

# House Bill 2759

Sponsored by Representative HOLVEY (Pre-session 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 **as introduced**.

Provides that person that knows or consciously avoids knowing that another person is engaging in act or practice that violates laws that regulate telephone solicitations or use of automatic dialing and announcing devices and nonetheless provides substantial assistance or support for violation is liable for loss and subject to penalty to same extent as person that engaged in violation.

Punishes violation as unlawful practice under Unlawful Trade Practices Act.

Takes effect on 91st day following adjournment sine die.

## A BILL FOR AN ACT

1  
2 Relating to penalties that apply to persons that assist in violations of laws that regulate calls to  
3 telephone subscribers; amending ORS 646.569, 646.608 and 646A.374; and prescribing an effective  
4 date.

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

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

7 646.569. (1)(a) A person may not engage in the telephone solicitation of a party at a telephone  
8 number included on the then current list:

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

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

12 **(b) If a person, including a telecommunications company, knows or consciously avoids**  
13 **knowing that another person is engaging in an act or practice that violates the provisions**  
14 **of paragraph (a) of this subsection and the person nonetheless provides substantial assist-**  
15 **ance or support for the violation, including permitting, carrying or facilitating calls that vi-**  
16 **olate paragraph (a) of this subsection, the person is liable for any loss and subject to any**  
17 **penalty for the violation to the same extent as the person that engaged in the violation of**  
18 **paragraph (a) of this subsection.**

19 **(c) A violation of paragraph (a) of this subsection is an unlawful practice under ORS**  
20 **646.608.**

21 (2) For purposes of this section:

22 (a) "Predecessor of the business enterprise" means a financial institution as defined in 15 U.S.C.  
23 6827 that has:

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

25 or

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

28 (b) "Telephone solicitation" does not include a person soliciting business from prospective pur-  
29 chasers who have previously purchased from:

**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 (A) The person making the solicitation;
- 2 (B) The business enterprise for which the person is calling; or
- 3 (C) A predecessor of the business enterprise for which the person is calling.

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

5 646A.374. (1) A caller who uses an automatic dialing and announcing device in order to call a  
6 subscriber may not misrepresent or falsify, either in speaking with the subscriber or in the prere-  
7 corded or synthesized voice message disseminated during the call:

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

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

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

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

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

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

17 (4) **If a person, including a telecommunications company, knows or consciously avoids**  
18 **knowing that another person is engaging in an act or practice that violates the provisions**  
19 **of subsection (1) or (2) of this section and the person nonetheless provides substantial as-**  
20 **sistance or support for the violation, including permitting, carrying or facilitating calls that**  
21 **violate subsection (1) or (2) of this section, the person is liable for any loss and subject to**  
22 **any penalty for the violation to the same extent as the person that engaged in the violation**  
23 **of subsection (1) or (2) of this section.**

24 (5) **A violation of subsection (1) or (2) of this section is an unlawful practice under ORS**  
25 **646.608.**

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

27 646.608. (1) A person engages in an unlawful practice if in the course of the person's business,  
28 vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

45 (h) Disparages the real estate, goods, services, property or business of a customer or another

1 by false or misleading representations of fact.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (w) Manufactures mercury fever thermometers.

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

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

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

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

1 with heating, cooling or ventilation equipment, control room temperature.

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

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

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

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

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

8 (ee) Violates ORS 646.883 or 646.885.

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

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

11 (hh) Violates ORS 646A.360.

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

13 (jj) Violates ORS 646.563.

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

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

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

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

19 (oo) Violates ORS 646A.095.

20 (pp) Violates ORS 822.046.

21 (qq) Violates ORS 128.001.

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

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

24 (tt) Violates ORS 87.686.

25 (uu) Violates ORS 646A.803.

26 (vv) Violates ORS 646A.362.

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

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

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

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

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

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

33 (ccc) Violates ORS 646A.365.

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

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

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

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

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

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

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

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

44 (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50  
45 U.S.C. 3901 et seq., as in effect on January 1, 2010.

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

2 (nnn) Violates ORS 646A.082.

3 (ooo) Violates ORS 646.647.

4 (ppp) Violates ORS 646A.115.

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

6 (rrr) Violates ORS 646A.092.

7 (sss) Violates a provision of ORS 646.644.

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

9 (uuu) Violates ORS 646A.564.

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

13 (www) Violates ORS 702.012, 702.029 or 702.054.

14 (xxx) Violates ORS 646A.806.

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

16 (zzz) Violates ORS 443.376.

17 (aaaa) Violates a provision of ORS 646A.770 to 646A.787.

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

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

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

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

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

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