

House Bill 3615

Sponsored by Representative KAHL (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**.

Includes insurance and loans and extension of credit in definition of "real estate, goods or services" for purposes of Unlawful Trade Practices Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to application of Unlawful Trade Practices Act; amending ORS 646.605; and declaring an
3 emergency.

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 copying of any
17 such material, and taking testimony under oath or acknowledgment in respect of any such docu-
18 mentary material or copy thereof.

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

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

24 (6) "Real estate, goods or services" means those that are or may be obtained primarily for per-
25 sonal, family or household purposes, or that are or may be obtained for any purposes as a result of
26 a telephone solicitation, and includes **loans and extensions of credit, insurance and** franchises,
27 distributorships and other similar business opportunities[, *but does not include insurance*]. Except as
28 provided in section 2, chapter 658, Oregon Laws 2003, real estate does not cover conduct covered
29 by ORS chapter 90.

30 (7) "Telephone solicitation" means a solicitation where a person, in the course of the person's
31 business, vocation or occupation, uses a telephone or an automatic dialing-announcing device to in-

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 initiate telephonic contact with a potential customer and the person is not one of the following:

2 (a) A person who is a broker-dealer or salesperson licensed under ORS 59.175, or a mortgage
3 banker or mortgage broker licensed under ORS 86A.106 when the solicitation is for a security
4 qualified for sale pursuant to ORS 59.055.

5 (b) A real estate licensee or a person who is otherwise authorized to engage in professional real
6 estate activity pursuant to ORS chapter 696, when the solicitation involves professional real estate
7 activity.

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

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

13 (e) A person soliciting the sale of a newspaper of general circulation, a magazine or membership
14 in a book or record club who complies with ORS 646.611, when the solicitation involves newspapers,
15 magazines or membership in a book or record club.

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

19 (g) A supervised financial institution or parent, subsidiary or affiliate thereof. As used in this
20 paragraph, "supervised financial institution" means any financial institution or trust company, as
21 those terms are defined in ORS 706.008, or any personal property broker, consumer finance lender,
22 commercial finance lender or insurer that is subject to regulation by an official or agency of this
23 state or of the United States.

24 (h) A person who is authorized to conduct prearrangement or preconstruction funeral or ceme-
25 tery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or precon-
26 struction funeral or cemetery plans.

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

30 (j) A person or affiliate of a person whose business is regulated by the Public Utility Commission
31 of Oregon.

32 (k) A person who sells farm products as defined by ORS 576.006 if the solicitation neither in-
33 tends to nor actually results in a sale that costs the purchaser in excess of \$100.

34 (L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section
35 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration
36 under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

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

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

41 (8) "Trade" and "commerce" mean advertising, offering or distributing, whether by sale, rental
42 or otherwise, any real estate, goods or services, and include any trade or commerce directly or in-
43 directly affecting the people of this state.

44 (9) "Unconscionable tactics" include, but are not limited to, actions by which a person:

45 (a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or ina-

1 bility to understand the language of the agreement;

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

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

6 (d) Knowingly takes advantage of a customer who is a disabled veteran, a disabled
7 servicemember or a servicemember in active service, or the spouse of a disabled veteran, disabled
8 servicemember or servicemember in active service. For purposes of this paragraph:

9 (A) "Disabled veteran" has the meaning given that term in ORS 408.225.

10 (B) "Disabled servicemember" means a servicemember, as defined in 50 U.S.C. App. 511 as in
11 effect on January 1, 2010, who may be entitled to disability compensation under laws administered
12 by the United States Department of Veterans Affairs.

13 (C) "Servicemember in active service" means:

14 (i) A servicemember called into active service under Title 10 or Title 32 of the United States
15 Code as in effect on January 1, 2010; or

16 (ii) A servicemember on active state duty, as defined in ORS 398.002.

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

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

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

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

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

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

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

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

30 **SECTION 2.** ORS 646.605, as amended by section 12, chapter 658, Oregon Laws 2003, section
31 199, chapter 71, Oregon Laws 2007, section 32, chapter 319, Oregon Laws 2007, and section 2,
32 chapter 215, Oregon Laws 2009, is 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 copying of any
44 such material, and taking testimony under oath or acknowledgment in respect of any such docu-
45 mentary material or copy thereof.

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

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

6 (6) "Real estate, goods or services" means those that are or may be obtained primarily for per-
7 sonal, family or household purposes, or that are or may be obtained for any purposes as a result of
8 a telephone solicitation, and includes **loans and extensions of credit, insurance and** franchises,
9 distributorships and other similar business opportunities[, *but does not include insurance*]. Real estate
10 does not cover conduct covered by ORS chapter 90.

11 (7) "Telephone solicitation" means a solicitation where a person, in the course of the person's
12 business, vocation or occupation, uses a telephone or an automatic dialing-announcing device to in-
13 itiate telephonic contact with a potential customer and the person is not one of the following:

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15 banker or mortgage broker licensed under ORS 86A.106 when the solicitation is for a security
16 qualified for sale pursuant to ORS 59.055.

17 (b) A real estate licensee or a person who is otherwise authorized to engage in professional real
18 estate activity pursuant to ORS chapter 696, when the solicitation involves professional real estate
19 activity.

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-
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30 later face-to-face meeting between the solicitor and the prospective purchaser.

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

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37 tery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or precon-
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1 (L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section
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9 or otherwise, any real estate, goods or services, and include any trade or commerce directly or in-
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17 probability of payment of the attendant financial obligation in full by the customer when due; or

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27 Code as in effect on January 1, 2010; or

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35 rower to the lender, other than payment of the proceeds of the loan jointly to the seller and the
36 borrower;

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

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

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

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

42 **SECTION 3. This 2010 Act being necessary for the immediate preservation of the public**
43 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**
44 **on its passage.**