

SB 1511-2
(LC 98)
2/2/22 (JLM/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

**PROPOSED AMENDMENTS TO
SENATE BILL 1511**

1 On page 1 of the printed bill, line 2, after “135.815” insert “, 137.223,
2 137.225, 137.930, 144.791 and 646.607”.

3 On page 4, delete lines 13 and 14 and insert:

4 **“SECTION 4.** ORS 137.223 is amended to read:

5 “137.223. (1) A person who has been found guilty except for insanity of
6 an offense for which, if convicted, the person could apply for entry of an
7 order setting aside the conviction pursuant to ORS 137.225, may by motion
8 apply to the court for entry of an order setting aside the judgment finding
9 the person guilty except for insanity of the offense.

10 “(2)(a) A person described in subsection (1) of this section may file the
11 motion to set aside a judgment of guilty except for insanity any time after
12 the following time periods:

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

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

20 “(C) For a judgment of guilty except for insanity on a Class A
21 misdemeanor, three years from the date of entry of the judgment or the date

1 the person is no longer under the jurisdiction of the board, whichever is
2 later.

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

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

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

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

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

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

19 “(3)(a) A copy of the motion shall be served upon the office of the prose-
20 cuting attorney who prosecuted the offense. The prosecuting attorney may
21 object to the motion filed and shall notify the court and the person of the
22 objection within 120 days of *[receiving the motion]* **the date the motion was**
23 **filed with the court. The prosecuting attorney shall indicate whether**
24 **the objection is based on the person’s eligibility under subsections (1)**
25 **and (2) of this section or on the person’s circumstances and behavior**
26 **from the date of the judgment of guilty except for insanity as de-**
27 **scribed in subsection (4)(a)(A) of this section.**

28 “(b) When a prosecuting attorney is served with a copy of a motion to set
29 aside a judgment of guilty except for insanity under this section, the prose-
30 cuting attorney shall provide a copy of the motion and notice of the hearing

1 date to the victim, if any, of the offense by mailing a copy of the motion and
2 notice to the victim's last-known address.

3 “(c) When a person files a motion under this section, the person must pay
4 a fee to the Department of State Police for the purpose of the department
5 performing a criminal record check, and shall forward to the department a
6 full set of the person's fingerprints on a fingerprint card or in any other
7 manner specified by the department. The department shall establish a fee in
8 an amount not to exceed the actual cost of performing the criminal record
9 check. If the department is required to perform only one criminal record
10 check for the person, the department may only charge one fee, regardless of
11 the number of counties in which the person is filing a motion to set aside
12 a conviction, arrest, charge or citation under this section. The department
13 shall provide a copy of the results of the criminal record check to the pro-
14 secuting attorney.

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

17 “(4)(a)(A) If an objection **based on the person's circumstances and**
18 **behavior** is received to a motion filed under this section, the court shall
19 hold a hearing, and may require the filing of such affidavits and may require
20 the taking of such proofs as the court deems proper. **If applicable**, the court
21 shall allow the victim to make a statement at the hearing. If the person is
22 otherwise eligible for relief under this section, the court shall grant the
23 motion and enter an order as described in paragraph (b) of this subsection
24 unless the court makes written findings, by clear and convincing evidence,
25 that the circumstances and behavior of the person, from the date of the
26 judgment the person is seeking to set aside to the date of the hearing on the
27 motion, do not warrant granting the motion due to the circumstances and
28 behavior creating a risk to public safety. When determining whether the
29 person's circumstances and behavior create a risk to public safety, the court
30 may only consider criminal behavior, or violations of regulatory law or ad-

1 ministrative rule enforced by civil penalty or other administrative sanction
2 that relate to the character of the conviction sought to be set aside. The
3 court may not consider nonpunitive civil liability, monetary obligations and
4 motor vehicle violations.

5 **“(B) If an objection based on the person’s eligibility under sub-**
6 **sections (1) and (2) of this section is received to a motion filed under**
7 **this section, the person may request a hearing within 60 days of the**
8 **date the objection was filed. If the person requests a hearing, the court**
9 **shall hold the hearing, and may require the filing of such affidavits**
10 **and may require the taking of such proofs as the court deems proper.**
11 **If applicable, the court shall allow the victim to make a statement at**
12 **the hearing. If the court finds that the person is eligible for relief**
13 **under this section, the court shall grant the motion and enter an order**
14 **as described in paragraph (b) of this subsection. If the court finds that**
15 **the person is not eligible for relief under this section, or if person does**
16 **not request a hearing within 60 days of the date the objection was**
17 **filed, the court shall deny the motion.**

18 “(b) An order entered under this subsection shall state the original arrest
19 charge and the charge for which the person was found guilty except for in-
20 sanity. The order shall further state that positive identification has been
21 established by the Department of State Police and further identified as to
22 Department of State Police number or submitting agency number.

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

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

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

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

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

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

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

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

26 “(10) As used in this section, ‘affidavit’ includes a declaration under
27 penalty of perjury.

28 **“SECTION 5.** ORS 137.225 is amended to read:

29 “137.225. (1)(a) At any time after the person becomes eligible as described
30 in paragraph (b) of this subsection, any person convicted of an offense who

1 has fully complied with and performed the sentence of the court for the of-
2 fense, and whose conviction is described in subsection (5) of this section, by
3 motion may apply to the court where the conviction was entered for entry
4 of an order setting aside the conviction. A person who is still under super-
5 vision as part of the sentence for the offense that is the subject of the motion
6 has not fully complied with or performed the sentence of the court.

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

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

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

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

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

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

28 “(d) At any time after an acquittal or a dismissal other than a dismissal
29 described in paragraph (c) of this subsection, an arrested, cited or charged
30 person may apply to the court in the county in which the person was ar-

1 rested, cited or charged, for entry of an order setting aside the record of the
2 arrest, citation or charge.

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

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

11 “(2)(a) A copy of the motion shall be served upon the office of the prose-
12 cuting attorney who prosecuted the offense, or who had authority to prose-
13 cute the charge if there was no accusatory instrument filed. The prosecuting
14 attorney may [*object*] **file an objection** to a motion filed under subsection
15 (1)(a) of this section and shall notify the court and the person of the ob-
16 jection within 120 days of the date the motion was filed with the court. **The**
17 **prosecuting attorney shall indicate whether the objection is based on**
18 **the person’s eligibility under subsections (1), (5), (6) and (7) of this**
19 **section or on the person’s circumstances and behavior from the date**
20 **of the conviction as described in subsection (3)(a)(A) of this section.**

21 “(b) When a prosecuting attorney is served with a copy of a motion to set
22 aside a conviction under subsection (1)(a) of this section, the prosecuting
23 attorney shall provide a copy of the motion and notice of the hearing date
24 to the victim, if any, of the offense by mailing a copy of the motion and
25 notice to the victim’s last-known address.

26 “(c) When a person makes a motion under this section, the person shall
27 forward to the Department of State Police a full set of the person’s finger-
28 prints on a fingerprint card or in any other manner specified by the depart-
29 ment.

30 “(d) When a person makes a motion under subsection (1)(a) of this section,

1 the person must pay a fee to the Department of State Police for the purpose
2 of the department performing a criminal record check. The department shall
3 establish a fee in an amount not to exceed the actual cost of performing the
4 criminal record check. If the department is required to perform only one
5 criminal record check for the person, the department may only charge one
6 fee, regardless of the number of counties in which the person is filing a
7 motion to set aside a conviction, arrest, charge or citation under this section.
8 The department shall provide a copy of the results of the criminal record
9 check to the prosecuting attorney.

10 “(e) The prosecuting attorney may not charge the person a fee for per-
11 forming the requirements described in this section.

12 “(3)(a)(A) If an objection **based on the person’s circumstances and**
13 **behavior** is received to a motion filed under subsection (1)(a) of this section,
14 the court shall hold a hearing, and may require the filing of such affidavits
15 and may require the taking of such proofs as the court deems proper. **If**
16 **applicable**, the court shall allow the victim to make a statement at the
17 hearing. If the person is otherwise eligible for relief under this section, the
18 court shall grant the motion [*and enter an order as described in paragraph*
19 *(b) of this subsection*] unless the court makes written findings, by clear and
20 convincing evidence, that the circumstances and behavior of the person, from
21 the date of the conviction the person is seeking to set aside to the date of
22 the hearing on the motion, do not warrant granting the motion due to the
23 circumstances and behavior creating a risk to public safety. When deter-
24 mining whether the person’s circumstances and behavior create a risk to
25 public safety, the court may only consider criminal behavior, or violations
26 of regulatory law or administrative rule enforced by civil penalty or other
27 administrative sanction that relate to the character of the conviction sought
28 to be set aside. The court may not consider nonpunitive civil liability, mon-
29 etary obligations and motor vehicle violations. Upon granting the motion,
30 the court shall enter an appropriate order containing the original arrest or

1 citation charge, the conviction charge, if different from the original, the date
2 of charge, the submitting agency and the disposition of the charge. Upon the
3 entry of the order, the person for purposes of the law shall be deemed not
4 to have been previously convicted, and the court shall issue an order sealing
5 the record of conviction and other official records in the case, including the
6 records of arrest, citation or charge.

7 **“(B) If an objection based on the person’s eligibility under sub-**
8 **sections (1), (5), (6) and (7) of this section is received to a motion filed**
9 **under subsection (1)(a) of this section, the person may request a**
10 **hearing within 60 days of the date the objection was filed. If the person**
11 **requests a hearing, the court shall hold the hearing, and may require**
12 **the filing of such affidavits and may require the taking of such proofs**
13 **as the court deems proper. If applicable, the court shall allow the**
14 **victim to make a statement at the hearing. If the court finds that the**
15 **person is eligible for relief under this section, the court shall grant the**
16 **motion and enter an order as described in subparagraph (A) of this**
17 **paragraph. If the court finds that the person is not eligible for relief**
18 **under this section, or if person does not request a hearing within 60**
19 **days of the date the objection was filed, the court shall deny the mo-**
20 **tion.**

21 “(b) The court shall grant a motion filed under subsection (1)(c) or (d) of
22 this section, or under subsection (1)(a) of this section if no objection to the
23 motion is received, and shall enter an appropriate order containing the ori-
24 ginal arrest or citation charge, the conviction charge, if applicable and dif-
25 ferent from the original, the date of charge, the submitting agency and the
26 disposition of the charge. Upon the entry of the order, the person for pur-
27 poses of the law shall be deemed not to have been previously convicted, ar-
28 rested, cited or charged, and the court shall issue an order sealing all official
29 records in the case, including the records of arrest, citation or charge,
30 whether or not the arrest, citation or charge resulted in a further criminal

1 proceeding.

2 “(4) The clerk of the court shall forward a certified copy of the order to
3 such agencies as directed by the court. A certified copy must be sent to the
4 Department of Corrections when the order concerns a conviction. Upon entry
5 of the order, the conviction, arrest, citation, charge or other proceeding shall
6 be deemed not to have occurred, and the person may answer accordingly any
7 questions relating to its occurrence.

8 “(5) The provisions of subsection (1)(a) of this section apply to a con-
9 viction for:

10 “(a) A Class B felony, except for a violation of ORS 166.429 or any crime
11 classified as a person felony as defined in the rules of the Oregon Criminal
12 Justice Commission.

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

15 “(c) An offense constituting a violation under state law or local ordi-
16 nance.

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

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

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

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

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

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

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

1 “(e) Assault in the third degree under ORS 163.165 (1)(h).
2 “(f) Any sex crime, unless:
3 “(A) The sex crime is listed in ORS 163A.140 (1)(a) and:
4 “(i) The person has been relieved of the obligation to report as a sex
5 offender pursuant to a court order entered under ORS 163A.145 or 163A.150;
6 and
7 “(ii) The person has not been convicted of, found guilty except for insan-
8 ity of or found to be within the jurisdiction of the juvenile court based on
9 a crime for which the court is prohibited from setting aside the conviction
10 under this section; or
11 “(B) The sex crime constitutes a Class C felony and:
12 “(i) The person was under 16 years of age at the time of the offense;
13 “(ii) The person is:
14 “(I) Less than two years and 180 days older than the victim; or
15 “(II) At least two years and 180 days older, but less than three years and
16 180 days older, than the victim and the court finds that setting aside the
17 conviction is in the interests of justice and of benefit to the person and the
18 community;
19 “(iii) The victim’s lack of consent was due solely to incapacity to consent
20 by reason of being less than a specified age;
21 “(iv) The victim was at least 12 years of age at the time of the offense;
22 “(v) The person has not been convicted of, found guilty except for insanity
23 of or found to be within the jurisdiction of the juvenile court based on a
24 crime for which the court is prohibited from setting aside the conviction
25 under this section; and
26 “(vi) Each conviction or finding described in this subparagraph involved
27 the same victim.
28 “(7) Notwithstanding subsection (5) of this section, the provisions of sub-
29 section (1) of this section do not apply to:
30 “(a) A conviction for a state or municipal traffic offense.

1 “(b) A person convicted, within the following applicable time period im-
2 mediately preceding the filing of the motion pursuant to subsection (1) of
3 this section, of any other offense, excluding motor vehicle violations,
4 whether or not the other conviction is for conduct associated with the same
5 criminal episode that caused the arrest, citation, charge or conviction that
6 is sought to be set aside:

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

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

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

10 “(D) For a motion concerning a Class B or Class C misdemeanor a vio-
11 lation or a finding of contempt of court, one year.

12 “(c) A single violation, other than a motor vehicle violation, within the
13 time period specified in paragraph (b) of this subsection is not a conviction
14 under this subsection. Notwithstanding subsection (1) of this section, a
15 conviction that has been set aside under this section shall be considered for
16 the purpose of determining whether paragraph (b) of this subsection is ap-
17 plicable.

18 “(d) A person who at the time the motion authorized by subsection (1) of
19 this section is pending before the court is under charge of commission of any
20 crime.

21 “(8) The provisions of subsection (1)(c) or (d) of this section do not apply
22 to an arrest or citation for driving while under the influence of intoxicants
23 if the charge is dismissed as a result of the person’s successful completion
24 of a diversion agreement described in ORS 813.200.

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

29 “(10) For purposes of any civil action in which truth is an element of a
30 claim for relief or affirmative defense, the provisions of subsection (3) of this

1 section providing that the conviction, arrest, citation, charge or other pro-
2 ceeding be deemed not to have occurred do not apply and a party may apply
3 to the court for an order requiring disclosure of the official records in the
4 case as may be necessary in the interest of justice.

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

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

19 “(12) The State Court Administrator shall create forms to be used
20 throughout the state for motions and proposed orders described in this sec-
21 tion.

22 “(13) As used in this section:

23 “(a) ‘Affidavit’ includes a declaration under penalty of perjury.

24 “(b) ‘Sex crime’ has the meaning given that term in ORS 163A.005.

25 **“SECTION 6.** ORS 137.930 is amended to read:

26 “137.930. (1) A criminal history data provider is prohibited from including
27 criminal history information in a criminal history report if the criminal
28 history information fails to reflect material changes to the official record of
29 a person’s criminal history occurring more than 60 days before the date the
30 criminal history report is delivered.

1 “(2) As used in this section, ‘material changes’ include, but are not lim-
2 ited to:

3 “(a) The setting aside of a conviction arrest, record of acquittal or dis-
4 missal, or the issuance of a criminal citation or criminal charge, if no
5 accusatory instrument is filed;

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

7 “(c) The vacating of a conviction.

8 “[*(3) A violation of subsection (1) of this section constitutes an unlawful*
9 *trade practice under ORS 646.607.*]

10 “**(3)(a) The Attorney General may bring a civil action in the name**
11 **of the State of Oregon for injunctive relief against a criminal history**
12 **data provider to restrain an actual or threatened violation of this**
13 **section and to compel compliance with this section.**

14 “**(b) The court may award to the Attorney General reasonable at-**
15 **torney fees and the costs of investigation, preparation and litigation**
16 **if the Attorney General prevails in an action described in this sub-**
17 **section.**

18 “(4) As used in this section:

19 “(a)(A) ‘**Criminal history data provider**’ means a person or entity
20 that compiles a criminal history report concerning an individual and
21 either uses the report or provides the report to a person or entity
22 other than a criminal justice agency.

23 “(B) ‘**Criminal history data provider**’ does not include:

24 “(i) A criminal justice agency;

25 “(ii) A person connected with or employed by a newspaper or other
26 periodical issued at regular intervals and having a general circulation,
27 or by a recognized press association or wire service, who receives in-
28 come from the gathering, writing, editing or interpretation of news;

29 “(iii) A person connected with a licensed radio or television station
30 as an owner or official, or as an editor or reporter, who receives in-

1 **come from the gathering, writing, editing, interpreting, announcing**
2 **or broadcasting of news;**

3 **“(iv) A person who gathers, records, compiles or disseminates**
4 **criminal history information solely for journalistic, academic, gov-**
5 **ernmental or legal research purposes; or**

6 **“(v) The clerk of a state or local court.**

7 **“(b) ‘Criminal justice agency’ has the meaning given that term in**
8 **ORS 181A.010.**

9 **“SECTION 7.** ORS 646.607 is amended to read:

10 “646.607. A person engages in an unlawful trade practice if in the course
11 of the person’s business, vocation or occupation the person:

12 “(1) Employs any unconscionable tactic in connection with selling, rent-
13 ing or disposing of real estate, goods or services, or collecting or enforcing
14 an obligation.

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

22 “(3) Violates ORS 401.965 (2).

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

24 “(5) Violates ORS 646A.530.

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

26 “(7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or
27 86.732 (1) or (2).

28 “(8) Violates ORS 646A.093.

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

30 “(10) Violates ORS 646A.808 (2).

1 “(11) Violates ORS 336.184.

2 “(12) Publishes on a website related to the person’s business, or in a
3 consumer agreement related to a consumer transaction, a statement or rep-
4 resentation of fact in which the person asserts that the person, in a partic-
5 ular manner or for particular purposes, will use, disclose, collect, maintain,
6 delete or dispose of information that the person requests, requires or receives
7 from a consumer and the person uses, discloses, collects, maintains, deletes
8 or disposes of the information in a manner that is materially inconsistent
9 with the person’s statement or representation.

10 “(13) Violates ORS 646A.813 (2).

11 “[~~(14)~~ Violates ORS 137.930 (1).]

12 “[~~(15)~~] (14) Violates section 1, chapter 305, Oregon Laws 2021.

13 **“SECTION 8.** ORS 646.607, as amended by section 3, chapter 305, Oregon
14 Laws 2021, is amended to read:

15 “646.607. A person engages in an unlawful trade practice if in the course
16 of the person’s business, vocation or occupation the person:

17 “(1) Employs any unconscionable tactic in connection with selling, rent-
18 ing or disposing of real estate, goods or services, or collecting or enforcing
19 an obligation.

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

27 “(3) Violates ORS 401.965 (2).

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

29 “(5) Violates ORS 646A.530.

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

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

3 “(8) Violates ORS 646A.093.

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

5 “(10) Violates ORS 646A.808 (2).

6 “(11) Violates ORS 336.184.

7 “(12) Publishes on a website related to the person’s business, or in a
8 consumer agreement related to a consumer transaction, a statement or rep-
9 resentation of fact in which the person asserts that the person, in a partic-
10 ular manner or for particular purposes, will use, disclose, collect, maintain,
11 delete or dispose of information that the person requests, requires or receives
12 from a consumer and the person uses, discloses, collects, maintains, deletes
13 or disposes of the information in a manner that is materially inconsistent
14 with the person’s statement or representation.

15 “(13) Violates ORS 646A.813 (2).

16 “[*(14) Violates ORS 137.930 (1).*]

17 **“SECTION 9.** ORS 144.791 is amended to read:

18 “144.791. (1) When a person is convicted of a felony, including a felony
19 sexual offense, the sentencing court may order a presentence report upon its
20 own motion or upon the request of the district attorney or the defendant.

21 “[*(2) The sentencing court shall order a presentence report if the defendant*
22 *is convicted of a felony sexual offense unless:*]

23 “[*(a) The defendant, as part of the same prosecution, is convicted of ag-*
24 *gravated murder;*]

25 “[*(b) The felony sexual offense requires the imposition of a mandatory*
26 *minimum prison sentence and no departure is sought by the court, district at-*
27 *torney or defendant; or*]

28 “[*(c) The felony sexual offense requires imposition of a presumptive prison*
29 *sentence and no departure is sought by the court, district attorney or defend-*
30 *ant.*]

1 “[3] (2) The Department of Corrections shall:

2 “(a) Require that a presentence report provide an analysis of what dispo-
3 sition is most likely to reduce the offender’s criminal conduct, explain why
4 that disposition would have that effect and provide an assessment of the
5 availability to the offender of any relevant programs or treatment in or out
6 of custody, whether provided by the department or another entity;

7 “(b) Determine what additional information must be included in the pre-
8 sentence report; and

9 “(c) Establish a uniform presentence report form.

10 **“SECTION 10. This 2022 Act takes effect on the 91st day after the**
11 **date on which the 2022 regular session of the Eighty-first Legislative**
12 **Assembly adjourns sine die.”**

13
