

Senate Bill 208

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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**.

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.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to telephone solicitations; creating new provisions; amending ORS 646.561, 646.567, 646.569,
3 646.572 and 646.574; 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 646.567 to**
19 **646.578.**

20 **SECTION 3.** (1) **The Legislative Assembly finds that:**

21 (a) **Fraud committed by means of unwanted telephone solicitation causes economic harm**
22 **to Oregonians and constitutes an invasion of privacy and a threat to the welfare of the peo-**
23 **ple of this state.**

24 (b) **Unwanted telephone solicitations cause Oregonians harm because:**

25 (A) **Telephone solicitations have become a primary tool for the marketing of real estate,**
26 **goods and services to parties. Telephone solicitors have engaged in the practice of cold**
27 **calling, which is the initiation of calls to parties with whom the telephone solicitors have no**
28 **prior business relationship, to market scams, fraudulent schemes and worthless goods and**

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 services to unsuspecting parties who often lose thousands of dollars as a result of the solic-
2 itations.

3 (B) Telephone solicitors often make calls based on lists targeting the elderly or other
4 vulnerable populations who are unable to assess the risks associated with engaging in sales
5 transactions over the telephone.

6 (C) Technologies designed to assist parties in avoiding unwanted telephone solicitations
7 are not enforceable and place an additional financial burden on parties, effectively shifting
8 the cost of unwanted telephone solicitations to parties. These technologies include:

9 (i) Caller identification systems, for which parties bear the cost of the caller identifica-
10 tion service and hardware, and for which technology exists that allows telephone solicitors
11 to block caller identification data;

12 (ii) Privacy manager services that, for a fee, intercept calls; and

13 (iii) Unlisted telephone numbers, for which parties pay an additional fee.

14 (D) Unwanted telephone solicitations tie up telephone lines and prevent legitimate tele-
15 phone calls from being received or placed by parties. Predictive dialers utilized by telephone
16 solicitors that automatically dial parties' telephone numbers frequently result in abandoned
17 telephone solicitations and in silence when the party answers the phone. These solicitations
18 constitute an intrusion on the property of parties and an invasion of privacy.

19 (E) The growing practice of preacquired account telephone solicitations, in which a tele-
20 phone solicitor acquires the party's billing information prior to initiating a telephone solic-
21 itation, has increasingly resulted in unauthorized charges to parties' financial accounts.

22 (c) Existing state and federal laws are inadequate to prevent the harm to the public
23 welfare that results from telephone solicitations.

24 (d) Allowing parties to choose not to receive unwanted telephone solicitations by placing
25 their telephone numbers on a "do not call" list provides a means by which parties can protect
26 themselves from fraud related to telephone solicitation and from the resulting economic
27 harm and invasion of privacy.

28 (2) The purpose of ORS 646.567 to 646.578 is to prevent the harmful effects set forth in
29 subsection (1)(b) of this section that result from telephone solicitations without inhibiting
30 legitimate telephone solicitations to parties who choose to receive them. Prohibiting tele-
31 phone solicitations under Oregon law to those Oregonians whose telephone numbers appear
32 on the list described in ORS 646.574 enables Oregonians to choose whether to receive tele-
33 phone solicitations.

34 **SECTION 4.** ORS 646.567 is amended to read:

35 646.567. As used in ORS 646.567 to 646.578, unless the context otherwise requires:

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

38 (2) "Information about a party" means information specific to a party, including but not limited
39 to the name and [*residence*] address of the party and the method by which the party paid the fee
40 required by ORS 646.574.

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

42 (4) "Qualified trade association" means an organization with at least the following character-
43 istics:

44 (a) Written bylaws or governing documents including a code of conduct for its members; and

45 (b) Criteria and procedures for expelling or suspending members who violate the association's

1 bylaws or governing documents.

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

5 (a) Calls made in response to a request or inquiry by the called party;

6 (b) Calls made by a charitable organization, a public agency or volunteers on behalf of the or-
7 ganization or agency to members of the organization or agency or to persons who have donated or
8 expressed an interest in donating **real estate**, goods[,] **or** services [*or real estate*];

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

10 (d) Business to business contacts.

11 **SECTION 5.** ORS 646.569 is amended to read:

12 646.569. (1) A person may not engage in the telephone solicitation of a party at a telephone
13 number included on the then current list:

14 (a) Published by the administrator of the telephone solicitation program established under ORS
15 646.572 and 646.574; **or**

16 (b) **Maintained by the federal agency designated under ORS 646.572.**

17 (2) For purposes of this section:

18 (a) "Predecessor of a business enterprise" means a financial institution as defined in 15 U.S.C.
19 6827 that has:

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

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

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

26 (A) The person making the solicitation;

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

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

29 **SECTION 6.** ORS 646.572 is amended to read:

30 646.572. (1) The Attorney General shall **either**:

31 (a) Advertise for bids and enter into a contract with a person to act as the administrator of the
32 telephone solicitation program described in ORS 646.574[.]; **or**

33 (b) **Designate a federal "do not call" registry, including but not limited to the registry**
34 **maintained by the Federal Trade Commission under 16 C.F.R. 310.**

35 (2) The **Attorney General may include in a** contract [*may include*] **with the administrator**
36 **any provision that the Attorney General determines is in the public interest.**

37 (3) **If a party requests, the Attorney General shall instruct the party on how to register**
38 **the party's telephone number on the federal "do not call" registry.**

39 **SECTION 7.** ORS 646.574 is amended to read:

40 646.574. **If the Attorney General enters into a contract pursuant to ORS 646.572 (1)(a):**

41 (1) The administrator referred to in ORS 646.572 shall create, maintain and distribute a database
42 containing a list of telephone numbers of parties who do not wish to receive any telephone solic-
43 itation at the listed numbers. Beginning on the date specified in the contract between the adminis-
44 trator and the Attorney General and at least once each quarter thereafter, the administrator shall
45 update the list by:

1 (a) Adding the numbers of parties who have filed notice and paid the fee as required in this
2 section; and

3 (b) Removing the numbers of those parties who have requested that their numbers be removed
4 or whose listing has expired without renewal.

5 (2) A party may file notice together with a fee of \$10 per listed number, or such lesser amount
6 as may be specified in the contract, with the administrator indicating the party's desire to place
7 telephone numbers on the list described in subsection (1) of this section. The notice shall be filed
8 in the form and manner specified in the contract between the administrator and the Attorney Gen-
9 eral. The notice is effective for one year from the date the party files the notice. The party may
10 renew the notice for additional periods of one year by filing an additional notice and paying an ad-
11 ditional fee by the anniversary of the original filing date of the notice.

12 (3) Information about a party is confidential. The Attorney General may not disclose information
13 about a party.

14 (4) The administrator *[shall]* **may** not furnish the list or disclose any information about a party
15 to any person, except as follows:

16 (a) Upon request of a person engaging or intending to engage in telephone solicitations and after
17 payment of the fees in the amounts specified in the contract between the administrator and the At-
18 torney General, the administrator shall furnish to the person:

19 (A) The most recent copy of the list described in subsection (1) of this section.

20 (B) The names of the parties whose telephone numbers are on the list.

21 (b) Upon request of a qualified trade association and after payment of the fees in the amounts
22 specified in the contract between the administrator and the Attorney General, the administrator
23 shall furnish to the qualified trade association:

24 (A) The most recent copy of the list described in subsection (1) of this section.

25 (B) The names of the parties whose telephone numbers are on the list.

26 (c) A qualified trade association that receives a list or the names of the parties whose telephone
27 numbers are on the list under this subsection may make the list or the names available to its
28 members on any terms the association and its members may impose.

29 (d) Upon request of the Attorney General for the purpose of enforcing ORS 646.569, the admin-
30 istrator shall furnish the Attorney General with all requested information about a party or any
31 person who the Attorney General believes has engaged in a solicitation prohibited by ORS 646.569.
32 The administrator *[shall]* **may** not charge any fee for furnishing the information to the Attorney
33 General.

34 (e) Upon request of any party who has filed a notice and paid the fee as provided in subsection
35 (2) of this section, the administrator shall furnish the party with all requested information about the
36 party or any person who the party believes has engaged in a solicitation prohibited by ORS 646.569.
37 The administrator *[shall]* **may** not charge any fee for furnishing the information to the party.

38 (f) The administrator shall comply with any lawful subpoena or court order directing disclosure
39 of the list and of any other information.

40 (g) The administrator shall provide all information that may be requested by any successor ad-
41 ministrator who may be selected by the Attorney General. The administrator *[shall]* **may** not charge
42 *[any]* a fee for furnishing the information to the successor administrator.

43 (5) The administrator shall promptly forward any complaints concerning alleged violations of
44 ORS 646.569 to the Attorney General.

45 (6) Fees paid to the administrator under this section shall be considered income to the admin-

1 istrator in the manner specified in the contract between the administrator and the Attorney Gen-
2 eral.

3 (7) When furnishing the list or names under subsection (4) of this section, the administrator shall
4 make the information available in printed and electronic form.

5 **SECTION 8. The amendments to ORS 646.561, 646.567 and 646.569 by sections 1, 4 and 5**
6 **of this 2005 Act apply to telephone solicitations made on or after the effective date of this**
7 **2005 Act.**

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

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