

SENATE AMENDMENTS TO SENATE BILL 1057

By COMMITTEE ON COMMERCE

June 2

1 On page 1 of the printed bill, line 2, delete "646.607" and insert "646.608 and 802.179".

2 Delete lines 4 through 25 and pages 2 through 6 and insert:

3 **"SECTION 1. As used in sections 1 to 6 of this 2005 Act:**

4 **"(1) 'Breach of security of noncomputerized data' means theft or unauthorized photoco-**
5 **pying, transmission by facsimile or photographing of personal information maintained in pa-**
6 **per or other nonelectronic format.**

7 **"(2)(a) 'Breach of security of system data' means acquisition of computerized data by an**
8 **unauthorized person that harms or poses an actual threat to the security, confidentiality or**
9 **integrity of personal information maintained by a person.**

10 **"(b) 'Breach of security of system data' does not include good-faith acquisition of per-**
11 **sonal information by a person's employee or agent for a legitimate purpose of that person**
12 **if the personal information is not used in violation of applicable law or in a manner that**
13 **harms or poses an actual threat to the security, confidentiality or integrity of the personal**
14 **information.**

15 **"(3) 'Consumer reporting agency' means a consumer reporting agency as described in**
16 **section 603(p) of the federal Fair Credit Reporting Act.**

17 **"(4) 'Person' means any individual, private or public corporation, partnership, cooper-**
18 **ative, association, estate, limited liability company, organization, public body as defined in**
19 **ORS 174.109 or other entity.**

20 **"(5)(a) 'Personal information' means an individual's first name or first initial and last**
21 **name in combination with any one or more of the following data elements, when either the**
22 **name or the data elements are not encrypted or redacted:**

23 **"(A) Date of birth;**

24 **"(B) Social Security number;**

25 **"(C) Driver license or state identification card number;**

26 **"(D) Passport number; or**

27 **"(E) Account number, credit or debit card number, security code, access code or pass-**
28 **word that would permit access to the individual's financial account.**

29 **"(b) 'Personal information' does not include publicly available information that is lawfully**
30 **made available to the general public from federal, state or local government records.**

31 **"(6) 'Security alert' means a notice placed in a consumer's credit report that notifies a**
32 **recipient of the credit report that the consumer may be a victim of fraud.**

33 **"(7) 'Security freeze' means a notice placed in a consumer's credit report at the request**
34 **of the consumer that prohibits the consumer reporting agency, except as provided in section**
35 **4 of this 2005 Act, from releasing the consumer's credit report or any information from the**

1 credit report without the express authorization of the consumer.

2 **“SECTION 2.** (1) Upon a reasonable belief or discovery of a breach of security of non-
3 computerized data or a breach of security of system data relating to personal information
4 about a consumer with a mailing address in this state, a person that owns, possesses or uses
5 the data and was subject to the breach of the data shall disclose the breach, the name of the
6 consumer and the type of personal information that was subject to the breach as expe-
7 ditiously as possible and without unreasonable delay to:

8 **“(a)** Appropriate law enforcement agencies;

9 **“(b)** The person’s primary state regulator, if any;

10 **“(c)** Each consumer reporting agency; and

11 **“(d)** The consumer with a mailing address in this state. The notification to the consumer
12 shall be delayed if an appropriate law enforcement agency determines that notification will
13 interfere with a criminal investigation or prosecution and provides the person that sustained
14 the breach of security with a written request for the delay. The person must promptly notify
15 the consumer as soon as notification no longer interferes with the investigation or prose-
16 cution.

17 **“(2)** Subsection (1) of this section does not apply to a financial institution, as defined in
18 ORS 706.008, that complies with regulations or guidance issued by its regulator concerning
19 notification upon discovery of a breach of security of noncomputerized data or a breach of
20 security of system data.

21 **“(3)** Subsection (1) of this section does not apply to uses or disclosures of protected
22 health information by covered entities, as defined in ORS 192.519, that comply with the
23 Standards for Privacy of Individually Identifiable Health Information adopted in accordance
24 with the federal Health Insurance Portability and Accountability Act of 1996.

25 **“(4)** Consumer notification required under subsection (1) of this section shall:

26 **“(a)** Describe the incident in general terms and the type of personal information about
27 a consumer that was the subject of the breach;

28 **“(b)** Advise a consumer of the need to remain vigilant to possible identity theft;

29 **“(c)** Advise a consumer to promptly report incidents of suspected identity theft to law
30 enforcement authorities;

31 **“(d)** Advise a consumer of the ability of the consumer to place a security freeze on the
32 consumer’s credit report under section 4 of this 2005 Act;

33 **“(e)** Provide information about the Federal Trade Commission’s online guidance regard-
34 ing steps a consumer can take to protect against identity theft; and

35 **“(f)** Be delivered to a consumer by:

36 **“(A)** First class mail with postage prepaid to the last known address of the consumer;

37 **“(B)** Electronic mail to an electronic mail address or electronic information processing
38 system used by the consumer for the purpose of receiving electronic information;

39 **“(C)** Direct communication by telephone; or

40 **“(D)** Substitute notice, if the person required to send the notification demonstrates that
41 the cost of providing notice would exceed \$250,000, the number of consumers required to be
42 notified under this section exceeds 500,000 or the person does not have sufficient contact
43 information to notify the consumer. Substitute notice shall be provided in a manner designed
44 to notify consumers of the breach and shall include:

45 **“(i)** A conspicuous notification on an Internet website accessible to the public and main-

1 tained by the person, if the person maintains a website;

2 “(ii) Notification in major statewide news media; and

3 “(iii) Notification by electronic mail to an electronic mail address used by the consumer
4 for the purpose of receiving electronic information, for each consumer for whom the person
5 has an electronic mail address.

6 “**SECTION 3.** (1) Not later than five business days after receiving notification under
7 section 2 of this 2005 Act, each consumer reporting agency shall place a security alert in the
8 credit report of each consumer with a mailing address in this state:

9 “(a) Who is identified in the notification; and

10 “(b) For whom the consumer reporting agency maintains a record.

11 “(2) For a period of not less than 180 days beginning on the date the notification was
12 received, each consumer reporting agency shall notify each person requesting consumer
13 credit information with respect to a consumer of the existence of a security alert in that
14 consumer’s credit report, regardless of whether a full credit report, credit score or summary
15 report is requested.

16 “(3) Except as provided in subsection (4) of this section, not later than one business day
17 after a consumer reporting agency receives a request for credit information about a con-
18 sumer whose credit report contains a security alert, the consumer reporting agency shall
19 notify the consumer of the request. The consumer notification shall:

20 “(a) Provide the identity and contact information of the person requesting the consum-
21 er’s credit information, including, but not limited to, a name and telephone number; and

22 “(b) Be delivered to the consumer by:

23 “(A) First class mail with postage prepaid to the last known address of the consumer;

24 “(B) Electronic mail to an electronic mail address or electronic information processing
25 system used by the consumer for the purpose of receiving electronic information; or

26 “(C) Direct communication by telephone.

27 “(4) A consumer reporting agency is not required to notify a consumer under subsection
28 (3) of this section if the request for credit information is made by:

29 “(a) A person or a subsidiary, agent or assignee of the person with which the consumer
30 has or, prior to assignment, had an account, contract or debtor-creditor relationship;

31 “(b) Any state or local government agency, law enforcement agency, trial court or pri-
32 vate collection agency acting pursuant to a court order or warrant; or

33 “(c) A person making firm offers of credit or insurance from prescreened lists as pro-
34 vided for by the federal Fair Credit Reporting Act.

35 “(5) The placement of a security alert may not be used against a consumer in rating or
36 determining creditworthiness.

37 “**SECTION 4.** (1) Any consumer with a mailing address in this state whose personal
38 identification has been stolen, who believes the consumer’s personal identification may have
39 been stolen or who receives notification under section 2 of this 2005 Act may place a security
40 freeze in the consumer’s credit report. The consumer may place the security freeze by
41 making a request in writing by first class mail to a consumer reporting agency.

42 “(2) A consumer reporting agency shall place a security freeze in the consumer’s credit
43 report within five business days after receiving a consumer’s request under subsection (1)
44 of this section. The consumer reporting agency shall send a written confirmation of the se-
45 curity freeze and a unique personal identification number or password to the consumer

1 within 10 business days after receiving the consumer's request. The written confirmation
2 shall also provide to the consumer in plain and simple language:

3 "(a) The consumer's rights and the consumer reporting agency's obligations under this
4 section;

5 "(b) Notification that the security freeze will remain in the consumer's credit report until
6 the consumer requests the security freeze be temporarily lifted or removed;

7 "(c) The procedures for temporarily lifting or removing the security freeze;

8 "(d) The fees that the consumer reporting agency may charge for placing, temporarily
9 lifting or removing a security freeze; and

10 "(e) A statement that a security freeze in the consumer's credit report may delay, in-
11 terfere with or prohibit the timely approval of a request or application for a loan, credit, a
12 mortgage, insurance, a government service or payment, rental housing, employment, in-
13 vestment, a license, a cellular telephone, utilities, a digital signature, an Internet credit card
14 transaction or other service, including an extension of credit at a point of sale.

15 "(3) If a security freeze is in place, the consumer reporting agency may not release in-
16 formation from a consumer's credit report to a third party without the consumer's express
17 authorization, except as provided in subsection (4) of this section.

18 "(4) While a security freeze is in place in a consumer's credit report, a consumer re-
19 porting agency may provide information from that report without the consumer's consent
20 when the person requesting the consumer report is:

21 "(a) A person or a subsidiary, agent or assignee of the person with which the consumer
22 has or, prior to assignment, had an account, contract or debtor-creditor relationship;

23 "(b) Any state or local government agency, law enforcement agency, trial court or pri-
24 vate collection agency acting pursuant to a court order or warrant; or

25 "(c) A person making firm offers of credit or insurance from prescreened lists as pro-
26 vided for by the federal Fair Credit Reporting Act.

27 "(5)(a) To permit access to a credit report by a third party or by all persons for a speci-
28 fied period of time, the consumer who requested the security freeze must contact the con-
29 sumer reporting agency and request a temporary lift. The consumer shall include in the
30 request the consumer's unique personal identification number or password provided by the
31 consumer reporting agency and information regarding the third party or the period of time
32 to which the temporary lift applies.

33 "(b) The request for a temporary lift may be made by telephone, mail, facsimile or elec-
34 tronic mail pursuant to reasonable procedures established by the consumer reporting agency.

35 "(c) The consumer reporting agency must act upon the request for a temporary lift
36 within three business days of receiving the request from the consumer.

37 "(6) A security freeze shall remain in a consumer's credit report until the consumer
38 makes a written request for removal. If a consumer requests removal of a security freeze,
39 the consumer must include with the request the consumer's unique personal identification
40 number or password provided by the consumer reporting agency. The consumer reporting
41 agency shall remove the security freeze from the consumer's credit report within three
42 business days of receiving the written request.

43 "(7) Except as provided in subsection (8) of this section, a consumer reporting agency
44 may charge a consumer no more than \$10 for each placement, temporary lift or removal of
45 a security freeze as described in this section.

1 “(8) A consumer reporting agency may not charge a fee for placing a security freeze if:

2 “(a) The request for the freeze is made as a result of the consumer receiving notification
3 from a consumer reporting agency under section 3 of this 2005 Act or the consumer’s per-
4 sonal information having been stolen; and

5 “(b) The request is made within 14 days of the consumer receiving notification from a
6 consumer reporting agency under section 3 of this 2005 Act, the consumer filing a valid police
7 report or the consumer receiving notice of the consumer’s personal information having been
8 stolen.

9 “SECTION 5. (1) Except as provided in subsection (2) of this section, a person may not
10 intentionally communicate or directly or indirectly display, transfer, sell, lease, loan, trade,
11 rent or otherwise disclose any individual’s Social Security number to a third party or to the
12 general public without the affirmatively expressed consent of the individual.

13 “(2) Nothing in this section prohibits or limits the intentional communication, disclosure,
14 display or transfer of a Social Security number:

15 “(a) Required, authorized or excepted under any federal or state law;

16 “(b) For a public health purpose, including the protection of the health or safety of an
17 individual in an emergency situation;

18 “(c) For a law enforcement purpose, including the investigation of fraud, criminal pros-
19 ecution and the enforcement of a child support obligation;

20 “(d) In any proceedings in a court of this state or in any records of a court of this state;

21 “(e) If the display is for a use occurring as a result of a legal interaction between per-
22 sons, regardless of which person initiates the interaction, including, but not limited to:

23 “(A) The prevention of fraud, including fraud in protecting an employee’s right to em-
24 ployment benefits;

25 “(B) The facilitation of credit checks or the facilitation of background checks of em-
26 ployees, prospective employees or volunteers; or

27 “(C) When the transmission of the Social Security number is incidental to, and in the
28 course of, the sale, lease, franchising or merger of all or a portion of a business;

29 “(f) If the transfer is part of a data-matching program involving a federal, state or local
30 government agency;

31 “(g) If the Social Security number is required to be submitted as part of an individual’s
32 application for any type of federal, state or local government benefit or program; or

33 “(h) For internal verification or administrative purposes by a person’s employee or agent
34 for a legitimate purpose of that person, provided that the Social Security number is not used
35 in violation of applicable law.

36 “SECTION 6. A person who, in the course of business, maintains or otherwise possesses
37 personal information, including disposal companies explicitly hired to dispose of records, may
38 not dispose of or otherwise destroy a record containing personal information unless the
39 person takes reasonable measures to protect against unauthorized access to or use of the
40 information in connection with or after disposal of the information. Reasonable measures
41 include, but are not limited to:

42 “(1) Burning, pulverizing, shredding or modifying the record containing personal infor-
43 mation so that the information cannot be read or reconstructed;

44 “(2) Destroying or erasing electronic media and other nonpaper media containing per-
45 sonal information so that the information cannot be read or reconstructed;

1 **“(3) Contracting with a person engaged in the business of record destruction to dispose**
2 **of personal information in a manner consistent with this section; or**

3 **“(4) Protecting against unauthorized access to or use of personal information during or**
4 **after the collection, transportation and destruction of the information.**

5 **“SECTION 7. Violation of section 5 of this 2005 Act is a Class A misdemeanor.**

6 **“SECTION 8.** ORS 646.608 is amended to read:

7 “646.608. (1) A person engages in an unlawful practice when in the course of the person’s busi-
8 ness, vocation or occupation the person does any of the following:

9 “(a) Passes off real estate, goods or services as those of another.

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

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

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

16 “(e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
17 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
18 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.

19 “(f) Represents that real estate or goods are original or new if they are deteriorated, altered,
20 reconditioned, reclaimed, used or secondhand.

21 “(g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
22 or that real estate or goods are of a particular style or model, if they are of another.

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

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

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

30 “(k) Makes false or misleading representations concerning credit availability or the nature of
31 the transaction or obligation incurred.

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

35 “(m) Performs service on or dismantles any goods or real estate when not authorized by the
36 owner or apparent owner thereof.

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

39 “(o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give
40 a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of
41 the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or
42 otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate,
43 discount or other value is contingent upon occurrence of an event subsequent to the time the cus-
44 tomer enters into the transaction.

45 “(p) Makes any false or misleading statement about a prize, contest or promotion used to pub-

1 licize a product, business or service.

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

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

5 “(s) Makes false or misleading representations of fact concerning the offering price of, or the
6 person’s cost for real estate, goods or services.

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

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

10 “(v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
11 ORS 698.640, whether in a commercial or noncommercial situation.

12 “(w) Manufactures mercury fever thermometers.

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

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

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

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

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

25 “(aa) Violates ORS 646.850 (1).

26 “(bb) Violates any requirement of ORS 646.661 to 646.686.

27 “(cc) Violates the provisions of ORS 128.801 to 128.898.

28 “(dd) Violates ORS 646.883 or 646.885.

29 “(ee) Violates any provision of ORS 646.195.

30 “(ff) Violates ORS 646.569.

31 “(gg) Violates the provisions of ORS 646.859.

32 “(hh) Violates ORS 759.290.

33 “(ii) Violates ORS 646.872.

34 “(jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

35 “(kk) Violates ORS 646.563.

36 “(LL) Violates ORS 759.690 or any rule adopted pursuant thereto.

37 “(mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
38 thereto.

39 “(nn) Violates ORS 646.892 or 646.894.

40 “(oo) Violates any provision of ORS 646.249 to 646.259.

41 “(pp) Violates ORS 646.384.

42 “(qq) Violates ORS 646.871.

43 “(rr) Violates ORS 822.046.

44 “(ss) Violates ORS 128.001.

45 “(tt) Violates ORS 646.649 (2) to (4).

1 “(uu) Violates ORS 646.877 (2) to (4).
2 “(vv) Violates ORS 87.686.
3 “(ww) Violates ORS 646.651.
4 “(xx) Violates ORS 646.879.
5 “(yy) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.
6 “(zz) Violates ORS 180.440 (1).
7 “(aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
8 “(bbb) Violates ORS 87.007 (2) or (3).
9 “(ccc) Violates section 2, 3, 4, 5 or 6 of this 2005 Act.
10 “(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifes-
11 tation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
12 “(3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
13 need not prove competition between the parties or actual confusion or misunderstanding.
14 “(4) No action or suit shall be brought under subsection (1)(u) of this section unless the Attorney
15 General has first established a rule in accordance with the provisions of ORS chapter 183 declaring
16 the conduct to be unfair or deceptive in trade or commerce.
17 “(5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is
18 brought under subsection (1)(zz) of this section by a person other than a prosecuting attorney, relief
19 shall be limited to an injunction and the prevailing party may be awarded reasonable attorney fees.
20 “**SECTION 9.** ORS 646.608, as amended by section 13, chapter 924, Oregon Laws 2001, section
21 2, chapter 133, Oregon Laws 2003, section 3, chapter 486, Oregon Laws 2003, section 5, chapter 778,
22 Oregon Laws 2003, and section 19, chapter 801, Oregon Laws 2003, is amended to read:
23 “646.608. (1) A person engages in an unlawful practice when in the course of the person’s busi-
24 ness, vocation or occupation the person does any of the following:
25 “(a) Passes off real estate, goods or services as those of another.
26 “(b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-
27 proval, or certification of real estate, goods or services.
28 “(c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-
29 ciation with, or certification by, another.
30 “(d) Uses deceptive representations or designations of geographic origin in connection with real
31 estate, goods or services.
32 “(e) Represents that real estate, goods or services have sponsorship, approval, characteristics,
33 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a
34 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.
35 “(f) Represents that real estate or goods are original or new if they are deteriorated, altered,
36 reconditioned, reclaimed, used or secondhand.
37 “(g) Represents that real estate, goods or services are of a particular standard, quality, or grade,
38 or that real estate or goods are of a particular style or model, if they are of another.
39 “(h) Disparages the real estate, goods, services, property or business of a customer or another
40 by false or misleading representations of fact.
41 “(i) Advertises real estate, goods or services with intent not to provide them as advertised, or
42 with intent not to supply reasonably expectable public demand, unless the advertisement discloses
43 a limitation of quantity.
44 “(j) Makes false or misleading representations of fact concerning the reasons for, existence of,
45 or amounts of price reductions.

1 “(k) Makes false or misleading representations concerning credit availability or the nature of
2 the transaction or obligation incurred.

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

6 “(m) Performs service on or dismantles any goods or real estate when not authorized by the
7 owner or apparent owner thereof.

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

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

16 “(p) Makes any false or misleading statement about a prize, contest or promotion used to pub-
17 licize a product, business or service.

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

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

21 “(s) Makes false or misleading representations of fact concerning the offering price of, or the
22 person’s cost for real estate, goods or services.

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

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

26 “(v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
27 ORS 698.640, whether in a commercial or noncommercial situation.

28 “(w) Manufactures mercury fever thermometers.

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

31 “(A) Prescribed by a person licensed under ORS chapter 677; and
32 “(B) Supplied with instructions on the careful handling of the thermometer to avoid breakage
33 and on the proper cleanup of mercury should breakage occur.

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

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

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

43 “(bb) Violates ORS 646.850 (1).

44 “(cc) Violates any requirement of ORS 646.661 to 646.686.

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

1 “(ee) Violates ORS 646.883 or 646.885.
2 “(ff) Violates any provision of ORS 646.195.
3 “(gg) Violates ORS 646.569.
4 “(hh) Violates the provisions of ORS 646.859.
5 “(ii) Violates ORS 759.290.
6 “(jj) Violates ORS 646.872.
7 “(kk) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
8 “(LL) Violates ORS 646.563.
9 “(mm) Violates ORS 759.690 or any rule adopted pursuant thereto.
10 “(nn) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
11 thereto.
12 “(oo) Violates ORS 646.892 or 646.894.
13 “(pp) Violates any provision of ORS 646.249 to 646.259.
14 “(qq) Violates ORS 646.384.
15 “(rr) Violates ORS 646.871.
16 “(ss) Violates ORS 822.046.
17 “(tt) Violates ORS 128.001.
18 “(uu) Violates ORS 646.649 (2) to (4).
19 “(vv) Violates ORS 646.877 (2) to (4).
20 “(ww) Violates ORS 87.686.
21 “(xx) Violates ORS 646.651.
22 “(yy) Violates ORS 646.879.
23 “(zz) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.
24 “(aaa) Violates ORS 180.440 (1).
25 “(bbb) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
26 “(ccc) Violates ORS 87.007 (2) or (3).
27 “(ddd) **Violates section 2, 3, 4, 5 or 6 of this 2005 Act.**
28 “(2) A representation under subsection (1) of this section or ORS 646.607 may be any manifes-
29 tation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
30 “(3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney
31 need not prove competition between the parties or actual confusion or misunderstanding.
32 “(4) No action or suit shall be brought under subsection (1)(u) of this section unless the Attorney
33 General has first established a rule in accordance with the provisions of ORS chapter 183 declaring
34 the conduct to be unfair or deceptive in trade or commerce.
35 “(5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is
36 brought under subsection (1)(aaa) of this section by a person other than a prosecuting attorney, re-
37 lief shall be limited to an injunction and the prevailing party may be awarded reasonable attorney
38 fees.
39 “**SECTION 10.** ORS 802.179 is amended to read:
40 “802.179. (1) The Department of Transportation, upon request or as required by law, shall dis-
41 close personal information from a motor vehicle record to a government agency for use in carrying
42 out its governmental functions.
43 “(2) The department shall disclose personal information from a motor vehicle record for use in
44 connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor
45 vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles and

1 dealers by motor vehicle manufacturers, and removal of nonowner records from the original owner
2 records of motor vehicle manufacturers to carry out the purposes of any of the following federal
3 Acts:

4 “(a) The Automobile Information Disclosure Act.

5 “(b) The Motor Vehicle Information and Cost Saving Act.

6 “(c) The National Traffic and Motor Vehicle Safety Act of 1966.

7 “(d) The Anti-Car Theft Act of 1992.

8 “(e) The Clean Air Act.

9 “(3)(a) If the department determines that a business is a legitimate business, the department
10 shall disclose personal information to the business for use in the normal course of business in:

11 “(A) Verifying the accuracy of personal information submitted to the business; or

12 “(B) Correcting personal information submitted to the business, but only in order to:

13 “(i) Prevent fraud;

14 “(ii) Pursue legal remedies against the individual who submitted the personal information; or

15 “(iii) Recover a debt from, or satisfy a security interest against, the individual.

16 “(b) The department shall adopt rules specifying the kind of information that the department
17 will accept as evidence that a business is a legitimate business.

18 “(4) The department shall disclose personal information to:

19 “(a) An attorney, a financial institution as defined in ORS chapter 706 or a collection agency
20 registered under ORS 697.031 for use in connection with a civil, criminal, administrative or arbi-
21 tration proceeding in any court, government agency or self-regulatory body. Permissible uses of
22 personal information under this paragraph include but are not limited to service of process, inves-
23 tigation in anticipation of litigation and the execution and enforcement of judgments and orders.

24 “(b) A process server acting as an agent for an individual for use in serving documents in con-
25 nection with an existing civil, criminal, administrative or arbitration proceeding, or a judgment, in
26 any court, government agency or self-regulatory body. Nothing in this paragraph limits the activities
27 of a process server when acting as an agent for an attorney, collection agency or like person or for
28 a government agency.

29 “(5) The department shall disclose personal information other than names to a researcher for
30 use in researching health and educational questions and providing statistical reports, as long as the
31 personal information is not published, redisclosed or used to contact individuals. The department
32 may disclose information under this subsection only for research sponsored by an educational insti-
33 tution or a health research institution.

34 “(6) The department shall disclose personal information to an insurer, an insurance support or-
35 ganization or a self-insured entity in connection with claims investigation activities, antifraud ac-
36 tivities, underwriting or rating.

37 “(7) The department shall disclose personal information regarding ownership or other financial
38 interests in a vehicle to a person who is required by the state or federal Constitution, a statute or
39 an ordinance to give notice to another person concerning the vehicle. Personal information disclosed
40 under this subsection may be used only for giving the required notice. Persons authorized to receive
41 personal information under this subsection include, but are not limited to:

42 “(a) Tow companies;

43 “(b) Persons who have or are entitled to have liens on the vehicle; and

44 “(c) Persons taking an action that could affect ownership rights to the vehicle.

45 “(8) The department shall disclose personal information to any private security officer certified

1 under ORS 181.878, to be used for the purpose of determining ownership of vehicles parked in a
2 place over which the private security officer, acting within the scope of the officer's employment,
3 exercises control.

4 "(9) The department shall disclose personal information to the employer of an individual who
5 holds a commercial driver license, or the insurer of the employer, to obtain or verify information
6 about the holder of the commercial driver license.

7 "(10) The department shall disclose personal information to the operator of a private toll facility
8 for use in collecting tolls.

9 "(11) The department may not disclose personal information for bulk distributors of surveys,
10 marketing materials or solicitations except as provided in this subsection. The department shall
11 implement methods and procedures to ensure:

12 "(a) That individuals are offered an opportunity to request that personal information about
13 themselves be disclosed to bulk distributors; and

14 "(b) That the personal information provided by the department will be used, rented or sold solely
15 for bulk distribution of surveys, marketing materials and solicitations.

16 "(12) The department shall disclose personal information to a person who requests the informa-
17 tion if the requester provides the department with written permission from the individual whose
18 personal information is requested. The written permission from the individual must be notarized.

19 "(13) The department shall disclose personal information to a person who is in the business of
20 disseminating such information under the following conditions:

21 "(a) In addition to any other requirements under the contract executed pursuant to paragraph
22 (b) of this subsection, the person requesting the information must file a performance bond with the
23 department in the amount of \$25,000. The bond must be executed in favor of the State of Oregon
24 and its form is subject to approval by the Attorney General.

25 "(b) The disseminator shall enter into a contract with the department. A contract under this
26 paragraph shall contain at least the following provisions:

27 "(A) That the disseminator will not reproduce or distribute the personal information in bulk but
28 only in response to an individual record inquiry.

29 "(B) That the disseminator will provide the personal information only as provided in ORS
30 802.181.

31 "(C) That the disseminator will have a method of ensuring that the disseminator can delay for
32 a period of up to two days the giving of personal information to a requester who is not a subscriber.

33 "(14) The department shall disclose personal information to representatives of the news media
34 for the gathering or dissemination of information related to the operation of a motor vehicle or to
35 public safety.

36 "(15) The department shall disclose personal information as provided in ORS 802.220 (5).

37 "(16) The department shall adopt rules providing for the release of personal information from
38 motor vehicle records to a person who has a financial interest in the vehicle. Rules adopted under
39 this subsection may include, but need not be limited to, rules establishing procedures for the de-
40 partment to verify the financial interest of the person making the request for personal information.

41 "(17) The department shall adopt rules providing for the release of personal information from
42 motor vehicle records to a person who is injured by the unsafe operation of a vehicle or who owns
43 property that is damaged because of the unsafe operation of a vehicle.

44 "(18) The department shall disclose personal information to a private investigator licensed by
45 any licensing authority within the State of Oregon, to be used for any purpose permitted any person

1 under this section. A licensed private investigator requesting information must prove to the de-
2 partment that the person has a corporate surety bond, an irrevocable letter of credit issued by an
3 insured institution as defined in ORS 706.008 or such other security as the Oregon Board of Inves-
4 tigators may prescribe by rule in the minimum amount of \$5,000 or errors and omissions insurance
5 in the minimum amount of \$5,000.

6 **“(19) The department shall disclose personal information to a consumer reporting agency,
7 as described in section 603(p) of the federal Fair Credit Reporting Act, for the purpose of
8 providing notification to the consumer reporting agency of a breach of security of noncom-
9 puterized data or a breach of security of system data as required under section 2 of this 2005
10 Act.**

11 **“SECTION 11. (1) Sections 2 and 3 of this 2005 Act and the amendments to ORS 802.179
12 by section 10 of this 2005 Act apply to breaches of security that occur on or after the effec-
13 tive date of this 2005 Act.**

14 **“(2) Sections 5 and 7 of this 2005 Act apply to communications, disclosures, displays or
15 transfers of Social Security numbers that occur on or after the effective date of this 2005
16 Act.**

17 **“(3) Section 6 of this 2005 Act applies to personal information to be disposed of on or af-
18 ter the effective date of this 2005 Act.**

19 **“(4) The amendments to ORS 646.608 by sections 8 and 9 of this 2005 Act apply to vio-
20 lations that occur on or after the effective date of this 2005 Act.”.**

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