

# Enrolled House Bill 2759

Sponsored by Representative HOLVEY; Representatives BOWMAN, DEXTER, FAHEY, GRAYBER, HARTMAN, KROPF, MCLAIN, NELSON, SOSA, Senators PATTERSON, SOLLMAN (Presession filed.)

CHAPTER .....

AN ACT

Relating to penalties that apply to persons that assist in violations of laws that regulate calls to telephone subscribers; amending ORS 646.569, 646.608 and 646A.374; and prescribing an effective date.

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

**SECTION 1.** ORS 646.569 is amended to read:

646.569. (1)(a) A person may not engage in the telephone solicitation of a party at a telephone number included on the then current list:

[(a)] (A) Published by the administrator of the telephone solicitation program established under ORS 646.572 and 646.574; or

[(b)] (B) Maintained as part of the federal registry designated under ORS 646.572.

**(b) If a person knows or consciously avoids knowing that another person is engaging in an act or practice that violates the provisions of paragraph (a) of this subsection and the person nonetheless provides substantial assistance or support for the violation, including permitting, carrying or facilitating calls that violate paragraph (a) of this subsection, the person is liable for any loss and subject to any penalty for the violation to the same extent as the person that engaged in the violation of paragraph (a) of this subsection.**

**(c) A violation of paragraph (a) of this subsection is an unlawful practice under ORS 646.608.**

**(d) Paragraphs (b) and (c) of this subsection do not apply to:**

**(A) A telecommunications utility or cooperative corporation when engaged in providing a telecommunications service and operating as a common carrier, as defined in 47 U.S.C. 153(11), as in effect on the effective date of this 2023 Act, including a radio common carrier that engages in providing cellular communications services for hire; and**

**(B) A person that enables another person to complete a voice communication by means of a network that the person operates and on which the voice communication terminates.**

(2) For purposes of this section:

**(a) "Cooperative corporation" means a cooperative corporation or unincorporated association that has a certificate of authority from the Public Utility Commission under ORS 759.025.**

[(a)] **(b) "Predecessor of the business enterprise" means a financial institution as defined in 15 U.S.C. 6827 that has:**

(A) Merged with or been acquired by the business enterprise for which the person is calling;  
or

(B) Sold or assigned an account of a party who has previously purchased from the business enterprise, to the business enterprise for which the person is calling.

(c) **“Radio common carrier” has the meaning given that term in ORS 759.005.**

(d) **“Telecommunications service” has the meaning given that term in ORS 759.005.**

(e) **“Telecommunications utility” has the meaning given that term in ORS 759.005.**

[(b)] (f) “Telephone solicitation” does not include a person soliciting business from prospective purchasers who have previously purchased from:

(A) The person making the solicitation;

(B) The business enterprise for which the person is calling; or

(C) A predecessor of the business enterprise for which the person is calling.

**SECTION 2.** ORS 646A.374 is amended to read:

**646A.374. (1) As used in this section:**

(a) **“Cooperative corporation” means a cooperative corporation or unincorporated association that has a certificate of authority from the Public Utility Commission under ORS 759.025.**

(b) **“Radio common carrier” has the meaning given that term in ORS 759.005.**

(c) **“Telecommunications service” has the meaning given that term in ORS 759.005.**

(d) **“Telecommunications utility” has the meaning given that term in ORS 759.005.**

[(1)] (2) A caller who uses an automatic dialing and announcing device in order to call a subscriber may not misrepresent or falsify, either in speaking with the subscriber or in the prerecorded or synthesized voice message disseminated during the call:

(a) The caller’s identity and the identity of any person on behalf of whom the caller is making the call;

(b) The telephone number from which the caller is making the call;

(c) The location from which the caller is making the call; or

(d) The purpose for which the caller is making the call.

[(2)] (3) A caller may not intentionally alter, misrepresent or falsify the information that a caller identification service would ordinarily provide to a subscriber who uses such a service.

[(3)] (4) **Except as provided in subsection (5) of this section,** a person who provides a caller identification service is not subject to civil liability for a caller’s violation of this section.

**(5) If a person knows or consciously avoids knowing that another person is engaging in an act or practice that violates the provisions of subsection (2) or (3) of this section and the person nonetheless provides substantial assistance or support for the violation, including permitting, carrying or facilitating calls that violate subsection (2) or (3) of this section, the person is liable for any loss and subject to any penalty for the violation to the same extent as the person that engaged in the violation of subsection (2) or (3) of this section.**

**(6) A violation of subsection (2) or (3) of this section is an unlawful practice under ORS 646.608.**

**(7) Subsections (5) and (6) of this section do not apply to:**

(a) **A telecommunications utility or cooperative corporation when engaged in providing a telecommunications service and operating as a common carrier, as defined in 47 U.S.C. 153(11), as in effect on the effective date of this 2023 Act, including a radio common carrier that engages in providing cellular communications services for hire; and**

(b) **A person that enables another person to complete a voice communication by means of a network that the person operates and on which the voice communication terminates.**

**SECTION 3.** ORS 646.608 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(w) Manufactures mercury fever thermometers.

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

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

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

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

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

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

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

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

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

(ee) Violates ORS 646.883 or 646.885.

(ff) Violates ORS 646.569 or **646A.374**.

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

(hh) Violates ORS 646A.360.

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

(jj) Violates ORS 646.563.

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

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

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

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

(oo) Violates ORS 646A.095.

(pp) Violates ORS 822.046.

(qq) Violates ORS 128.001.

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

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

(tt) Violates ORS 87.686.

(uu) Violates ORS 646A.803.

(vv) Violates ORS 646A.362.

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

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

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

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

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

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

(ccc) Violates ORS 646A.365.

(ddd) Violates ORS 98.853, 98.854, 98.856 or 98.858.

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

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

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

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

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

(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration described in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the subject of the violation.

- (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
- (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50 U.S.C. 3901 et seq., as in effect on January 1, 2010.
- (mmm) Violates a provision of ORS 646A.480 to 646A.495.
- (nnn) Violates ORS 646A.082.
- (ooo) Violates ORS 646.647.
- (ppp) Violates ORS 646A.115.
- (qqq) Violates a provision of ORS 646A.405.
- (rrr) Violates ORS 646A.092.
- (sss) Violates a provision of ORS 646.644.
- (ttt) Violates a provision of ORS 646A.295.
- (uuu) Violates ORS 646A.564.
- (vvv) Engages in the business of, or acts in the capacity of, an immigration consultant, as defined in ORS 9.280, in this state and for compensation, unless federal law authorizes the person to do so or unless the person is an active member of the Oregon State Bar.
- (www) Violates ORS 702.012, 702.029 or 702.054.
- (xxx) Violates ORS 646A.806.
- (yyy) Violates ORS 646A.810 (2).
- (zzz) Violates ORS 443.376.
- (aaaa) Violates a provision of ORS 646A.770 to 646A.787.
- (2) A representation under subsection (1) of this section or ORS 646.607 may be any manifestation of any assertion by words or conduct, including, but not limited to, a failure to disclose a fact.
- (3) In order to prevail in an action or suit under ORS 336.184 and 646.605 to 646.652, a prosecuting attorney need not prove competition between the parties or actual confusion or misunderstanding.
- (4) An action or suit may not be brought under subsection (1)(u) of this section unless the Attorney General has first established a rule in accordance with the provisions of ORS chapter 183 declaring the conduct to be unfair or deceptive in trade or commerce.
- (5) Notwithstanding any other provision of ORS 336.184 and 646.605 to 646.652, if an action or suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

**SECTION 4. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.**

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**Passed by House April 3, 2023**

**Repassed by House June 24, 2023**

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Timothy G. Sekerak, Chief Clerk of House

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Dan Rayfield, Speaker of House

**Passed by Senate June 24, 2023**

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Rob Wagner, President of Senate

**Received by Governor:**

.....M.,....., 2023

**Approved:**

.....M.,....., 2023

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Tina Kotek, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2023

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Secretary of State