

# Senate Bill 206

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## 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**.

Makes residential mortgage loans subject to Unlawful Trade Practices Act.

## A BILL FOR AN ACT

1  
2 Relating to the coverage of loans by the Unlawful Trade Practices Act; creating new provisions; and  
3 amending ORS 646.605.

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

5 **SECTION 1.** ORS 646.605 is amended to read:

6 646.605. As used in ORS 646.605 to 646.652:

7 (1) "Appropriate court" means the circuit court of a county:

8 (a) Where one or more of the defendants reside;

9 (b) Where one or more of the defendants maintain a principal place of business;

10 (c) Where one or more of the defendants are alleged to have committed an act prohibited by  
11 ORS 646.605 to 646.652; or

12 (d) With the defendant's consent, where the prosecuting attorney maintains an office.

13 (2) "Documentary material" means the original or a copy of any book, record, report, memo-  
14 randum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or  
15 other tangible document or recording[, *wherever situate*].

16 (3) "Examination" of documentary material [*shall include inspection, study, or*] **includes in-**  
17 **spection, study and** copying of [*any such*] **the** material, and [*taking testimony under oath or ac-*  
18 *knowledgment in respect of any such documentary*] **the taking of testimony related to the** material  
19 [*or copy thereof*].

20 (4) "Person" means natural persons, corporations, trusts, partnerships, incorporated or  
21 unincorporated associations, and any other legal entity except bodies or officers acting under stat-  
22 utory authority of this state or the United States.

23 (5) "Prosecuting attorney" means the Attorney General or the district attorney of any county  
24 in which a violation of ORS 646.605 to 646.652 is alleged to have occurred.

25 (6) "Real estate, goods or services":

26 (a) Means [*those which*]:

27 (A) **Real estate, goods or services that** are or may be obtained:

28 (i) Primarily for personal, family or household purposes[, *or which are or may be obtained*]; **or**

29 (ii) For any purposes as a result of a telephone solicitation[.];

30 (B) **Residential mortgage loans**; and [*includes*]

31 (C) Franchises, distributorships and other similar business opportunities[, *but*].

**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       **(b)** Does not include:

2       **(A)** Insurance[.]; **and**

3       **(B)** Except as provided in section 2, chapter 658, Oregon Laws 2003, [*real estate does not*  
4 *cover*] conduct covered by ORS chapter 90.

5       **(7) “Residential mortgage loan” means a loan that:**

6       **(a) Is directly or indirectly secured by a mortgage, deed of trust, or any lien interest on**  
7 **real estate;**

8       **(b) Is created or assumed with the consent of the owner of the real estate; and**

9       **(c) Secures real estate upon which one to four residential dwelling units, including but**  
10 **not limited to individual units or condominiums and cooperatives, are planned or situated.**

11       [(7)] **(8) “Telephone solicitation”** means a solicitation where a person, in the course of the per-  
12 son’s business, vocation or occupation, uses a telephone or an automatic dialing-announcing device  
13 to initiate telephonic contact with a potential customer and the person is not one of the following:

14       (a) A person who is a broker-dealer or salesperson licensed under ORS 59.175, or a mortgage  
15 banker or mortgage broker licensed under ORS 59.850 when the solicitation is for a security quali-  
16 fied for sale pursuant to ORS 59.055;

17       (b) A person who is licensed or is otherwise authorized to engage in professional real estate  
18 activity pursuant to ORS chapter 696, when the solicitation involves professional real estate activ-  
19 ity;

20       (c) A person licensed or exempt from licensure as a builder pursuant to ORS chapter 701, when  
21 the solicitation involves the construction, alteration, repair, improvement or demolition of a struc-  
22 ture;

23       (d) A person licensed or otherwise authorized to sell insurance as an insurance producer pur-  
24 suant to ORS chapter 744, when the solicitation involves insurance;

25       (e) A person soliciting the sale of a newspaper of general circulation, a magazine or membership  
26 in a book or record club who complies with ORS 646.611, when the solicitation involves newspapers,  
27 magazines or membership in a book or record club;

28       (f) A person soliciting without the intent to complete and who does not complete the sales  
29 presentation during the telephone solicitation and who only completes the sales presentation at a  
30 later face-to-face meeting between the solicitor and the prospective purchaser;

31       (g) A supervised financial institution or **the** parent, subsidiary or affiliate [*thereof*] **of the**  
32 **supervised financial institution.** As used in this paragraph, “supervised financial institution”  
33 means any financial institution or trust company, as those terms are defined in ORS 706.008, or any  
34 personal property broker, consumer finance lender, commercial finance lender or insurer that is  
35 subject to regulation by an official or agency of this state or of the United States;

36       (h) A person who is authorized to conduct prearrangement or preconstruction funeral or ceme-  
37 tery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or precon-  
38 struction funeral or cemetery plans;

39       (i) A person who solicits the services provided by a cable television system licensed or fran-  
40 chised pursuant to state, local or federal law, when the solicitation involves cable television ser-  
41 vices;

42       (j) A person or affiliate of a person whose business is regulated by the Public Utility Commission  
43 of Oregon;

44       (k) A person who sells farm products as defined by ORS chapter 576 if the solicitation neither  
45 intends to nor [*actually*] results in a sale that costs the purchaser in excess of \$100;

1 (L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section  
 2 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration  
 3 under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section;

4 (m) A person soliciting exclusively the sale of telephone answering services to be provided by  
 5 that person or that person's employer when the solicitation involves answering services; or

6 (n) A telecommunications utility with access lines of 15,000 or less or a cooperative telephone  
 7 association when the solicitation involves regulated goods or services.

8 [(8)] (9) "Trade" and "commerce" mean advertising, offering or distributing, whether by sale,  
 9 rental or otherwise, any real estate, goods or services, and includes any trade or commerce directly  
 10 or indirectly affecting the people of this state.

11 [(9)] (10) "Unconscionable tactics" include, but are not limited to, actions by which a person:

12 (a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or ina-  
 13 bility to understand the language of the agreement;

14 (b) Knowingly permits a customer to enter into a transaction from which the customer will  
 15 derive no material benefit; or

16 (c) Permits a customer to enter into a transaction with knowledge that there is no reasonable  
 17 probability of payment of the attendant financial obligation in full by the customer when due.

18 [(10)] (11) A willful violation occurs when the person committing the violation knew or should  
 19 have known that the conduct of the person was a violation.

20 [(11)] (12) A loan is made "in close connection with the sale of a manufactured dwelling" if:

21 (a) The lender directly or indirectly controls, is controlled by or is under common control with  
 22 the seller, unless the relationship is remote and is not a factor in the transaction;

23 (b) The lender gives a commission, rebate or credit in any form to a seller who refers the bor-  
 24 rower to the lender, other than payment of the proceeds of the loan jointly to the seller and the  
 25 borrower;

26 (c) The lender is related to the seller by blood or marriage;

27 (d) The seller directly and materially assists the borrower in obtaining the loan;

28 (e) The seller prepares documents that are given to the lender and used in connection with the  
 29 loan; or

30 (f) The lender supplies documents to the seller used by the borrower in obtaining the loan.

31 **SECTION 2.** ORS 646.605, as amended by section 12, chapter 658, Oregon Laws 2003, is  
 32 amended to read:

33 646.605. As used in ORS 646.605 to 646.652:

34 (1) "Appropriate court" means the circuit court of a county:

35 (a) Where one or more of the defendants reside;

36 (b) Where one or more of the defendants maintain a principal place of business;

37 (c) Where one or more of the defendants are alleged to have committed an act prohibited by  
 38 ORS 646.605 to 646.652; or

39 (d) With the defendant's consent, where the prosecuting attorney maintains an office.

40 (2) "Documentary material" means the original or a copy of any book, record, report, memo-  
 41 randum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or  
 42 other tangible document or recording[, *wherever situate*].

43 (3) "Examination" of documentary material [*shall include inspection, study, or*] **includes in-**  
 44 **spection, study and** copying of [*any such*] **the** material, and [*taking testimony under oath or ac-*  
 45 *knowledge in respect of any such documentary*] **the taking of testimony related to the** material

1 [or copy thereof].

2 (4) “Person” means natural persons, corporations, trusts, partnerships, incorporated or  
 3 unincorporated associations, and any other legal entity except bodies or officers acting under stat-  
 4 utory authority of this state or the United States.

5 (5) “Prosecuting attorney” means the Attorney General or the district attorney of any county  
 6 in which a violation of ORS 646.605 to 646.652 is alleged to have occurred.

7 (6) “Real estate, goods or services”:

8 (a) Means *[those which]*:

9 (A) **Real estate, goods or services that** are or may be obtained:

10 (i) Primarily for personal, family or household purposes[, *or which are or may be obtained*]; **or**

11 (ii) For any purposes as a result of a telephone solicitation[.];

12 (B) **Residential mortgage loans**; and [*includes*]

13 (C) Franchises, distributorships and other similar business opportunities[, *but*].

14 (b) Does not include:

15 (A) Insurance[.]; **and**

16 (B) [*Real estate does not cover*] Conduct covered by ORS chapter 90.

17 (7) **“Residential mortgage loan” means a loan that:**

18 (a) **Is directly or indirectly secured by a mortgage, deed of trust, or any lien interest on**  
 19 **real estate;**

20 (b) **Is created or assumed with the consent of the owner of the real estate; and**

21 (c) **Secures real estate upon which one to four residential dwelling units, including but**  
 22 **not limited to individual units or condominiums and cooperatives, are planned or situated.**

23 [(7)] (8) “Telephone solicitation” means a solicitation where a person, in the course of the per-  
 24 son’s business, vocation or occupation, uses a telephone or an automatic dialing-announcing device  
 25 to initiate telephonic contact with a potential customer and the person is not one of the following:

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 27 banker or mortgage broker licensed under ORS 59.850 when the solicitation is for a security quali-  
 28 fied for sale pursuant to ORS 59.055;

29 (b) A person who is licensed or is otherwise authorized to engage in professional real estate  
 30 activity pursuant to ORS chapter 696, when the solicitation involves professional real estate activ-  
 31 ity;

32 (c) A person licensed or exempt from licensure as a builder pursuant to ORS chapter 701, when  
 33 the solicitation involves the construction, alteration, repair, improvement or demolition of a struc-  
 34 ture;

35 (d) A person licensed or otherwise authorized to sell insurance as an insurance producer pur-  
 36 suant to ORS chapter 744, when the solicitation involves insurance;

37 (e) A person soliciting the sale of a newspaper of general circulation, a magazine or membership  
 38 in a book or record club who complies with ORS 646.611, when the solicitation involves newspapers,  
 39 magazines or membership in a book or record club;

40 (f) A person soliciting without the intent to complete and who does not complete the sales  
 41 presentation during the telephone solicitation and who only completes the sales presentation at a  
 42 later face-to-face meeting between the solicitor and the prospective purchaser;

43 (g) A supervised financial institution or **the** parent, subsidiary or affiliate [*thereof*] **of the**  
 44 **supervised financial institution.** As used in this paragraph, “supervised financial institution”  
 45 means any financial institution or trust company, as those terms are defined in ORS 706.008, or any

1 personal property broker, consumer finance lender, commercial finance lender or insurer that is  
2 subject to regulation by an official or agency of this state or of the United States;

3 (h) A person who is authorized to conduct prearrangement or preconstruction funeral or ceme-  
4 tery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or precon-  
5 struction funeral or cemetery plans;

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7 chised pursuant to state, local or federal law, when the solicitation involves cable television ser-  
8 vices;

9 (j) A person or affiliate of a person whose business is regulated by the Public Utility Commission  
10 of Oregon;

11 (k) A person who sells farm products as defined by ORS chapter 576 if the solicitation neither  
12 intends to nor *[actually]* results in a sale that costs the purchaser in excess of \$100;

13 (L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section  
14 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration  
15 under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section;

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17 that person or that person's employer when the solicitation involves answering services; or

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19 association when the solicitation involves regulated goods or services.

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21 rental or otherwise, any real estate, goods or services, and includes any trade or commerce directly  
22 or indirectly affecting the people of this state.

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26 (b) Knowingly permits a customer to enter into a transaction from which the customer will  
27 derive no material benefit; or

28 (c) Permits a customer to enter into a transaction with knowledge that there is no reasonable  
29 probability of payment of the attendant financial obligation in full by the customer when due.

30 ~~[(10)]~~ (11) A willful violation occurs when the person committing the violation knew or should  
31 have known that the conduct of the person was a violation.

32 ~~[(11)]~~ (12) A loan is made "in close connection with the sale of a manufactured dwelling" if:

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34 the seller, unless the relationship is remote and is not a factor in the transaction;

35 (b) The lender gives a commission, rebate or credit in any form to a seller who refers the bor-  
36 rower to the lender, other than payment of the proceeds of the loan jointly to the seller and the  
37 borrower;

38 (c) The lender is related to the seller by blood or marriage;

39 (d) The seller directly and materially assists the borrower in obtaining the loan;

40 (e) The seller prepares documents that are given to the lender and used in connection with the  
41 loan; or

42 (f) The lender supplies documents to the seller used by the borrower in obtaining the loan.

43 **SECTION 3. The amendments to ORS 646.605 by section 1 of this 2005 Act apply to resi-**  
44 **dential mortgage loans offered or made on or after the effective date of this 2005 Act.**