

# A-Engrossed Senate Bill 208

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

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Attorney General Hardy Myers for Department of Justice)

## 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.

*[Expands state no call program and regulation of unlawful telephone solicitations to include all telephone customers of telecommunications companies.]*

*[Authorizes Attorney General to designate federal do not call registry in lieu of contracting for administration of separate state registry. Requires Attorney General, if requested, to instruct party on how to register with federal agency that maintains federal registry.]*

**Authorizes Attorney General to enforce federal "do not call" list in accordance with rules adopted by Federal Trade Commission. Allows Attorney General to bring action in state court for violation of rules. Authorizes court to award damages, restitution, other compensation or other relief. Authorizes court to award fees and costs to Attorney General if Attorney General prevails in action.**

**Repeals state statutory provisions relating to "do not call" registry.**  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to telephone solicitations; creating new provisions; amending ORS 646.561 and 646.608; re-  
3 pealing ORS 646.567, 646.569, 646.572, 646.574, 646.576 and 646.578; and declaring an emergency.

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

5 **SECTION 1.** ORS 646.561 is amended to read:

6 646.561. As used in ORS 646.561 to 646.565, unless the context otherwise requires:

7 (1) "Charitable organization" means an organization organized for charitable purposes as defined  
8 in ORS 128.801.

9 (2) "Party" means a [*residential*] telephone customer of a telecommunications company.

10 (3) "Telephone solicitation" means the solicitation by telephone by any person of a party [*at the*  
11 *residence of the party*] for the purpose of encouraging the party to purchase [*property*] **real estate**,  
12 goods or services, or make a donation. "Telephone solicitation" does not include:

13 (a) Calls made by a charitable organization, a public agency or volunteers on behalf of the or-  
14 ganization or agency to members of the organization or agency or to persons who have made a do-  
15 nation or expressed an interest in making a donation;

16 (b) Calls limited to polling or soliciting the expression of ideas, opinions or votes; or

17 (c) Business to business contacts.

18 **SECTION 2.** Section 3 of this 2005 Act is added to and made a part of ORS 646.561 to  
19 **646.565.**

20 **SECTION 3.** (1) In addition to the authority granted the Attorney General under 15 U.S.C.  
21 **6103, whenever the Attorney General has reason to believe that any person has engaged or**

**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 **is engaging in a pattern or practice of telemarketing that violates any telemarketing rule**  
2 **adopted by the Federal Trade Commission under 15 U.S.C. 6102, the Attorney General may:**

3 **(a) Bring an action in the appropriate circuit court in this state to enjoin the telemar-**  
4 **keting or enforce compliance with telemarketing rules adopted by the Federal Trade Com-**  
5 **mission under 15 U.S.C. 6102; or**

6 **(b) Seek an assurance of voluntary compliance as described in ORS 646.632 from the**  
7 **person.**

8 **(2) In any action brought by the Attorney General under subsection (1) of this section,**  
9 **the court may award:**

10 **(a) Damages, restitution, other compensation or other relief the court considers appro-**  
11 **priate; and**

12 **(b) Reasonable attorney fees and costs, including investigative costs, to the Attorney**  
13 **General if the Attorney General prevails in the action.**

14 **SECTION 4.** ORS 646.608 is amended to read:

15 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-  
16 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (n) Solicits potential customers by telephone or door to door as a seller unless the person pro-

1 vides the information required under ORS 646.611.

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

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

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

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

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

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

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

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

20 (w) Manufactures mercury fever thermometers.

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

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

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

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

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

33 (aa) Violates ORS 646.850 (1).

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

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

36 (dd) Violates ORS 646.883 or 646.885.

37 (ee) Violates any provision of ORS 646.195.

38 [(ff) Violates ORS 646.569.]

39 [(gg)] (ff) Violates the provisions of ORS 646.859.

40 [(hh)] (gg) Violates ORS 759.290.

41 [(ii)] (hh) Violates ORS 646.872.

42 [(jj)] (ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

43 [(kk)] (jj) Violates ORS 646.563.

44 [(LL)] (kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

45 [(mm)] (LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted

- 1 pursuant thereto.
- 2 [(nn)] (mm) Violates ORS 646.892 or 646.894.
- 3 [(oo)] (nn) Violates any provision of ORS 646.249 to 646.259.
- 4 [(pp)] (oo) Violates ORS 646.384.
- 5 [(qq)] (pp) Violates ORS 646.871.
- 6 [(rr)] (qq) Violates ORS 822.046.
- 7 [(ss)] (rr) Violates ORS 128.001.
- 8 [(tt)] (ss) Violates ORS 646.649 (2) to (4).
- 9 [(uu)] (tt) Violates ORS 646.877 (2) to (4).
- 10 [(vv)] (uu) Violates ORS 87.686.
- 11 [(ww)] (vv) Violates ORS 646.651.
- 12 [(xx)] (ww) Violates ORS 646.879.
- 13 [(yy)] (xx) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.
- 14 [(zz)] (yy) Violates ORS 180.440 (1).
- 15 [(aaa)] (zz) Commits the offense of acting as a vehicle dealer without a certificate under ORS  
16 822.005.
- 17 [(bbb)] (aaa) Violates ORS 87.007 (2) or (3).
- 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 646.605 to 646.652, a prosecuting attorney  
21 need not prove competition between the parties or actual confusion or misunderstanding.
- 22 (4) No action or suit shall be brought under subsection (1)(u) of this section unless the Attorney  
23 General has first established a rule in accordance with the provisions of ORS chapter 183 declaring  
24 the conduct to be unfair or deceptive in trade or commerce.
- 25 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought  
26 under subsection [(1)(zz)] (1)(yy) of this section by a person other than a prosecuting attorney, relief  
27 shall be limited to an injunction and the prevailing party may be awarded reasonable attorney fees.
- 28 **SECTION 5.** ORS 646.608, as amended by section 13, chapter 924, Oregon Laws 2001, section  
29 2, chapter 133, Oregon Laws 2003, section 3, chapter 486, Oregon Laws 2003, section 5, chapter 778,  
30 Oregon Laws 2003, and section 19, chapter 801, Oregon Laws 2003, is amended to read:
- 31 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-  
32 ness, vocation or occupation the person does any of the following:
- 33 (a) Passes off real estate, goods or services as those of another.
- 34 (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, ap-  
35 proval, or certification of real estate, goods or services.
- 36 (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or asso-  
37 ciation with, or certification by, another.
- 38 (d) Uses deceptive representations or designations of geographic origin in connection with real  
39 estate, goods or services.
- 40 (e) Represents that real estate, goods or services have sponsorship, approval, characteristics,  
41 ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a  
42 sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.
- 43 (f) Represents that real estate or goods are original or new if they are deteriorated, altered,  
44 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 they are of another.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (w) Manufactures mercury fever thermometers.

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

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

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

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

1 graph, “thermostat” means a device commonly used to sense and, through electrical communication  
2 with heating, cooling or ventilation equipment, control room temperature.

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

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

6 (bb) Violates ORS 646.850 (1).

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

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

9 (ee) Violates ORS 646.883 or 646.885.

10 (ff) Violates any provision of ORS 646.195.

11 [(gg) Violates ORS 646.569.]

12 [(hh)] (gg) Violates the provisions of ORS 646.859.

13 [(ii)] (hh) Violates ORS 759.290.

14 [(jj)] (ii) Violates ORS 646.872.

15 [(kk)] (jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

16 [(LL)] (kk) Violates ORS 646.563.

17 [(mm)] (LL) Violates ORS 759.690 or any rule adopted pursuant thereto.

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

20 [(oo)] (nn) Violates ORS 646.892 or 646.894.

21 [(pp)] (oo) Violates any provision of ORS 646.249 to 646.259.

22 [(qq)] (pp) Violates ORS 646.384.

23 [(rr)] (qq) Violates ORS 646.871.

24 [(ss)] (rr) Violates ORS 822.046.

25 [(tt)] (ss) Violates ORS 128.001.

26 [(uu)] (tt) Violates ORS 646.649 (2) to (4).

27 [(vv)] (uu) Violates ORS 646.877 (2) to (4).

28 [(ww)] (vv) Violates ORS 87.686.

29 [(xx)] (ww) Violates ORS 646.651.

30 [(yy)] (xx) Violates ORS 646.879.

31 [(zz)] (yy) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.

32 [(aaa)] (zz) Violates ORS 180.440 (1).

33 [(bbb)] (aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS  
34 822.005.

35 [(ccc)] (bbb) Violates ORS 87.007 (2) or (3).

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

38 (3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting attorney  
39 need not prove competition between the parties or actual confusion or misunderstanding.

40 (4) No action or suit shall be brought under subsection (1)(u) of this section unless the Attorney  
41 General has first established a rule in accordance with the provisions of ORS chapter 183 declaring  
42 the conduct to be unfair or deceptive in trade or commerce.

43 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought  
44 under subsection [(1)(aaa)] (1)(zz) of this section by a person other than a prosecuting attorney,  
45 relief shall be limited to an injunction and the prevailing party may be awarded reasonable attorney

1 fees.

2 **SECTION 6. ORS 646.567, 646.569, 646.572, 646.574, 646.576 and 646.578 are repealed.**

3 **SECTION 7. Section 3 of this 2005 Act, the amendments to ORS 646.561 and 646.608 by**  
4 **sections 1, 4 and 5 of this 2005 Act and the repeal of ORS 646.567, 646.569, 646.572, 646.574,**  
5 **646.576 and 646.578 by section 6 of this 2005 Act apply to telephone solicitations made on or**  
6 **after the effective date of this 2005 Act.**

7 **SECTION 8. This 2005 Act being necessary for the immediate preservation of the public**  
8 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**  
9 **on its passage.**

10