(b) The reduction of an offense to a lower level of offense; and

(c) The vacating of a conviction.

(3) A violation of subsection (1) of this section constitutes an unlawful trade practice under ORS 646.607.

SECTION 5. ORS 646.607 is amended to read:

646.607. A person engages in an unlawful trade practice if in the course of the person's business, vocation or occupation the person:

(1) Employs any unconscionable tactic in connection with selling, renting or disposing of real estate, goods or services, or collecting or enforcing an obligation.

(2) Fails to deliver all or any portion of real estate, goods or services as promised, and at a customer's request, fails to refund money that the customer gave to the person to purchase the undelivered real estate, goods or services and that the person does not retain pursuant to any right, claim or defense the person may assert in good faith. This subsection does not create a warranty obligation and does not apply to a dispute over the quality of real estate, goods or services delivered to a customer.

(3) Violates ORS 401.965 (2).

(4) Violates a provision of ORS 646A.725 to 646A.750.

(5) Violates ORS 646A.530.

(6) Employs a collection practice that is unlawful under ORS 646.639.

(7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or 86.732 (1) or (2).

(8) Violates ORS 646A.093.

(9) Violates a provision of ORS 646A.600 to 646A.628.

(10) Violates ORS 646A.808 (2).

(11) Violates ORS 336.184.

(12) Publishes on a website related to the person's business, or in a consumer agreement related to a consumer transaction, a statement or representation of fact in which the person asserts that the person, in a particular manner or for particular purposes, will use, disclose, collect, maintain, delete or dispose of information that the person requests, requires or receives from a consumer and the person uses, discloses, collects, maintains, deletes or disposes of the information in a manner that is materially inconsistent with the person's statement or representation.

(13) Violates ORS 646A.813 (2).

(14) Violates section 4 (1) of this 2021 Act.

Passed by Senate June 16, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 22, 2021

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Tina Kotek, Speaker of House

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.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State