

Requested by Representative HOLVEY

**PROPOSED AMENDMENTS TO  
HOUSE BILL 4147**

1 On page 1 of the printed bill, line 2, after “ORS” insert “646.608,” and  
2 delete “646A.606,”.

3 Delete lines 5 through 20 and delete pages 2 through 13 and insert:

4 **“SECTION 1.** ORS 646A.602 is amended to read:

5 “646A.602. As used in ORS 646A.600 to 646A.628:

6 “(1)(a) ‘Breach of security’ means an unauthorized acquisition of comput-  
7 erized data that materially compromises the security, confidentiality or in-  
8 tegrity of personal information that a person maintains.

9 “(b) ‘Breach of security’ does not include an inadvertent acquisition of  
10 personal information by a person or the person’s employee or agent if the  
11 personal information is not used in violation of applicable law or in a man-  
12 ner that harms or poses an actual threat to the security, confidentiality or  
13 integrity of the personal information.

14 “(2) ‘Consumer’ means an individual resident of this state.

15 “(3) ‘Consumer report’ means a consumer report as described in section  
16 603(d) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)), as that  
17 Act existed on [*January 1, 2016*] **the effective date of this 2018 Act**, that  
18 a consumer reporting agency compiles and maintains.

19 “(4) ‘Consumer reporting agency’ means a consumer reporting agency as  
20 described in section 603(p) of the federal Fair Credit Reporting Act (15 U.S.C.  
21 1681a(p)) as that Act existed on [*January 1, 2016*] **the effective date of this**

1 **2018 Act.**

2 “(5) ‘Debt’ means any obligation or alleged obligation arising out of a  
3 consumer transaction.

4 “(6) ‘Encryption’ means an algorithmic process that renders data unread-  
5 able or unusable without the use of a confidential process or key.

6 “(7) ‘Extension of credit’ means a right to defer paying debt or a right to  
7 incur debt and defer paying the debt, that is offered or granted primarily for  
8 personal, family or household purposes.

9 “(8) **‘Financial access device’ means a consumer’s credit card, debit  
10 card or similar device that the consumer uses in a transaction to make  
11 a payment that draws on an extension of credit or withdraws funds  
12 from an account.**

13 “(9) **‘Financial account information’ means the following informa-  
14 tion that is associated with a consumer’s account with a financial in-  
15 stitution:**

16 “(a) **An account number.**

17 “(b) **A personal identification number.**

18 “(c) **A card verification value number.**

19 “(d) **A card security code number.**

20 “(e) **An access code.**

21 “(f) **A password.**

22 “(g) **A biometric measurement or an encoding of a biometric  
23 measurement.**

24 “(h) **Any other information or combination of information that  
25 would permit access to the consumer’s account.**

26 “(10) **‘Financial institution’ has the meaning given that term in  
27 ORS 706.008.**

28 “[8] (11) ‘Identity theft’ has the meaning set forth in ORS 165.800.

29 “[9] (12) ‘Identity theft declaration’ means a completed and signed  
30 statement that documents alleged identity theft, using *[the]* a form available

1 from the Federal Trade Commission, or another substantially similar form.

2 “(13) **‘Merchant’ means a person that receives a payment by means**  
3 **of a financial access device.**

4 “(14) **‘Merchant services provider’ means a person that:**

5 “(a) **Provides a product or service that is necessary to enable a**  
6 **merchant to accept a payment by means of a financial access device;**  
7 **or**

8 “(b) **Processes a payment a consumer makes with a financial access**  
9 **device.**

10 “[10] (15) **‘Person’ means an individual, private or public corporation,**  
11 **partnership, cooperative, association, estate, limited liability company, or-**  
12 **ganization or other entity, whether or not organized to operate at a profit,**  
13 **or a public body as defined in ORS 174.109.**

14 “[11] (16)(a) **‘Personal information’ means:**

15 “[a] (A) **A consumer’s first name or first initial and last name in com-**  
16 **bination with any one or more of the following data elements, if encryption,**  
17 **redaction or other methods have not rendered the data elements unusable**  
18 **or if the data elements are encrypted and the encryption key has been ac-**  
19 **quired:**

20 “[A] (i) **A consumer’s Social Security number;**

21 “[B] (ii) **A consumer’s driver license number or state identification card**  
22 **number issued by the Department of Transportation;**

23 “[C] (iii) **A consumer’s passport number or other identification number**  
24 **issued by the United States;**

25 “[D] (iv) **A consumer’s financial account **information** [number, credit**  
26 **card number or debit card number, in combination with any required security**  
27 **code, access code or password that would permit access to a consumer’s fi-**  
28 **nancial account];**

29 “[E] (v) **Data from automatic measurements of a consumer’s physical**  
30 **characteristics, such as an image of a fingerprint, retina or iris, that are**

1 used to authenticate the consumer's identity in the course of a financial  
2 transaction or other transaction;

3 “[*F*] (vi) A consumer's health insurance policy number or health insur-  
4 ance subscriber identification number in combination with any other unique  
5 identifier that a health insurer uses to identify the consumer; [*or*] **and**

6 “[*G*] (vii) Any information about a consumer's medical history or mental  
7 or physical condition or about a health care professional's medical diagnosis  
8 or treatment of the consumer.

9 “[*b*] (B) Any of the data elements or any combination of the data ele-  
10 ments described in [*paragraph (a) of this subsection*] **subparagraph (A) of**  
11 **this paragraph** without the consumer's first name or first initial and last  
12 name if:

13 “[*A*] (i) Encryption, redaction or other methods have not rendered the  
14 data element or combination of data elements unusable; and

15 “[*B*] (ii) The data element or combination of data elements would enable  
16 a person to commit identity theft against a consumer.

17 “[*c*] (b) ‘Personal information’ does not include information in a federal,  
18 state or local government record, other than a Social Security number, that  
19 is lawfully made available to the public.

20 “[*12*] (17) ‘Proper identification’ means written information or doc-  
21 umentation that a consumer or representative can present to another person  
22 as evidence of the consumer's or representative's identity, examples of which  
23 include:

24 “(a) A valid Social Security number or a copy of a valid Social Security  
25 card;

26 “(b) A certified or otherwise official copy of a birth certificate that a  
27 governmental body issued; and

28 “(c) A copy of a driver license or other government-issued identification.

29 “[*13*] (18) ‘Protected consumer’ means an individual who is:

30 “(a) Not older than 16 years old at the time a representative requests a

1 security freeze on the individual's behalf; or

2 “(b) Incapacitated or for whom a court or other authority has appointed  
3 a guardian or conservator.

4 “[~~(14)~~] **(19)** ‘Protective record’ means information that a consumer re-  
5 porting agency compiles to identify a protected consumer for whom the con-  
6 sumer reporting agency has not prepared a consumer report.

7 “[~~(15)~~] **(20)** ‘Redacted’ means altered or truncated so that no more than  
8 the last four digits of a Social Security number, driver license number, state  
9 identification card number, passport number or other number issued by the  
10 United States, financial account number, credit card number or debit card  
11 number is visible or accessible.

12 “[~~(16)~~] **(21)** ‘Representative’ means a consumer who provides a consumer  
13 reporting agency with sufficient proof of the consumer's authority to act on  
14 a protected consumer's behalf.

15 “[~~(17)~~] **(22)** ‘Security freeze’ means a notice placed in a consumer report  
16 at a consumer's request or a representative's request or in a protective re-  
17 cord at a representative's request that, subject to certain exemptions, pro-  
18 hibits a consumer reporting agency from releasing information in the  
19 consumer report or the protective record for an extension of credit, unless  
20 the consumer temporarily lifts the security freeze on the consumer's con-  
21 sumer report or a protected consumer or representative removes the security  
22 freeze on or deletes the protective record.

23 **“SECTION 2.** ORS 646A.604 is amended to read:

24 “646A.604. (1) **If** a person [*that*] owns or licenses personal information  
25 that the person uses in the course of the person's business, vocation, occu-  
26 pation or volunteer activities **or possesses or has access to personal in-**  
27 **formation as a result of a transaction with a consumer,** and [*that*] **the**  
28 **personal information** was subject to a breach of security, **the person** shall  
29 give notice of the breach of security to:

30 “(a) The consumer to whom the personal information pertains [*after the*

1 *person discovers the breach of security or after the person receives notice of a*  
2 *breach of security under subsection (2) of this section. The person shall notify*  
3 *the consumer in the most expeditious manner possible, without unreasonable*  
4 *delay, consistent with the legitimate needs of law enforcement described in*  
5 *subsection (3) of this section and consistent with any measures that are nec-*  
6 *essary to determine sufficient contact information for the affected consumer,*  
7 *determine the scope of the breach of security and restore the reasonable integ-*  
8 *egrity, security and confidentiality of the personal information].*

9 “(b) The Attorney General, either in writing or electronically, if the  
10 number of consumers to whom the person must send the notice described in  
11 paragraph (a) of this subsection exceeds 250. [*The person shall disclose the*  
12 *breach of security to the Attorney General in the manner described in para-*  
13 *graph (a) of this subsection.*]

14 **“(c) A merchant services provider that processes a transaction the**  
15 **person made with a consumer using financial account information**  
16 **that was subject to the breach of security.**

17 “(2)(a) A person that maintains or otherwise possesses personal informa-  
18 tion on behalf of, or under license of, another person shall notify the other  
19 person after discovering a breach of security.

20 **“(b) A financial institution that discovers or receives notice of a**  
21 **breach of security that involves financial account information shall**  
22 **give notice of the breach of security to any merchant services provider**  
23 **that processed a transaction that involved the financial account in-**  
24 **formation, or a financial access device with financial account infor-**  
25 **mation, that was subject to the breach of security.**

26 **“(c) Except as provided in this paragraph, a merchant services**  
27 **provider that discovers or receives notice of a breach of security that**  
28 **involves financial account information in connection with a trans-**  
29 **action that the merchant services provider processed, including a**  
30 **transaction that involved a financial access device, shall give notice**

1 of the breach of security to any financial institution for which the fi-  
2 nancial account information would allow access to a consumer's ac-  
3 count. A merchant services provider that receives notice of a breach  
4 of security from a merchant or a financial institution does not need  
5 to notify the financial institution or the merchant of the breach of  
6 security.

7 “(3)(a) Except as provided in paragraph (b) of this subsection, a  
8 person that must give notice of a breach of security under subsection  
9 (1) or (2) of this section shall give the notice in the most expeditious  
10 manner possible, without unreasonable delay, but not later than 45  
11 days after discovering or receiving notification of the breach of secu-  
12 rity, provided that the person undertakes any measures that are nec-  
13 essary to:

14 “(A) Determine sufficient contact information for the intended re-  
15 cipient of the notice;

16 “(B) Determine the scope of the breach of security; and

17 “(C) Restore the reasonable integrity, security and confidentiality  
18 of the personal information.

19 “(b) A person that [*owns or licenses personal information*] **must give**  
20 **notice of a breach of security under subsection (1) or (2) of this section**  
21 may delay [*notifying a consumer of a breach of security*] **giving the notice**  
22 only if a law enforcement agency determines that a notification will impede  
23 a criminal investigation and if the law enforcement agency requests in  
24 writing that the person delay the notification.

25 “(4) For purposes of this section, a person that owns or licenses personal  
26 information, **or possesses or has access to personal information as a**  
27 **result of a transaction with a consumer**, may notify [*a*] **the** consumer of  
28 a breach of security:

29 “(a) In writing;

30 “(b) Electronically, if the person customarily communicates with the

1 consumer electronically or if the notice is consistent with the provisions  
2 regarding electronic records and signatures set forth in the Electronic Sig-  
3 natures in Global and National Commerce Act (15 U.S.C. 7001) as that Act  
4 existed on [*January 1, 2016*] **the effective date of this 2018 Act**;

5 “(c) By telephone, if the person contacts the affected consumer directly;  
6 or

7 “(d) With substitute notice, if the person demonstrates that the cost of  
8 notification otherwise would exceed \$250,000 or that the affected class of  
9 consumers exceeds 350,000, or if the person does not have sufficient contact  
10 information to notify affected consumers. For the purposes of this paragraph,  
11 ‘substitute notice’ means:

12 “(A) Posting the notice or a link to the notice conspicuously on the  
13 person’s website if the person maintains a website; and

14 “(B) Notifying major statewide television and newspaper media.

15 “(5) Notice under this section must include, at a minimum:

16 “(a) A description of the breach of security in general terms;

17 “(b) The approximate date of the breach of security;

18 “(c) The type of personal information that was subject to the breach of  
19 security;

20 “(d) Contact information for the person that owned or licensed, **or pos-**  
21 **sessed or had access as a result of a transaction with a consumer, to**  
22 the personal information that was subject to the breach of security;

23 “(e) Contact information for national consumer reporting agencies; and

24 “(f) Advice to the consumer to report suspected identity theft to law  
25 enforcement, including the Attorney General and the Federal Trade Com-  
26 mission.

27 “(6) If a person discovers a breach of security that affects more than 1,000  
28 consumers, the person shall notify, without unreasonable delay, all consumer  
29 reporting agencies that compile and maintain reports on consumers on a  
30 nationwide basis of the timing, distribution and content of the notice the

1 person gave to affected consumers and shall include in the notice any police  
2 report number assigned to the breach of security. A person may not delay  
3 notifying affected consumers of a breach of security in order to notify con-  
4 sumer reporting agencies.

5 **“(7)(a) Except as provided in paragraph (b) of this subsection, a**  
6 **person that provides credit monitoring services in connection with a**  
7 **breach of security and without charge to a consumer:**

8 **“(A) May not:**

9 **“(i) Offer services other than the credit monitoring services at the**  
10 **time the person offers or begins credit monitoring services or during**  
11 **a six-month period that starts at the time the person begins credit**  
12 **monitoring services, unless the other services are also without charge**  
13 **to the consumer; and**

14 **“(ii) Condition the person’s provision of credit monitoring services**  
15 **on a consumer’s acceptance of services other than the credit moni-**  
16 **toring services; and**

17 **“(B) Shall require in any contract with another person that pro-**  
18 **vides credit monitoring services in connection with a breach of secu-**  
19 **rity and without charge to a consumer that the other person is subject**  
20 **to the same prohibitions described in subparagraph (A) of this para-**  
21 **graph.**

22 **“(b) If a person offers credit monitoring services for a fee to a**  
23 **consumer that accepted credit monitoring services that the person**  
24 **previously offered or provided without charge, the person must notify**  
25 **the consumer of how much time remains during which credit moni-**  
26 **toring services are without charge and require the consumer to**  
27 **affirmatively accept any credit monitoring services that require the**  
28 **consumer to pay a fee.**

29 **“[(7)] (8) Notwithstanding subsection (1) of this section, a person does not**  
30 **need to notify consumers of a breach of security if, after an appropriate in-**

1 investigation or after consultation with relevant federal, state or local law  
2 enforcement agencies, the person reasonably determines that the consumers  
3 whose personal information was subject to the breach of security are un-  
4 likely to suffer harm. The person must document the determination in writ-  
5 ing and maintain the documentation for at least five years.

6 “[8] (9) This section does not apply to:

7 “(a) A person that complies with notification requirements or procedures  
8 for a breach of security that the person’s primary or functional federal reg-  
9 ulator adopts, promulgates or issues in rules, regulations, procedures,  
10 guidelines or guidance, if the rules, regulations, procedures, guidelines or  
11 guidance provide greater protection to personal information and disclosure  
12 requirements at least as thorough as the protections and disclosure require-  
13 ments provided under this section.

14 “(b) A person that complies with a state or federal law that provides  
15 greater protection to personal information and disclosure requirements at  
16 least as thorough as the protections and disclosure requirements provided  
17 under this section.

18 “(c) A person that is subject to and complies with regulations  
19 promulgated pursuant to Title V of the Gramm-Leach-Bliley Act of 1999 (15  
20 U.S.C. 6801 to 6809) as that Act existed on [January 1, 2016] **the effective**  
21 **date of this 2018 Act, if the Act provides protections and disclosure**  
22 **requirements that are as stringent and thorough as, or more stringent**  
23 **and thorough than, the protections and disclosure requirements set**  
24 **forth in this section.**

25 “[d)(A) *Except as provided in subparagraph (B) of this paragraph, a cov-*  
26 *ered entity, as defined in 45 C.F.R. 160.103, as in effect on January 1, 2016,*  
27 *that is governed under 45 C.F.R. parts 160 and 164, as in effect on January*  
28 *1, 2016, if the covered entity sends the Attorney General a copy of the notice*  
29 *the covered entity sent to consumers under ORS 646A.604 or a copy of the no-*  
30 *tice that the covered entity sent to the primary functional regulator designated*

1 *for the covered entity under the Health Insurance Portability and Availability*  
2 *Act of 1996, (P.L. 104-191, 110 Stat. 1936, 42 U.S.C. 300(gg), 29 U.S.C. 118 et*  
3 *seq., 42 U.S.C. 1320(d) et seq., 45 C.F.R. parts 160 and 164).]*

4 “[*B*) A covered entity is subject to the provisions of this section if the  
5 covered entity does not send a copy of a notice described in subparagraph (A)  
6 of this paragraph to the Attorney General within a reasonable time after the  
7 Attorney General requests the copy.]

8 “(d) A person that is subject to and that complies with the regu-  
9 lations set forth in 45 C.F.R. parts 160 and 164, as in effect on the ef-  
10 fective date of this 2018 Act, if the regulations provide protections and  
11 disclosure requirements that are as stringent and thorough as, or  
12 more stringent and thorough than, the protections and disclosure re-  
13 quirements set forth in this section.

14 “(10) Notwithstanding the exemptions set forth in subsection (9) of  
15 this section, a person shall provide to the Attorney General a copy of  
16 any notice the person sent to consumers or to the person’s primary  
17 or functional regulator in compliance with this section or with other  
18 state or federal laws or regulations that apply to the person as a con-  
19 sequence of a breach of security. The person shall send the copy  
20 within a reasonable time after the Attorney General requests the copy.

21 “[*9(a)*] (11)(a) A person’s violation of a provision of ORS 646A.600 to  
22 646A.628 is an unlawful practice under ORS 646.607.

23 “(b) The rights and remedies available under this section are cumulative  
24 and are in addition to any other rights or remedies that are available under  
25 law.

26 “**SECTION 3.** ORS 646A.608 is amended to read:

27 “646A.608. (1)(a) A consumer reporting agency shall place a security  
28 freeze on a consumer report not later than five business days after receiving  
29 from a consumer:

30 “(A) The request described in ORS 646A.606 (1); **and**

1 “(B) Proper identification.[]; *and*]

2 “[*(C) A fee, if applicable.*]

3 “(b) If a consumer report does not exist for a protected consumer on be-  
4 half of whom a representative seeks to place a security freeze, a consumer  
5 reporting agency shall create a protective record after receiving from the  
6 representative the request described in ORS 646A.606 (1), proper identifica-  
7 tion for both the representative and the protected consumer and sufficient  
8 proof of authority, as described in ORS 646A.606 (3)(b). After creating a  
9 protective record for a protected consumer under this paragraph, the con-  
10 sumer reporting agency shall place the security freeze that the representative  
11 requested on the protected consumer’s protective record.

12 “(c) The protective record that the consumer reporting agency creates  
13 under paragraph (b) of this subsection does not need to contain any infor-  
14 mation other than the protected consumer’s personal information, if other  
15 information for the protected consumer is not available. Except as provided  
16 in ORS 646A.614, a consumer reporting agency may not use or release to  
17 another person the information in a protective record for the purpose of as-  
18 sessing a protected consumer’s eligibility or capacity for an extension of  
19 credit, as a basis for evaluating a protected consumer’s character, reputation  
20 or personal characteristics or for other purposes that are not related to  
21 protecting the protected consumer from identity theft.

22 “(2)(a) The consumer reporting agency shall send a written confirmation  
23 of a security freeze on a consumer’s consumer report to the consumer at the  
24 last known address for the consumer shown in the consumer report that the  
25 consumer reporting agency maintains, within 10 business days after placing  
26 the security freeze and, with the confirmation, shall provide the consumer  
27 with a unique personal identification number or password or similar device  
28 the consumer must use to authorize the consumer reporting agency to release  
29 the consumer’s consumer report for a specific period of time or to perma-  
30 nently remove the security freeze. The consumer reporting agency shall in-

1 clude with the written confirmation information that describes how to  
2 remove a security freeze and how to temporarily lift a security freeze on a  
3 consumer report, other than a consumer report for a protected consumer, in  
4 order to allow access to information from the consumer's consumer report  
5 for a period of time while the security freeze is in place.

6 “(b) This subsection does not require a consumer reporting agency to  
7 provide a consumer or representative with a personal identification number  
8 or password for the consumer or representative to use to authorize the con-  
9 sumer reporting agency to release information from a protective record.

10 “(3)(a) If a consumer wishes to allow the consumer's consumer report to  
11 be accessed for a specific period of time while a security freeze is in effect,  
12 the consumer shall contact the consumer reporting agency using a point of  
13 contact the consumer reporting agency designates, request that the security  
14 freeze be temporarily lifted and provide the following:

15 “(A) Proper identification;

16 “(B) The unique personal identification number or password or similar  
17 device the consumer reporting agency provided under subsection (2) of this  
18 section; **and**

19 “(C) An indication of the period of time during which the consumer report  
20 must be available to users of the consumer report[; *and*].

21 “[*(D) A fee, if applicable.*]

22 “(b) A protective record is not subject to a temporary lift of a security  
23 freeze.

24 “(c) Except as provided in ORS 646A.612 (2)(a), a consumer report for a  
25 protected consumer is not subject to a temporary lift of a security freeze.

26 “(4) A consumer reporting agency that receives a request from [*the*] a  
27 consumer to temporarily lift a security freeze on a consumer report, other  
28 than a consumer report for a protected consumer, under subsection (3) of this  
29 section shall comply with the request not later than three business days after  
30 receiving from the consumer:

1       “(a) Proper identification;

2       “(b) The unique personal identification number or password or similar  
3 device the consumer reporting agency provided under subsection (2) of this  
4 section; **and**

5       “(c) An indication of the period of time during which the consumer report  
6 must be available to users of the consumer report[; *and*].

7       “[(d) *A fee, if applicable.*]

8       “(5)(a) A security freeze for a consumer report must remain in place until  
9 the consumer requests, using a point of contact the consumer reporting  
10 agency designates, that the security freeze be removed. A consumer reporting  
11 agency shall remove a security freeze within three business days after re-  
12 ceiving a request for removal from the consumer, who provides:

13       “(A) Proper identification; **and**

14       “(B) The unique personal identification number or password or similar  
15 device the consumer reporting agency provided under subsection (2) of this  
16 section.[; *and*]

17       “[(C) *A fee, if applicable.*]

18       “(b) A security freeze for a protective record must remain in place until  
19 the protected consumer or a representative requests, using a point of contact  
20 the consumer reporting agency designates, that the security freeze be re-  
21 moved or that the protective record be deleted. The consumer reporting  
22 agency does not have an affirmative duty to notify the protected consumer  
23 or the representative that a security freeze is in place or to remove the se-  
24 curity freeze or delete the protective record once the protected consumer is  
25 no longer a protected consumer. A protected consumer or a representative  
26 has the affirmative duty to request that the consumer reporting agency re-  
27 move the security freeze or delete the protective record. A consumer report-  
28 ing agency shall remove a security freeze or delete a protective record within  
29 30 business days after receiving a request for removal or deletion from the  
30 protected consumer or a representative, who provides:

1 “(A) Proper identification;

2 “(B) Sufficient proof of authority, as described in ORS 646A.606 (3)(b), if  
3 the representative seeks to remove the security freeze or delete the protec-  
4 tive record; **and**

5 “(C) Proof that the representative’s authority to act on the protected  
6 consumer’s behalf is no longer valid or applicable, if the protected consumer  
7 seeks to remove the security freeze or delete the protective record.[; *and*]

8 “[*(D) A fee, if applicable.*]

9 “**SECTION 4.** ORS 646A.610 is amended to read:

10 “646A.610. (1) **If a consumer or a representative of a protected con-**  
11 **sumer submits to a consumer reporting agency a copy of a valid police**  
12 **report, incident report or identity theft declaration, the [A] consumer**  
13 **reporting agency may not charge a fee [to] for placing, temporarily lifting**  
14 **or removing a security freeze on a consumer report or for placing or**  
15 **removing a security freeze on a protective record if:**

16 “(a) A consumer or a protected consumer [*who*] is the victim of identity  
17 theft; or [*to*]

18 “(b) A consumer [*who*] has reported or a **representative of a** protected  
19 consumer [*for whom a representative*] has reported to a law enforcement  
20 agency the theft of personal information[, *provided the consumer or the rep-*  
21 *resentative has submitted to the consumer reporting agency a copy of a valid*  
22 *police report, incident report or identity theft declaration*].

23 “[*(2)(a) A consumer reporting agency may charge a reasonable fee of not*  
24 *more than \$10 to a consumer, other than a consumer described in subsection*  
25 *(1) of this section, for each placement of a security freeze, temporary lift of the*  
26 *security freeze, removal of the security freeze or replacing a lost personal*  
27 *identification number or password previously provided to the consumer.*]

28 “[*(b)(A) Except as provided in subsection (1) of this section and in sub-*  
29 *paragraph (B) of this paragraph, a consumer reporting agency may charge a*  
30 *reasonable fee of not more than \$10 to place or remove a security freeze for a*

1 *protected consumer's consumer report or protective record or to create or delete*  
2 *a protective record for a protected consumer.]*

3 “[*B*) *A consumer reporting agency may not charge a fee to place or remove*  
4 *a security freeze on an existing consumer report or protective record for a*  
5 *protected consumer who is under 16 years of age at the time a representative*  
6 *requests the consumer reporting agency to place or remove the security*  
7 *freeze.]*

8 **“(2)(a) Except as provided in paragraph (b) of this subsection, a**  
9 **consumer reporting agency may not charge a fee to create or delete**  
10 **a protective record, to place or remove a security freeze on a protec-**  
11 **tive record or to place, temporarily lift or remove a security freeze on**  
12 **a consumer report.**

13 **“(b) A consumer reporting agency may charge a consumer, other**  
14 **than a consumer described in subsection (1) of this section, a reason-**  
15 **able fee of not more than \$10 for placing a security freeze on a con-**  
16 **sumer report if the consumer reporting agency placed a security freeze**  
17 **on the consumer report within the previous 12 months and the con-**  
18 **sumer did not request the security freeze in response to a breach of**  
19 **security that involved the consumer's personal information.**

20 **“SECTION 5. ORS 646A.622 is amended to read:**

21 **“646A.622. (1) As used in this section:**

22 **“(a) ‘Personal information’ means:**

23 **“(A) A consumer's first name or first initial and last name in**  
24 **combination with any one or more of the following data elements, if**  
25 **encryption, redaction or other methods have not rendered the data**  
26 **elements unusable or if the data elements are encrypted and the en-**  
27 **ryption key has been acquired:**

28 **“(i) A consumer's Social Security number;**

29 **“(ii) A consumer's driver license number or state identification card**  
30 **number issued by the Department of Transportation;**

1       “(iii) A consumer’s passport number or other identification number  
2 issued by the United States;

3       “(iv) A consumer’s financial account information;

4       “(v) Data from automatic measurements of a consumer’s physical  
5 characteristics, such as an image of a fingerprint, retina or iris, that  
6 are used to authenticate the consumer’s identity in the course of a  
7 financial transaction or other transaction;

8       “(vi) A consumer’s health insurance policy number or health in-  
9 surance subscriber identification number in combination with any  
10 other unique identifier that a health insurer uses to identify the con-  
11 sumer;

12       “(vii) Any information about a consumer’s medical history or  
13 mental or physical condition or about a health care professional’s  
14 medical diagnosis or treatment of the consumer;

15       “(viii) A user name or electronic mail address that, in combination  
16 with a password or security question and answer, would permit access  
17 to an account;

18       “(ix) Geolocation information for an individual; and

19       “(x) Photographs or images that could identify an individual or  
20 metadata or other personal information that is associated with a  
21 photograph or image and that could identify an individual or permit  
22 access to an account.

23       “(B) Any of the data elements or any combination of the data ele-  
24 ments described in subparagraph (A) of this paragraph without the  
25 consumer’s first name or first initial and last name if:

26       “(i) Encryption, redaction or other methods have not rendered the  
27 data element or combination of data elements unusable; and

28       “(ii) The data element or combination of data elements would ena-  
29 ble a person to commit identity theft against a consumer.

30       “(b) ‘Personal information’ does not include information in a fed-

1 **eral, state or local government record, other than a Social Security**  
2 **number, that is lawfully made available to the public.**

3 “[*(1)*] **(2)** A person that owns, maintains or otherwise possesses, **or has**  
4 **control over or access to**, data that includes [*a consumer’s*] personal in-  
5 formation that the person uses in the course of the person’s business, voca-  
6 tion, occupation or volunteer activities shall develop, implement and  
7 maintain reasonable safeguards to protect the security, confidentiality and  
8 integrity of the personal information, including safeguards that protect the  
9 personal information when the person disposes of the personal information.

10 “[*(2)*] **(3)** A person complies with subsection [*(1)*] **(2)** of this section if the  
11 person:

12 “(a) Complies with a state or federal law that provides greater protection  
13 to personal information than the protections that this section provides.

14 “(b) Complies with regulations promulgated under Title V of the Gramm-  
15 Leach-Bliley Act of 1999 (15 U.S.C. 6801 to 6809) as in effect on [*January 1,*  
16 *2016*] **the effective date of this 2018 Act**, if the person is subject to the  
17 Act.

18 “(c) Complies with regulations that implement the Health Insurance Por-  
19 tability and Accountability Act of 1996 (45 C.F.R. parts 160 and 164) as in  
20 effect on [*January 1, 2016*] **the effective date of this 2018 Act**, if the person  
21 is subject to the Act.

22 “(d) Implements an information security program that includes:

23 “(A) Administrative safeguards such as:

24 “(i) Designating one or more employees to coordinate the security pro-  
25 gram;

26 “(ii) Identifying reasonably foreseeable internal and external risks **with**  
27 **reasonable regularity**;

28 “(iii) Assessing whether existing safeguards adequately control the iden-  
29 tified risks;

30 “(iv) Training and managing employees in security program practices and

1 procedures **with reasonable regularity**;

2 “(v) Selecting service providers that are capable of maintaining appro-  
3 priate safeguards **and adhering to procedures and protocols to which the**  
4 **person and the service provider agree**, and requiring the service providers  
5 by contract to maintain the safeguards, **procedures and protocols**; [*and*]

6 “(vi) Adjusting the security program in light of business changes, **po-**  
7 **tential threats** or new circumstances;

8 “(vii) **Monitoring, verifying, logging and disseminating information**  
9 **about security updates and upgrades to software that might be at risk**  
10 **of or vulnerable to a breach of security**; and

11 “(viii) **Reviewing user access policies with reasonable regularity**;

12 “(B) Technical safeguards such as:

13 “(i) Assessing risks **and vulnerabilities** in network and software design  
14 **and in information collection, processing, transmission, retention, ac-**  
15 **cess, storage and disposal and taking timely action to address the risks**  
16 **and vulnerabilities with reasonable regularity**;

17 “(ii) [*Assessing risks in information processing, transmission and storage*]  
18 **Applying security updates and upgrades to software that might be at**  
19 **risk of or vulnerable to a breach of security**;

20 “(iii) **Monitoring**, detecting, preventing and responding to attacks or  
21 system failures; [*and*]

22 “(iv) Testing and monitoring regularly the effectiveness of key controls,  
23 systems and procedures **and taking action to reduce or eliminate weak-**  
24 **nesses, deficiencies and risks in the controls, systems and procedures**;  
25 and

26 “(v) **Isolating and segregating personal information from other in-**  
27 **formation and ensuring that only authorized individuals have access**  
28 **to the personal information**; and

29 “(C) Physical safeguards such as:

30 “(i) Assessing **known and potential** risks of information **collection**,

1 storage, **usage, retention, access** and disposal **and implementing meth-**  
2 **ods to remedy or mitigate identified risks;**

3 “(ii) **Monitoring**, detecting, preventing, **isolating** and responding to in-  
4 trusions **timely and with reasonable regularity;**

5 “(iii) Protecting against unauthorized access to or use of personal infor-  
6 mation during or after collecting, **using, storing**, transporting, **retaining**,  
7 destroying or disposing of the personal information; and

8 “(iv) Disposing of personal information, **whether on or off the person’s**  
9 **premises or property**, after the person no longer needs the personal infor-  
10 mation for business purposes or as required by local, state or federal law by  
11 burning, pulverizing, shredding or modifying a physical record and by de-  
12 stroying or erasing electronic media so that the information cannot be read  
13 or reconstructed.

14 “[3] (4) A person complies with subsection [(2)(d)(C)(iv)] **(3)(d)(C)(iv)**  
15 of this section if the person contracts with another person engaged in the  
16 business of record destruction to dispose of personal information in a manner  
17 that is consistent with subsection [(2)(d)(C)(iv)] **(3)(d)(C)(iv)** of this section.

18 “[4] (5) Notwithstanding subsection [(2)] **(3)** of this section, a person  
19 that is an owner of a small business as defined in ORS 285B.123 (2) complies  
20 with subsection [(1)] **(2)** of this section if the person’s information security  
21 and disposal program contains administrative, technical and physical safe-  
22 guards and disposal measures that are appropriate for the size and complex-  
23 ity of the small business, the nature and scope of the small business’s  
24 activities, and the sensitivity of the personal information the small business  
25 collects from or about consumers.

26 “**SECTION 6.** ORS 646.608, as operative until July 1, 2018, is amended to  
27 read:

28 “646.608. (1) A person engages in an unlawful practice if in the course of  
29 the person’s business, vocation or occupation the person does any of the  
30 following:

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

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

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

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

10       “(e) Represents that real estate, goods or services have sponsorship, ap-  
11 proval, characteristics, ingredients, uses, benefits, quantities or qualities that  
12 the real estate, goods or services do not have or that a person has a spon-  
13 sorship, approval, status, qualification, affiliation, or connection that the  
14 person does not have.

15       “(f) Represents that real estate or goods are original or new if the real  
16 estate or goods are deteriorated, altered, reconditioned, reclaimed, used or  
17 secondhand.

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

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

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

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

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

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

5 “(m) Performs service on or dismantles any goods or real estate if the  
6 owner or apparent owner of the goods or real estate does not authorize the  
7 service or dismantling.

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

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

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

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

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

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

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

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

30 “(v) Violates any of the provisions relating to auction sales, consignment

1 sales, auctioneers, consignees or auction marts under ORS 698.640, whether  
2 in a commercial or noncommercial situation.

3 “(w) Manufactures mercury fever thermometers.

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

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

7 “(B) Supplied with instructions on the careful handling of the  
8 thermometer to avoid breakage and on the proper cleanup of mercury should  
9 breakage occur.

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

18 “(z) Sells or offers for sale a motor vehicle manufactured after January  
19 1, 2006, that contains mercury light switches.

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

21 “(bb) Violates ORS 646A.070 (1).

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

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

24 “(ee) Violates ORS 646.883 or 646.885.

25 “(ff) Violates ORS 646.569.

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

27 “(hh) Violates ORS 646A.360.

28 “(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

29 “(jj) Violates ORS 646.563.

30 “(kk) Violates ORS 759.680 or any rule adopted pursuant thereto.

1 “(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any  
2 rule adopted pursuant thereto.

3 “(mm) Violates ORS 646A.210 or 646A.214.

4 “(nn) Violates any provision of ORS 646A.124 to 646A.134.

5 “(oo) Violates ORS 646A.095.

6 “(pp) Violates ORS 822.046.

7 “(qq) Violates ORS 128.001.

8 “(rr) Violates ORS 646A.800 (2) to (4).

9 “(ss) Violates ORS 646A.090 (2) to (5).

10 “(tt) Violates ORS 87.686.

11 “(uu) Violates ORS 646A.803.

12 “(vv) Violates ORS 646A.362.

13 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or  
14 646A.054.

15 “(xx) Violates ORS 180.440 (1) or 180.486 (1).

16 “(yy) Commits the offense of acting as a vehicle dealer without a certif-  
17 icate under ORS 822.005.

18 “(zz) Violates ORS 87.007 (2) or (3).

19 “(aaa) Violates ORS 92.405 (1), (2) or (3).

20 “(bbb) Engages in an unlawful practice under ORS 646.648.

21 “(ccc) Violates ORS 646A.365.

22 “(ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted un-  
23 der ORS 98.864.

24 “(eee) Sells a gift card in violation of ORS 646A.276.

25 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.

26 “(ggg) Violates ORS 646A.430 to 646A.450.

27 “(hhh) Violates a provision of ORS 744.318 to 744.384.

28 “(iii) Violates a provision of ORS 646A.702 to 646A.720.

29 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning  
30 or declaration described in ORS 646A.530 is issued for the children’s product,

1 as defined in ORS 646A.525, that is the subject of the violation.

2 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,  
3 697.682, 697.692 or 697.707.

4 “(LLL) Violates the consumer protection provisions of the  
5 Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on  
6 January 1, 2010.

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

8 “(nnn) Violates ORS 646A.082.

9 “(ooo) Violates ORS 646.647.

10 “(ppp) Violates ORS 646A.115.

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

12 “(rrr) Violates ORS 646A.092.

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

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

15 “(uuu) Violates ORS 646A.564.

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

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

21 “(xxx) Violates ORS 646A.806.

22 “(yyy) Violates ORS 646A.810 (2).

23 “(zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws  
24 2015.

25 **“(aaaa) Violates a provision of ORS 646A.600 to 646A.628.**

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

29 “(3) In order to prevail in an action or suit under ORS 336.184 and 646.605  
30 to 646.652, a prosecuting attorney need not prove competition between the

1 parties or actual confusion or misunderstanding.

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

6 “(5) Notwithstanding any other provision of ORS 336.184 and 646.605 to  
7 646.652, if an action or suit is brought under subsection (1)(xx) of this section  
8 by a person other than a prosecuting attorney, relief is limited to an in-  
9 junction and the prevailing party may be awarded reasonable attorney fees.

10 **“SECTION 7.** ORS 646.608 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 “(p) Makes any false or misleading statement about a prize, contest or

1 promotion used to publicize a product, business or service.

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

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

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

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

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

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

16 “(w) Manufactures mercury fever thermometers.

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

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

20 “(B) Supplied with instructions on the careful handling of the  
21 thermometer to avoid breakage and on the proper cleanup of mercury should  
22 breakage occur.

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

1       “(z) Sells or offers for sale a motor vehicle manufactured after January  
2 1, 2006, that contains mercury light switches.

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

4       “(bb) Violates ORS 646A.070 (1).

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

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

7       “(ee) Violates ORS 646.883 or 646.885.

8       “(ff) Violates ORS 646.569.

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

10       “(hh) Violates ORS 646A.360.

11       “(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

12       “(jj) Violates ORS 646.563.

13       “(kk) Violates ORS 759.680 or any rule adopted pursuant thereto.

14       “(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any  
15 rule adopted pursuant thereto.

16       “(mm) Violates ORS 646A.210 or 646A.214.

17       “(nn) Violates any provision of ORS 646A.124 to 646A.134.

18       “(oo) Violates ORS 646A.095.

19       “(pp) Violates ORS 822.046.

20       “(qq) Violates ORS 128.001.

21       “(rr) Violates ORS 646A.800 (2) to (4).

22       “(ss) Violates ORS 646A.090 (2) to (5).

23       “(tt) Violates ORS 87.686.

24       “(uu) Violates ORS 646A.803.

25       “(vv) Violates ORS 646A.362.

26       “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or  
27 646A.054.

28       “(xx) Violates ORS 180.440 (1) or 180.486 (1).

29       “(yy) Commits the offense of acting as a vehicle dealer without a certif-  
30 icate under ORS 822.005.

1 “(zz) Violates ORS 87.007 (2) or (3).  
2 “(aaa) Violates ORS 92.405 (1), (2) or (3).  
3 “(bbb) Engages in an unlawful practice under ORS 646.648.  
4 “(ccc) Violates ORS 646A.365.  
5 “(ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted un-  
6 der ORS 98.864.  
7 “(eee) Sells a gift card in violation of ORS 646A.276.  
8 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.  
9 “(ggg) Violates ORS 646A.430 to 646A.450.  
10 “(hhh) Violates a provision of ORS 744.318 to 744.384.  
11 “(iii) Violates a provision of ORS 646A.702 to 646A.720.  
12 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning  
13 or declaration described in ORS 646A.530 is issued for the children’s product,  
14 as defined in ORS 646A.525, that is the subject of the violation.  
15 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,  
16 697.682, 697.692 or 697.707.  
17 “(LLL) Violates the consumer protection provisions of the  
18 Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on  
19 January 1, 2010.  
20 “(mmm) Violates a provision of ORS 646A.480 to 646A.495.  
21 “(nnn) Violates ORS 646A.082.  
22 “(ooo) Violates ORS 646.647.  
23 “(ppp) Violates ORS 646A.115.  
24 “(qqq) Violates a provision of ORS 646A.405.  
25 “(rrr) Violates ORS 646A.092.  
26 “(sss) Violates a provision of ORS 646.644.  
27 “(ttt) Violates a provision of ORS 646A.295.  
28 “(uuu) Violates ORS 646A.564.  
29 “(vvv) Engages in the business of, or acts in the capacity of, an immi-  
30 gration consultant, as defined in ORS 9.280, in this state and for compen-

1 sation, unless federal law authorizes the person to do so or unless the person  
2 is an active member of the Oregon State Bar.

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

4 “(xxx) Violates ORS 646A.806.

5 “(yyy) Violates ORS 646A.810 (2).

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

8 “(aaaa) Violates ORS 443.376.

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

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

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

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

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

24 “**SECTION 8.** ORS 646.608, as amended by section 10, chapter 523, Oregon  
25 Laws 2015, section 15, chapter 113, Oregon Laws 2017, section 3, chapter 241,  
26 Oregon Laws 2017, section 16, chapter 480, Oregon Laws 2017, and section  
27 6, chapter 656, Oregon Laws 2017, is amended to read:

28 “646.608. (1) A person engages in an unlawful practice if in the course of  
29 the person’s business, vocation or occupation the person does any of the  
30 following:

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

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

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

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

10       “(e) Represents that real estate, goods or services have sponsorship, ap-  
11 proval, characteristics, ingredients, uses, benefits, quantities or qualities that  
12 the real estate, goods or services do not have or that a person has a spon-  
13 sorship, approval, status, qualification, affiliation, or connection that the  
14 person does not have.

15       “(f) Represents that real estate or goods are original or new if the real  
16 estate or goods are deteriorated, altered, reconditioned, reclaimed, used or  
17 secondhand.

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

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

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

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

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

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

5       “(m) Performs service on or dismantles any goods or real estate if the  
6 owner or apparent owner of the goods or real estate does not authorize the  
7 service or dismantling.

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

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

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

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

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

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

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

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

30       “(v) Violates any of the provisions relating to auction sales, consignment

1 sales, auctioneers, consignees or auction marts under ORS 698.640, whether  
2 in a commercial or noncommercial situation.

3 “(w) Manufactures mercury fever thermometers.

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

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

7 “(B) Supplied with instructions on the careful handling of the  
8 thermometer to avoid breakage and on the proper cleanup of mercury should  
9 breakage occur.

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

18 “(z) Sells or offers for sale a motor vehicle manufactured after January  
19 1, 2006, that contains mercury light switches.

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

21 “(bb) Violates ORS 646A.070 (1).

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

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

24 “(ee) Violates ORS 646.883 or 646.885.

25 “(ff) Violates ORS 646.569.

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

27 “(hh) Violates ORS 646A.360.

28 “(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

29 “(jj) Violates ORS 646.563.

30 “(kk) Violates ORS 759.680 or any rule adopted pursuant thereto.

1 “(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any  
2 rule adopted pursuant thereto.

3 “(mm) Violates ORS 646A.210 or 646A.214.

4 “(nn) Violates any provision of ORS 646A.124 to 646A.134.

5 “(oo) Violates ORS 646A.095.

6 “(pp) Violates ORS 822.046.

7 “(qq) Violates ORS 128.001.

8 “(rr) Violates ORS 646A.800 (2) to (4).

9 “(ss) Violates ORS 646A.090 (2) to (5).

10 “(tt) Violates ORS 87.686.

11 “(uu) Violates ORS 646A.803.

12 “(vv) Violates ORS 646A.362.

13 “(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or  
14 646A.054.

15 “(xx) Violates ORS 180.440 (1) or 180.486 (1).

16 “(yy) Commits the offense of acting as a vehicle dealer without a certif-  
17 icate under ORS 822.005.

18 “(zz) Violates ORS 87.007 (2) or (3).

19 “(aaa) Violates ORS 92.405 (1), (2) or (3).

20 “(bbb) Engages in an unlawful practice under ORS 646.648.

21 “(ccc) Violates ORS 646A.365.

22 “(ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858 or a rule adopted un-  
23 der ORS 98.864.

24 “(eee) Sells a gift card in violation of ORS 646A.276.

25 “(fff) Violates ORS 646A.102, 646A.106 or 646A.108.

26 “(ggg) Violates ORS 646A.430 to 646A.450.

27 “(hhh) Violates a provision of ORS 744.318 to 744.384.

28 “(iii) Violates a provision of ORS 646A.702 to 646A.720.

29 “(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning  
30 or declaration described in ORS 646A.530 is issued for the children’s product,

1 as defined in ORS 646A.525, that is the subject of the violation.

2 “(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662,  
3 697.682, 697.692 or 697.707.

4 “(LLL) Violates the consumer protection provisions of the  
5 Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on  
6 January 1, 2010.

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

8 “(nnn) Violates ORS 646A.082.

9 “(ooo) Violates ORS 646.647.

10 “(ppp) Violates ORS 646A.115.

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

12 “(rrr) Violates ORS 646A.092.

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

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

15 “(uuu) Violates ORS 646A.564.

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

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

21 “(xxx) Violates ORS 646A.806.

22 “(yyy) Violates ORS 646A.810 (2).

23 “(zzz) Violates ORS 443.376.

24 “(aaaa) **Violates a provision of ORS 646A.600 to 646A.628.**

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

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

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

5       “(5) Notwithstanding any other provision of ORS 336.184 and 646.605 to  
6 646.652, if an action or suit is brought under subsection (1)(xx) of this section  
7 by a person other than a prosecuting attorney, relief is limited to an in-  
8 junction and the prevailing party may be awarded reasonable attorney fees.

9       **“SECTION 9. The amendments to ORS 646.608, 646A.602, 646A.604,  
10 646A.608, 646A.610 and 646A.622 by sections 1 to 8 of this 2018 Act apply  
11 to contracts into which a person enters with another person on or af-  
12 ter the effective date of this 2018 Act.**

13       **“SECTION 10. This 2018 Act takes effect on the 91st day after the  
14 date on which the 2018 regular session of the Seventy-ninth Legislative  
15 Assembly adjourns sine die.”.**

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