

A-Engrossed
House Bill 2661

Ordered by the House April 27
Including House Amendments dated April 27

Sponsored by Representatives KENY-GUYER, MEEK; Representative GOMBERG (Presession filed.)

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.

Requires long term care referral provider to be [*certified by Health Licensing Office. Directs office to adopt rules for regulation of*] **registered with Department of Human Services. Imposes certain requirements on long term care referral providers.**

Makes long term care referral provider mandatory reporter of elder abuse.

Makes violation of certain provisions unfair trade practice.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to long term care referral; creating new provisions; amending ORS 124.050 and 646.608; and
3 declaring an emergency.

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

5 **SECTION 1. As used in sections 1 to 3 of this 2017 Act:**

6 (1) **"Client" means an individual who seeks a long term care referral for the individual**
7 **or for another individual.**

8 (2) **"Facility" means:**

9 (a) **A long term care facility as defined in ORS 442.015.**

10 (b) **A residential care facility as defined in ORS 443.400, including but not limited to an**
11 **assisted living facility and a facility marketed as a memory care community.**

12 (c) **An adult foster home as defined in ORS 443.705.**

13 (d) **A continuing care retirement community as defined in ORS 101.020.**

14 (3) **"Long term care referral" means a referral to a facility in connection with which the**
15 **referral agent receives compensation from the facility.**

16 (4) **"Placement information" means any information a person collects from a client about**
17 **the client or the subject of placement, including but not limited to name, electronic mail**
18 **address, phone number, zip code, medical history, information about necessary assistance for**
19 **activities of daily living or the reasons for seeking long term care.**

20 (5)(a) **"Referral agent" means a person that provides long term care referrals.**

21 (b) **"Referral agent" does not include:**

22 (A) **A facility or its employees.**

23 (B) **A resident or patron of a facility who refers a client to a facility and receives a dis-**
24 **count or other remuneration from the facility.**

25 (C) **A public body as defined in ORS 174.109.**

26 (6) **"Subject of placement" means the individual to be placed with a facility through a**

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 long term care referral.

2 **SECTION 2.** (1) Before providing a long term care referral, a referral agent shall provide
3 the client with a disclosure designed to give actual notice to the client of its contents. The
4 disclosure must be conspicuous and provided in clear language. The disclosure may be made
5 orally, if the referral agent records the disclosure with consent of the client and thereafter
6 provides the client with a written disclosure. The disclosure must include:

7 (a) A description of the long term care referral to be provided by the referral agent, in-
8 cluding the length of any contract the referral agent has with a facility regarding placement
9 information about the client or the subject of placement.

10 (b) The referral agent's contact information, including address and phone number.

11 (c) The referral agent's privacy policy.

12 (d) A statement of whether the referral agent provides referrals only to facilities with
13 which the agent has an existing contract.

14 (e) A statement of whether the referral fees for the long term care referral will be paid
15 to the referral agent by the facility.

16 (2) A referral agent may not:

17 (a) Share a client's placement information with or sell a client's placement information
18 to a facility or marketing affiliate without obtaining affirmative consent from the client for
19 each instance of sharing or selling the information.

20 (b) Refer a client to a facility in which the referral agent or an immediate family member
21 of the referral agent has an ownership interest.

22 (c) Contact a client who has requested in writing that the referral agent stop contacting
23 the client.

24 (3) If a referral agent has received compensation from a facility in connection with a
25 client and the subject of placement later leaves that facility, the client may notify the re-
26 ferral agent in writing that the client wishes to use a new referral agent. Upon receipt of
27 notice under this subsection, the first referral agent may not accept compensation from
28 another facility in connection with the client.

29 (4) If a referral agent maintains a website, the website must contain a link to any state
30 agency website listing complaints concerning facilities. If the referral agent does not main-
31 tain a website, the referral agent shall notify clients in writing of the state agency website
32 addresses.

33 (5)(a) A referral agent must include in any contract with a long term care facility pro-
34 visions prohibiting the referral agent from collecting compensation from a facility if a new
35 referral agent subsequently refers the subject of placement to the facility under the following
36 circumstances:

37 (A) The subject of placement enters a facility to which the subject of placement is re-
38 ferred by the first referral agent, but subsequently leaves that facility; and

39 (B) A new referral agent refers the subject of placement to a facility.

40 (b) When a subsequent referral is made for a subject of placement by a new referral
41 agent as described in paragraph (a) of this subsection, the new referral agent must present
42 evidence to the facility that the first referral agent is not entitled to compensation.

43 (6) Violation of this section is an unlawful practice under ORS 646.608.

44 **SECTION 3.** (1) A person may not provide a long term care referral unless the person is
45 registered with the Department of Human Services under this section.

1 **(2) The department shall issue a registration to provide long term care referrals to an**
2 **applicant who meets requirements established by the department by rule and pays a \$200 fee.**

3 **(3) A registration issued under this section must be renewed every two years. The re-**
4 **newal fee is \$200.**

5 **(4) The department shall require an applicant to:**

6 **(a) Identify an individual responsible for the application;**

7 **(b) Demonstrate that the applicant meets the requirements of section 2 of this 2017 Act;**

8 **(c) Demonstrate that the applicant maintains at least \$1 million in general liability in-**
9 **surance; and**

10 **(d) Perform background checks on referral agents who have direct contact with clients,**
11 **as defined by rule of the department.**

12 **(5) The department may adopt rules as necessary to administer sections 1 to 3 of this**
13 **2017 Act.**

14 **(6) The department may impose a civil penalty on a person for violation of sections 1 to**
15 **3 of this 2017 Act or violation of rules adopted under sections 1 to 3 of this 2017 Act.**

16 **SECTION 4.** ORS 124.050 is amended to read:

17 124.050. As used in ORS 124.050 to 124.095:

18 (1) "Abuse" means one or more of the following:

19 (a) Any physical injury to an elderly person caused by other than accidental means, or which
20 appears to be at variance with the explanation given of the injury.

21 (b) Neglect.

22 (c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal
23 or neglect of duties and obligations owed an elderly person by a caretaker or other person.

24 (d) Willful infliction of physical pain or injury upon an elderly person.

25 (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,
26 163.465, 163.467 or 163.525.

27 (f) Verbal abuse.

28 (g) Financial exploitation.

29 (h) Sexual abuse.

30 (i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline
31 the person.

32 (j) A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of
33 restraint prescribed by a physician licensed under ORS chapter 677 and any treatment activities
34 that are consistent with an approved treatment plan or in connection with a court order.

35 (2) "Elderly person" means any person 65 years of age or older who is not subject to the pro-
36 visions of ORS 441.640 to 441.665.

37 (3) "Facility" means:

38 (a) A long term care facility as that term is defined in ORS 442.015.

39 (b) A residential facility as that term is defined in ORS 443.400, including but not limited to an
40 assisted living facility.

41 (c) An adult foster home as that term is defined in ORS 443.705.

42 (4) "Financial exploitation" means:

43 (a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an
44 elderly person or a person with a disability.

45 (b) Alarming an elderly person or a person with a disability by conveying a threat to wrongfully

1 take or appropriate money or property of the person if the person would reasonably believe that the
2 threat conveyed would be carried out.

3 (c) Misappropriating, misusing or transferring without authorization any money from any ac-
4 count held jointly or singly by an elderly person or a person with a disability.

5 (d) Failing to use the income or assets of an elderly person or a person with a disability effec-
6 tively for the support and maintenance of the person.

7 (5) "Intimidation" means compelling or deterring conduct by threat.

8 (6) "Law enforcement agency" means:

9 (a) Any city or municipal police department.

10 (b) Any county sheriff's office.

11 (c) The Oregon State Police.

12 (d) Any district attorney.

13 (e) A police department established by a university under ORS 352.121 or 353.125.

14 (7) "Neglect" means failure to provide basic care or services that are necessary to maintain the
15 health or safety of an elderly person.

16 (8) "Person with a disability" means a person described in:

17 (a) ORS 410.040 (7); or

18 (b) ORS 410.715.

19 (9) "Public or private official" means:

20 (a) Physician or physician assistant licensed under ORS chapter 677, naturopathic physician or
21 chiropractor, including any intern or resident.

22 (b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
23 or employee of an in-home health service.

24 (c) Employee of the Department of Human Services or community developmental disabilities
25 program.

26 (d) Employee of the Oregon Health Authority, local health department or community mental
27 health program.

28 (e) Peace officer.

29 (f) Member of the clergy.

30 (g) Regulated social worker.

31 (h) Physical, speech or occupational therapist.

32 (i) Senior center employee.

33 (j) Information and referral or outreach worker.

34 (k) Licensed professional counselor or licensed marriage and family therapist.

35 (L) Member of the Legislative Assembly.

36 (m) Firefighter or emergency medical services provider.

37 (n) Psychologist.

38 (o) Provider of adult foster care or an employee of the provider.

39 (p) Audiologist.

40 (q) Speech-language pathologist.

41 (r) Attorney.

42 (s) Dentist.

43 (t) Optometrist.

44 (u) Chiropractor.

45 (v) Personal support worker, as defined by rule adopted by the Home Care Commission.

1 (w) Home care worker, as defined in ORS 410.600.

2 **(x) Referral agent, as defined in section 1 of this 2017 Act.**

3 (10) "Services" includes but is not limited to the provision of food, clothing, medicine, housing,
4 medical services, assistance with bathing or personal hygiene or any other service essential to the
5 well-being of an elderly person.

6 (11)(a) "Sexual abuse" means:

7 (A) Sexual contact with an elderly person who does not consent or is considered incapable of
8 consenting to a sexual act under ORS 163.315;

9 (B) Verbal or physical harassment of a sexual nature, including but not limited to severe or
10 pervasive exposure to sexually explicit material or language;

11 (C) Sexual exploitation;

12 (D) Any sexual contact between an employee of a facility or paid caregiver and an elderly per-
13 son served by the facility or caregiver; or

14 (E) Any sexual contact that is achieved through force, trickery, threat or coercion.

15 (b) "Sexual abuse" does not mean consensual sexual contact between an elderly person and:

16 (A) An employee of a facility who is also the spouse of the elderly person; or

17 (B) A paid caregiver.

18 (12) "Sexual contact" has the meaning given that term in ORS 163.305.

19 (13) "Verbal abuse" means to threaten significant physical or emotional harm to an elderly
20 person or a person with a disability through the use of:

21 (a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

22 (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate
23 sexual comments.

24 **SECTION 5.** ORS 646.608 is amended to read:

25 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,
26 vocation or occupation the person does any of the following:

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

28 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
29 proval, or certification of real estate, goods or services.

30 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
31 ciation with, or certification by, another.

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

34 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
35 ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have
36 or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the
37 person does not have.

38 (f) Represents that real estate or goods are original or new if the real estate or goods are de-
39 teriorated, altered, reconditioned, reclaimed, used or secondhand.

40 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
41 or that real estate or goods are of a particular style or model, if the real estate, goods or services
42 are of another.

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

45 (i) Advertises real estate, goods or services with intent not to provide the real estate, goods or

1 services as advertised, or with intent not to supply reasonably expectable public demand, unless the
2 advertisement discloses a limitation of quantity.

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

5 (k) Makes false or misleading representations concerning credit availability or the nature of the
6 transaction or obligation incurred.

7 (L) Makes false or misleading representations relating to commissions or other compensation to
8 be paid in exchange for permitting real estate, goods or services to be used for model or demon-
9 stration purposes or in exchange for submitting names of potential customers.

10 (m) Performs service on or dismantles any goods or real estate if the owner or apparent owner
11 of the goods or real estate does not authorize the service or dismantling.

12 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
13 vides the information required under ORS 646.611.

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

20 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
21 cize a product, business or service.

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

24 (r) Organizes or induces or attempts to induce membership in a pyramid club.

25 (s) Makes false or misleading representations of fact concerning the offering price of, or the
26 person's cost for real estate, goods or services.

27 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
28 known material defect or material nonconformity.

29 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

30 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,
31 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-
32 ation.

33 (w) Manufactures mercury fever thermometers.

34 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
35 law, or is:

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

37 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
38 on the proper cleanup of mercury should breakage occur.

39 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
40 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
41 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
42 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
43 graph, "thermostat" means a device commonly used to sense and, through electrical communication
44 with heating, cooling or ventilation equipment, control room temperature.

45 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains

- 1 mercury light switches.
- 2 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 3 (bb) Violates ORS 646A.070 (1).
- 4 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 5 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 6 (ee) Violates ORS 646.883 or 646.885.
- 7 (ff) Violates ORS 646.569.
- 8 (gg) Violates the provisions of ORS 646A.142.
- 9 (hh) Violates ORS 646A.360.
- 10 (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 11 (jj) Violates ORS 646.563.
- 12 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 13 (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 14 thereto.
- 15 (mm) Violates ORS 646A.210 or 646A.214.
- 16 (nn) Violates any provision of ORS 646A.124 to 646A.134.
- 17 (oo) Violates ORS 646A.095.
- 18 (pp) Violates ORS 822.046.
- 19 (qq) Violates ORS 128.001.
- 20 (rr) Violates ORS 646A.800 (2) to (4).
- 21 (ss) Violates ORS 646A.090 (2) to (4).
- 22 (tt) Violates ORS 87.686.
- 23 (uu) Violates ORS 646A.803.
- 24 (vv) Violates ORS 646A.362.
- 25 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 26 (xx) Violates ORS 180.440 (1) or 180.486 (1).
- 27 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 28 (zz) Violates ORS 87.007 (2) or (3).
- 29 (aaa) Violates ORS 92.405 (1), (2) or (3).
- 30 (bbb) Engages in an unlawful practice under ORS 646.648.
- 31 (ccc) Violates ORS 646A.365.
- 32 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 33 (eee) Sells a gift card in violation of ORS 646A.276.
- 34 (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
- 35 (ggg) Violates ORS 646A.430 to 646A.450.
- 36 (hhh) Violates a provision of ORS 744.318 to 744.384.
- 37 (iii) Violates a provision of ORS 646A.702 to 646A.720.
- 38 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
- 39 scribed in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the
- 40 subject of the violation.
- 41 (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- 42 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50
- 43 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
- 44 (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- 45 (nnn) Violates ORS 646A.082.

- 1 (ooo) Violates ORS 646.647.
2 (ppp) Violates ORS 646A.115.
3 (qqq) Violates a provision of ORS 646A.405.
4 (rrr) Violates ORS 646A.092.
5 (sss) Violates a provision of ORS 646.644.
6 (ttt) Violates a provision of ORS 646A.295.
7 (uuu) Violates ORS 646A.564.
8 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
9 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
10 do so or unless the person is an active member of the Oregon State Bar.
11 (www) Violates ORS 702.012, 702.029, 702.032 or 702.054.
12 (xxx) Violates ORS 646A.806.
13 (yyy) Violates ORS 646A.810 (2).
14 (zzz) Violates a provision of sections 1 to 7, chapter 523, Oregon Laws 2015.
15 **(aaaa) Violates section 2 of this 2017 Act.**
16 (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifesta-
17 tion of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
18 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-
19 cuting attorney need not prove competition between the parties or actual confusion or misunder-
20 standing.
21 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
22 torney General has first established a rule in accordance with the provisions of ORS chapter 183
23 declaring the conduct to be unfair or deceptive in trade or commerce.
24 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or
25 suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attor-
26 ney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney
27 fees.
28 **SECTION 6.** ORS 646.608, as amended by section 10, chapter 523, Oregon Laws 2015, is
29 amended to read:
30 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,
31 vocation or occupation the person does any of the following:
32 (a) Passes off real estate, goods or services as the real estate, goods or services of another.
33 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
34 proval, or certification of real estate, goods or services.
35 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
36 ciation with, or certification by, another.
37 (d) Uses deceptive representations or designations of geographic origin in connection with real
38 estate, goods or services.
39 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
40 ingredients, uses, benefits, quantities or qualities that the real estate, goods or services do not have
41 or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the
42 person does not have.
43 (f) Represents that real estate or goods are original or new if the real estate or goods are de-
44 teriorated, altered, reconditioned, reclaimed, used or secondhand.
45 (g) Represents that real estate, goods or services are of a particular standard, quality, or grade,

1 or that real estate or goods are of a particular style or model, if the real estate, goods or services
2 are of another.

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

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

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

10 (k) Makes false or misleading representations concerning credit availability or the nature of the
11 transaction or obligation incurred.

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

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

17 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-
18 vides the information required under ORS 646.611.

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

25 (p) Makes any false or misleading statement about a prize, contest or promotion used to publi-
26 cize a product, business or service.

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

29 (r) Organizes or induces or attempts to induce membership in a pyramid club.

30 (s) Makes false or misleading representations of fact concerning the offering price of, or the
31 person's cost for real estate, goods or services.

32 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
33 known material defect or material nonconformity.

34 (u) Engages in any other unfair or deceptive conduct in trade or commerce.

35 (v) Violates any of the provisions relating to auction sales, consignment sales, auctioneers,
36 consignees or auction marts under ORS 698.640, whether in a commercial or noncommercial situ-
37 ation.

38 (w) Manufactures mercury fever thermometers.

39 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
40 law, or is:

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

42 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
43 on the proper cleanup of mercury should breakage occur.

44 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
45 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be

1 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
2 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
3 graph, “thermostat” means a device commonly used to sense and, through electrical communication
4 with heating, cooling or ventilation equipment, control room temperature.

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

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

8 (bb) Violates ORS 646A.070 (1).

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

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

11 (ee) Violates ORS 646.883 or 646.885.

12 (ff) Violates ORS 646.569.

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

14 (hh) Violates ORS 646A.360.

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

16 (jj) Violates ORS 646.563.

17 (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

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

20 (mm) Violates ORS 646A.210 or 646A.214.

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

22 (oo) Violates ORS 646A.095.

23 (pp) Violates ORS 822.046.

24 (qq) Violates ORS 128.001.

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

26 (ss) Violates ORS 646A.090 (2) to (4).

27 (tt) Violates ORS 87.686.

28 (uu) Violates ORS 646A.803.

29 (vv) Violates ORS 646A.362.

30 (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

31 (xx) Violates ORS 180.440 (1) or 180.486 (1).

32 (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

33 (zz) Violates ORS 87.007 (2) or (3).

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

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

36 (ccc) Violates ORS 646A.365.

37 (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

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

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

40 (ggg) Violates ORS 646A.430 to 646A.450.

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

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

43 (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration de-
44 scribed in ORS 646A.530 is issued for the children’s product, as defined in ORS 646A.525, that is the
45 subject of the violation.

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

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

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

5 (nnn) Violates ORS 646A.082.

6 (ooo) Violates ORS 646.647.

7 (ppp) Violates ORS 646A.115.

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

9 (rrr) Violates ORS 646A.092.

10 (sss) Violates a provision of ORS 646.644.

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

12 (uuu) Violates ORS 646A.564.

13 (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as de-
14 fined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to
15 do so or unless the person is an active member of the Oregon State Bar.

16 (www) Violates ORS 702.012, 702.029, 702.032 or 702.054.

17 (xxx) Violates ORS 646A.806.

18 (yyy) Violates ORS 646A.810 (2).

19 **(zzz) Violates section 2 of this 2017 Act.**

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

22 (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prose-
23 cuting attorney need not prove competition between the parties or actual confusion or misunder-
24 standing.

25 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-
26 torney General has first established a rule in accordance with the provisions of ORS chapter 183
27 declaring the conduct to be unfair or deceptive in trade or commerce.

28 (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or
29 suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attor-
30 ney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney
31 fees.

32 **SECTION 7. (1) Sections 1 to 3 of this 2017 Act and the amendments to ORS 124.050 and**
33 **646.608 by sections 4 to 6 of this 2017 Act become operative on July 1, 2018.**

34 **(2) The Department of Human Services may take any action before the operative date**
35 **specified in subsection (1) of this section that is necessary to enable the department, on and**
36 **after the operative date specified in subsection (1) of this section, to exercise all of the du-**
37 **ties, functions and powers conferred on the department by sections 1 to 3 of this 2017 Act**
38 **and the amendments to ORS 124.050 and 646.608 by sections 4 to 6 of this 2017 Act.**

39 **SECTION 8. Section 2 of this 2017 Act applies only to contracts entered into between a**
40 **referral agent and a facility or between a referral agent and a client on or after July 1, 2018.**

41 **SECTION 9. This 2017 Act being necessary for the immediate preservation of the public**
42 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
43 **on its passage.**

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