

House Bill 2909

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFECTIVENESS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits person from sending to consumer check, draft, payment instrument or other negotiable instrument that is with, part of or related to solicitation for or offer of credit or loan, unless the consumer previously requested or consented to receive check, draft, payment instrument or other negotiable instrument. Provides that consumer's previous request or consent must have been affirmative and in written agreement that is separate from any other agreement.

Becomes operative 91 days after effective date.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to unlawful trade practices; creating new provisions; amending ORS 459.045, 646.607,
3 646.608, 646.609, 646.611, 646.633, 646.638, 646.883, 646A.110, 646A.365 and 698.640; and declaring
4 an emergency.

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

6 **SECTION 1.** ORS 646A.365 is amended to read:

7 646A.365. (1) A person may not mail or cause to be sent a check, draft or other payment in-
8 strument that, when deposited or cashed, obligates the depositor or payee thereafter to make any
9 payment. This *[section]* **subsection** does not apply to an extension of credit or an offer to lend
10 money.

11 (2)(a) **As used in this subsection, "consumer" means an individual resident of this state.**

12 (b) **A person may not send to a consumer a check, draft, payment instrument or other**
13 **negotiable instrument that is with, part of or related to a solicitation for or an offer of credit**
14 **or a loan, unless the consumer previously requested or consented to receive the check, draft,**
15 **payment instrument or other negotiable instrument. The consumer's previous request or**
16 **consent must have been affirmative and in a written agreement that is separate from any**
17 **other agreement.**

18 (3) **Violating a provision of subsection (2) of this section is an unlawful practice under**
19 **ORS 646.607 that is subject to enforcement under ORS 646.618 and 646.632. A prosecuting**
20 **attorney who intends to take an enforcement action under this subsection against a state**
21 **regulated lender, as defined in ORS 646.633, may bring the person's conduct to the attention**
22 **of the Director of the Department of Consumer and Business Services but otherwise shall**
23 **comply with the provisions of ORS 646.633.**

24 **SECTION 2.** ORS 646.607 is amended to read:

25 646.607. A person engages in an unlawful practice if in the course of the person's business, vo-
26 cation or occupation the person:

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

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

7 (3) Violates ORS 401.965 (2);

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

9 (5) Violates ORS 646A.530;

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

11 (7) Is a beneficiary that violates ORS 86.726 (1)(a) or (2), 86.729 (4) or 86.732 (1) or (2); [or]

12 (8) Violates ORS 646A.093[.]; **or**

13 **(9) Violates ORS 646A.365 (2).**

14 **SECTION 3.** ORS 646.608, as amended by section 3, chapter 19, Oregon Laws 2014, is amended
 15 to read:

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

18 [(a)] (1) Passes off real estate, goods or services as the real estate, goods or services of another.

19 [(b)] (2) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship,
 20 approval, or certification of real estate, goods or services.

21 [(c)] (3) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or
 22 association with, or certification by, another.

23 [(d)] (4) Uses deceptive representations or designations of geographic origin in connection with
 24 real estate, goods or services.

25 [(e)] (5) Represents that real estate, goods or services have sponsorship, approval, character-
 26 istics, ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do
 27 not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection
 28 that the person does not have.

29 [(f)] (6) Represents that real estate or goods are original or new if the real estate or goods are
 30 deteriorated, altered, reconditioned, reclaimed, used or secondhand.

31 [(g)] (7) Represents that real estate, goods or services are of a particular standard, quality, or
 32 grade, or that real estate or goods are of a particular style or model, if the real estate, goods or
 33 services are of another.

34 [(h)] (8) Disparages the real estate, goods, services, property or business of a customer or an-
 35 other by false or misleading representations of fact.

36 [(i)] (9) Advertises real estate, goods or services with intent not to provide the real estate, goods
 37 or services as advertised, or with intent not to supply reasonably expectable public demand, unless
 38 the advertisement discloses a limitation of quantity.

39 [(j)] (10) Makes false or misleading representations of fact concerning the reasons for, existence
 40 of, or amounts of price reductions.

41 [(k)] (11) Makes false or misleading representations concerning credit availability or the nature
 42 of the transaction or obligation incurred.

43 [(L)] (12) Makes false or misleading representations relating to commissions or other compen-
 44 sation to be paid in exchange for permitting real estate, goods or services to be used for model or
 45 demonstration purposes or in exchange for submitting names of potential customers.

1 [(m)] (13) Performs service on or dismantles any goods or real estate if the owner or apparent
2 owner of the goods or real estate does not authorize the service or dismantling.

3 [(n)] (14) [*Solicits potential customers by telephone or door to door as a seller unless the person*
4 *provides the information required under*] **Violates** ORS 646.611.

5 [(o)] (15) In a sale, rental or other disposition of real estate, goods or services, gives or offers
6 to give a rebate or discount or otherwise pays or offers to pay value to the customer in consider-
7 ation of the customer giving to the person the names of prospective purchasers, lessees, or borrow-
8 ers, or otherwise aiding the person in making a sale, lease, or loan to another person, if earning the
9 rebate, discount or other value is contingent upon an event occurring after the time the customer
10 enters into the transaction.

11 [(p)] (16) Makes any false or misleading statement about a prize, contest or promotion used to
12 publicize a product, business or service.

13 [(q)] (17) Promises to deliver real estate, goods or services within a certain period of time with
14 intent not to deliver the real estate, goods or services as promised.

15 [(r)] (18) Organizes or induces or attempts to induce membership in a pyramid club.

16 [(s)] (19) Makes false or misleading representations of fact concerning the offering price of, or
17 the person's cost for real estate, goods or services.

18 [(t)] (20) Concurrent with tender or delivery of any real estate, goods or services fails to disclose
19 any known material defect or material nonconformity.

20 [(u)] (21) Engages in any other unfair or deceptive conduct in trade or commerce.

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

24 [(w)] (23) Manufactures mercury fever thermometers.

25 [(x)] (24) Sells or supplies mercury fever thermometers unless the thermometer is required by
26 federal law, or is:

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

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

30 [(y)] (25) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner
31 to inform the purchaser that mercury is present in the thermostat and that the thermostat may not
32 be disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that
33 the mercury does not become part of the solid waste stream or wastewater. For purposes of this
34 [*paragraph*] **subsection**, "thermostat" means a device commonly used to sense and, through elec-
35 trical communication with heating, cooling or ventilation equipment, control room temperature.

36 [(z)] (26) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that con-
37 tains mercury light switches.

38 [(aa)] (27) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

39 [(bb)] (28) Violates ORS 646A.070 (1).

40 [(cc)] (29) Violates any requirement of ORS 646A.030 to 646A.040.

41 [(dd)] (30) Violates the provisions of ORS 128.801 to 128.898.

42 [(ee)] (31) Violates ORS 646.883 or 646.885.

43 [(ff)] (32) Violates ORS 646.569.

44 [(gg)] (33) Violates the provisions of ORS 646A.142.

45 [(hh)] (34) Violates ORS 646A.360.

- 1 [(ii)] (35) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
 2 [(jj)] (36) Violates ORS 646.563.
 3 [(kk)] (37) Violates ORS 759.690 or any rule adopted pursuant thereto.
 4 [(LL)] (38) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pur-
 5 suant thereto.
 6 [(mm)] (39) Violates ORS 646A.210 or 646A.214.
 7 [(nn)] (40) Violates any provision of ORS 646A.124 to 646A.134.
 8 [(oo)] (41) Violates ORS 646A.095.
 9 [(pp)] (42) Violates ORS 822.046.
 10 [(qq)] (43) Violates ORS 128.001.
 11 [(rr)] (44) Violates ORS 646A.800 (2) to (4).
 12 [(ss)] (45) Violates ORS 646A.090 (2) to (4).
 13 [(tt)] (46) Violates ORS 87.686.
 14 [(uu)] (47) Violates ORS 646A.803.
 15 [(vv)] (48) Violates ORS 646A.362.
 16 [(ww)] (49) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
 17 [(xx)] (50) Violates ORS 180.440 (1) or 180.486 (1).
 18 [(yy)] (51) Commits the offense of acting as a vehicle dealer without a certificate under ORS
 19 822.005.
 20 [(zz)] (52) Violates ORS 87.007 (2) or (3).
 21 [(aaa)] (53) Violates ORS 92.405 (1), (2) or (3).
 22 [(bbb)] (54) Engages in an unlawful practice under ORS 646.648.
 23 [(ccc)] (55) Violates ORS 646A.365 (1).
 24 [(ddd)] (56) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
 25 [(eee)] (57) Sells a gift card in violation of ORS 646A.276.
 26 [(fff)] (58) Violates ORS 646A.102, 646A.106 or 646A.108.
 27 [(ggg)] (59) Violates ORS 646A.430 to 646A.450.
 28 [(hhh)] (60) Violates a provision of ORS 744.318 to 744.384.
 29 [(iii)] (61) Violates a provision of ORS 646A.702 to 646A.720.
 30 [(jjj)] (62) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration
 31 described in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is
 32 the subject of the violation.
 33 [(kkk)] (63) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or
 34 697.707.
 35 [(LLL)] (64) Violates the consumer protection provisions of the Servicemembers Civil Relief Act,
 36 50 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
 37 [(mmm)] (65) Violates a provision of ORS 646A.480 to 646A.495.
 38 [(nnn)] (66) Violates ORS 646A.082.
 39 [(ooo)] (67) Violates ORS 646.647.
 40 [(ppp)] (68) Violates ORS 646A.115.
 41 [(qqq)] (69) Violates a provision of ORS 646A.405.
 42 [(rrr)] (70) Violates ORS 646A.092.
 43 [(sss)] (71) Violates a provision of ORS 646.644.
 44 [(ttt)] (72) Violates a provision of ORS 646A.295.
 45 [(uuu)] (73) Violates ORS 646A.564.

1 [(vvv)] (74) Engages in the business of, or acts in the capacity of, an immigration consultant, as
 2 defined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person
 3 to do so or unless the person is an active member of the Oregon State Bar.

4 [(www)] (75) Violates ORS 702.012, 702.029, 702.032 or 702.054.

5 [(xxx)] (76) Violates ORS 646A.806.

6 [(yyy)] (77) Violates section 2 (2), chapter 19, Oregon Laws 2014.

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

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

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

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

17 **SECTION 4. (1) A representation under ORS 646.607 or 646.608 may be any manifestation**
 18 **of any assertion by words or conduct, including, but not limited to, a failure to disclose a**
 19 **fact.**

20 **(2) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting**
 21 **attorney need not prove competition between the parties or actual confusion or misunder-**
 22 **standing.**

23 **(3) An action or suit may not be brought under ORS 646.608 (21) unless the Attorney**
 24 **General has first established a rule in accordance with the provisions of ORS chapter 183**
 25 **declaring the conduct to be unfair or deceptive in trade or commerce.**

26 **(4) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is**
 27 **brought under ORS 646.608 (50) by a person other than a prosecuting attorney, relief is lim-**
 28 **ited to an injunction and the prevailing party may be awarded reasonable attorney fees.**

29 **SECTION 5.** ORS 459.045 is amended to read:

30 459.045. (1) The Environmental Quality Commission shall adopt reasonable and necessary solid
 31 waste management rules governing the:

32 (a) Accumulation, storage, collection, transportation and disposal of solid wastes to prevent
 33 vector production and sustenance, transmission of diseases to humans or animals, air pollution,
 34 pollution of surface or ground waters, and hazards to service or disposal workers or to the public.

35 (b) Location of disposal sites, giving consideration to:

36 (A) The adaptability of each disposal site to the population served, topography and geology of
 37 the area and other characteristics as they affect protection of ground and surface waters and air
 38 pollution;

39 (B) Minimum standards of design, management and operation of disposal sites; and

40 (C) Salvage operations at disposal sites.

41 (c) Construction, loading and operation of vehicles used in performing collection service to
 42 prevent the contents of the vehicles from dropping, sifting, leaking or escaping onto public highways.

43 (d) Definition of other “wastes” subject to regulation under ORS 459.005 to 459.105, 459.205 to
 44 459.385 and 459.992 (1) and (2).

45 (e) Closure and post-closure maintenance of land disposal sites.

1 (2) The commission may by rule:

2 (a) Exempt a class of land disposal sites other than those receiving domestic solid waste from
3 the requirement to provide financial assurance under ORS 459.272; or

4 (b) Establish criteria that a land disposal site must meet to be exempted from the requirement
5 to provide financial assurance under ORS 459.272.

6 (3) The commission shall adopt rules on other subjects as necessary to carry out:

7 (a) ORS 459.005 to 459.105 and 459.205 to 459.385.

8 (b) ORS 646.608 [(1)(y)] **(25)**. Rules adopted under this paragraph shall, to the greatest extent
9 practicable, be consistent with the labeling requirements of other states.

10 (4) The commission shall adopt rules which have modified or limited application in different ge-
11 ographic areas of the state when special conditions prevail in specified geographic areas. Special
12 conditions that shall be considered include, but are not limited to, climatic conditions, zone classi-
13 fication of the area, population characteristics, methods and costs of solid waste management, solid
14 waste management plans and other conditions in the area. Modifications or limitations shall not be
15 unreasonable, arbitrary or inimical to the policy and purposes of ORS 459.005 to 459.105 and 459.205
16 to 459.385.

17 (5) All rules adopted under this section shall be adopted after public hearing and in accordance
18 with ORS chapter 183.

19 (6) Unless a rule adopted under this section is adopted pursuant to the authority granted by
20 ORS 183.335 (5), the commission shall mail copies of the proposed rules to all persons who have
21 requested such copies. The copies shall be mailed at least 30 days prior to the hearing required by
22 subsection (5) of this section.

23 **SECTION 6.** ORS 646.609 is amended to read:

24 646.609. As used in ORS 646.608 [(1)(r)] **(18)**, “pyramid club” means a sales device whereby a
25 person, upon condition that the person make an investment, is granted a license or right to solicit
26 or recruit for economic gain one or more additional persons who are also granted such license or
27 right upon condition of making an investment and who may further perpetuate the chain of persons
28 who are granted such license or right upon such condition. “Pyramid club” also includes any such
29 sales device which does not involve the sale or distribution of any real estate, goods or services,
30 including but not limited to a chain letter scheme. A limitation as to the number of persons who
31 may participate, or the presence of additional conditions affecting eligibility for such license or right
32 to recruit or solicit or the receipt of economic gain therefrom, does not change the identity of the
33 scheme as a pyramid club. As used herein, “investment” means any acquisition, for a consideration
34 other than personal services, of property, tangible or intangible, and includes without limitation,
35 franchises, business opportunities and services. It does not include sales demonstration equipment
36 and materials furnished at cost for use in making sales and not for resale. For the purpose of ORS
37 646.608 [(1)(r)] **(18)**, any person who organizes or induces or attempts to induce membership in a
38 pyramid club is acting in the course of the person’s business, vocation or occupation.

39 **SECTION 7.** ORS 646.611 is amended to read:

40 646.611. (1) A person [who solicits] **may not solicit** potential customers by telephone or [door
41 to door] **door-to-door** as a seller [is in violation of ORS 646.608 (1)(n)] unless the person:

42 [(1)] **(a)** Within 30 seconds after beginning the conversation:

43 [(a)] **(A)** Provides identification of both the person and whom the person represents;

44 [(b)] **(B)** Explains the purpose of the person’s call;

45 [(c)] **(C)** Provides a description in commonly understood terms of the goods or services offered

1 for sale; and

2 [(d)] (D) Inquires whether the person being solicited is interested in listening to a sales pres-
 3 entation and immediately discontinues the solicitation if the person being solicited gives a negative
 4 response; and

5 [(2)] (b) During the course of the solicitation, states the total cost of the goods or services of-
 6 fered for sale and the number, timing and amount of installment payments if payment on an install-
 7 ment basis is available to the person being solicited.

8 (2) **Soliciting a potential customer by telephone or door-to-door without making the dis-
 9 closures required under subsection (1) of this section is a violation of ORS 646.608 that is
 10 subject to enforcement under ORS 646.638.**

11 **SECTION 8.** ORS 646.633 is amended to read:

12 646.633. (1) For purposes of this section, “state regulated lender” means:

13 (a) A banking institution as defined in ORS 706.008;

14 (b) A credit union as defined in ORS 723.006;

15 (c) A person that is required to be licensed under ORS 725.045;

16 (d) A pawnbroker, as defined in ORS 726.010, that is required to be licensed under ORS chapter
 17 726; or

18 (e) A mortgage banker, mortgage broker or **mortgage** loan originator, as those terms are de-
 19 fined in ORS 86A.100, that is required to be licensed under ORS 86A.095 to 86A.198.

20 (2) A prosecuting attorney may not take action under ORS 646.618 or 646.632 with respect to
 21 an alleged unlawful practice under ORS 646.607 or 646.608 when the conduct involves loans or ex-
 22 tensions of credit and was engaged in by a state regulated lender unless requested to do so by the
 23 Director of the Department of Consumer and Business Services. In any action requested to be taken
 24 by the director under this subsection, the director may elect to be named as a party to the pro-
 25 ceeding or suit.

26 (3) The Attorney General may not adopt rules under [*ORS 646.608 (4)*] **section 4 (3) of this 2015
 27 Act** with respect to conduct involving loans or extensions of credit that is engaged in by a state
 28 regulated lender except with the prior review and approval of the proposed rules by the director.
 29 The Attorney General may not adopt rules under [*ORS 646.608 (4)*] **section 4 (3) of this 2015 Act**
 30 with respect to conduct involving loans or extensions of credit that is engaged in by a state regu-
 31 lated lender except as provided in this subsection.

32 (4) As soon as practicable upon receipt, the Attorney General shall provide the director with
 33 copies of any complaint or other initial pleading or any judgment received under ORS 646.638 when
 34 the action involves the conduct of a state regulated lender.

35 **SECTION 9.** ORS 646.638 is amended to read:

36 646.638. (1) Except as provided in subsections (8) and (9) of this section, a person that suffers
 37 an ascertainable loss of money or property, real or personal, as a result of another person’s willful
 38 use or employment of a method, act or practice declared unlawful under ORS 646.608, may bring an
 39 individual action in an appropriate court to recover actual damages or statutory damages of \$200,
 40 whichever is greater. The court or the jury may award punitive damages and the court may provide
 41 any equitable relief the court considers necessary or proper.

42 (2) A person that brings an action under subsection (1) of this section shall mail a copy of the
 43 complaint or other initial pleading to the Attorney General at the time the action commences and,
 44 upon entry of any judgment in the action, shall mail a copy of the judgment to the Attorney General.
 45 Failure to mail a copy of the complaint is not a jurisdictional defect, but a court may not enter

1 judgment for the plaintiff until proof of mailing is filed with the court. Proof of mailing may be by
 2 affidavit or by return receipt of mailing.

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

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

10 (5) Any permanent injunction or final judgment or order the court makes under ORS 646.632 or
 11 646.636 is prima facie evidence in an action brought under this section that the respondent used or
 12 employed a method, act or practice declared unlawful under ORS 646.608, but an assurance of vol-
 13 untary compliance, whether or not approved by the court, is not evidence of the violation.

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

20 (7) Notwithstanding subsection (6) of this section, in any action that a seller or lessor brings
 21 against a purchaser or lessee of real estate, goods or services, the purchaser or lessee may assert
 22 any counterclaim that the purchaser or lessee has arising out of a violation of ORS 646.605 to
 23 646.652.

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

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

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

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

31 (9) This section does not apply to:

32 (a) Any method, act or practice described in ORS 646.608 [(1)(aa)] **(27)**. Actions for violation of
 33 laws relating to odometers are provided under ORS 815.410 and 815.415.

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

35 **SECTION 10.** ORS 646.883 is amended to read:

36 646.883. [*It shall be unlawful for*] A seller [*to*] **may not** include a price comparison in an ad-
 37 vertisement unless:

38 (1) The seller clearly and conspicuously identifies in the advertisement the origin of the price
 39 that the seller is comparing to the seller's current price. The origin of the price that the seller is
 40 comparing to the seller's current price includes but is not limited to the seller's former selling price,
 41 a manufacturer's list price or a competitor's price for the same real estate, goods or services.

42 (2) The price comparison is in compliance with ORS 646.608 [(1)(j)] **(10)** and the rules adopted
 43 under [*ORS 646.608 (4)*] **section 4 (3) of this 2015 Act** and compliance is established based on facts
 44 provable by the seller.

45 **SECTION 11.** ORS 646A.110 is amended to read:

1 646A.110. (1) ORS 646.608 [(1)(ddd)] (56), 646A.100 to 646A.110 and 646A.112 apply only to per-
 2 sons who engage in the retail sale of merchandise in the regular course of their business.

3 (2) ORS 646.608 [(1)(ddd)] (56), 646A.100 to 646A.110 and 646A.112 do not apply to public officials
 4 acting within the scope of their duties as public officials.

5 **SECTION 12.** ORS 698.640 is amended to read:

6 698.640. (1) Except as provided in ORS 698.650:

7 (a) This section establishes requirements for auction sales, consignment sales, auctioneers, con-
 8 signees and auction marts.

9 (b) A person who violates a requirement under this section commits an unlawful practice as
 10 described in ORS 646.608 [(1)(v)] (22) that is subject to enforcement and penalty as provided under
 11 ORS 646.605 to 646.652.

12 (c) The requirements of this section are in addition to the provisions of ORS 72.3280 that relate
 13 to auctions and in addition to other provisions of law that govern consignment sales.

14 (2) The following requirements apply to auction sales, consignment sales, auctioneers, con-
 15 signees and auction marts as described:

16 (a) An advertisement of an auction sale or consignment sale must include the name of the
 17 auctioneer who will conduct the auction sale or the person responsible for conducting the auction
 18 sale or consignment sale.

19 (b) An auctioneer, auction mart operator or consignee may not use any method of bidding at an
 20 auction or selling at a consignment sale that will allow the auctioneer, auction mart operator or
 21 consignee to purchase property in an undisclosed manner on the auctioneer's, auction mart
 22 operator's or consignee's own behalf.

23 (c) An auctioneer, auction mart operator or consignee may not use a method of bidding at an
 24 auction or selling at a consignment sale that allows the auctioneer, auction mart operator or con-
 25 signee to avoid selling property offered for sale at auction or at a consignment sale.

26 (d) An auctioneer, auction mart operator or consignee may not employ or use another person
 27 to act as a bidder or buyer at the auction or consignment sale on behalf of the auctioneer, auction
 28 mart operator or consignee.

29 (e) If an auctioneer, auction mart operator or consignee does not immediately pay moneys that
 30 the auctioneer, auction mart operator or consignee owes to a person after selling real or personal
 31 property that the person offered, gave or entrusted to the auctioneer, auction mart operator or
 32 consignee to sell on the person's behalf at auction or at a consignment sale, the auctioneer, auction
 33 mart operator or consignee shall:

34 (A) Maintain the moneys in trust for the person in a trust account that is separate from any
 35 account that the auctioneer, auction mart operator or consignee uses for personal reasons or other
 36 business reasons, and identify and account for the moneys so that the moneys may be distinguished
 37 from moneys that are subject to the auctioneer's, auction mart operator's or consignee's other debts;

38 (B) Account to the person for all moneys the auctioneer, auction mart operator or consignee
 39 receives in payment for the person's real or personal property;

40 (C) Pay the moneys the auctioneer, auction mart operator or consignee owes to the person
 41 within 21 calendar days after the date of the auction or the consignment sale at which the
 42 auctioneer, auction mart operator or consignee sold the person's real or personal property, unless
 43 the person and the auctioneer, auction mart operator or consignee have mutually agreed in writing
 44 to payment on a different date; and

45 (D) Return the person's unsold property within 21 calendar days after the auction or consign-

1 ment sale unless the parties have mutually agreed in writing to another date.

2 **SECTION 13.** (1) Section 4 of this 2015 Act and the amendments to ORS 459.045, 646.607,
3 646.608, 646.609, 646.611, 646.633, 646.638, 646.883, 646A.110, 646A.635 and 698.640 by sections 1
4 to 3 and 5 to 12 of this 2015 Act become operative 91 days after the effective date of this 2015
5 Act.

6 (2) The Attorney General and the Director of the Department of Consumer and Business
7 Services may take any action before the operative date specified in subsection (1) of this
8 section that is necessary to enable the Attorney General or the director to exercise, on and
9 after the effective date specified in subsection (1) of this section, all of the duties, functions
10 and powers conferred on the Attorney General and the director by section 4 of this 2015 Act
11 and the amendments to ORS 459.045, 646.607, 646.608, 646.609, 646.611, 646.633, 646.638, 646.883,
12 646A.110, 646A.635 and 698.640 by sections 1 to 3 and 5 to 12 of this 2015 Act.

13 **SECTION 14.** This 2015 Act being necessary for the immediate preservation of the public
14 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
15 on its passage.

16 _____