

Enrolled
Senate Bill 117

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CHAPTER

AN ACT

Relating to telephone solicitations; creating new provisions; amending ORS 646.561, 646.567, 646.569, 646.572 and 646.574; and declaring an emergency.

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

SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS 646.567 to 646.578.

SECTION 2. (1) The Legislative Assembly finds that:

(a) Fraud committed by means of unwanted telephone solicitations causes economic harm to Oregonians and constitutes an invasion of privacy and a threat to the welfare of the people of this state.

(b) Unwanted telephone solicitations cause Oregonians harm because:

(A) Telephone solicitations have become a primary tool for the marketing of real estate, goods and services to parties. Telephone solicitors have engaged in the practice of cold calling, which is the initiation of calls to parties with whom the telephone solicitors have no prior business relationship, to market scams, fraudulent schemes and worthless goods and services to unsuspecting parties who often lose thousands of dollars as a result of the solicitations.

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

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

(i) Caller identification systems, for which parties bear the cost of the caller identification service and any related hardware, and for which technology exists that allows telephone solicitors to block caller identification data;

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

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

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

(E) The growing practice of preacquired account telephone solicitation, in which a telephone solicitor acquires the party's billing information prior to initiating a telephone solicitation, has increasingly resulted in unauthorized charges to parties' financial accounts.

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

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

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

SECTION 3. ORS 646.561 is amended to read:

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

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

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

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

(a) Calls made by a charitable organization, a public agency or volunteers on behalf of the organization or agency to members of the organization or agency or to persons who have made a donation or expressed an interest in making a donation **to the organization or agency**;

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

(c) Business to business contacts.

SECTION 4. ORS 646.567 is amended to read:

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

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

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

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

(4) "Qualified trade association" means an organization with at least the following characteristics:

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

(b) Criteria and procedures for expelling or suspending members who violate the association's bylaws or governing documents.

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

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

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

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

(d) Business to business contacts.

SECTION 5. ORS 646.569 is amended to read:

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

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

(b) **Maintained as part of the federal registry designated under ORS 646.572.**

(2) For purposes of this section:

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

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

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

(b) "Telephone solicitation" does not include a person soliciting business from prospective purchasers who have previously purchased from:

(A) The person making the solicitation;

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

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

SECTION 6. ORS 646.572 is amended to read:

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

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

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

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

(3) **If a party requests, the Attorney General shall instruct the party on how to register the party's telephone number on the federal "do not call" registry designated under subsection (1)(b) of this section.**

SECTION 7. ORS 646.574 is amended to read:

646.574. (1) **If the Attorney General enters into a contract pursuant to ORS 646.572 (1)(a), the administrator [*referred to in ORS 646.572*] of the telephone solicitation program shall create, maintain and distribute a database containing a list of telephone numbers of parties who do not wish to receive any telephone solicitation at the listed numbers. Beginning on the date specified in the contract between the administrator and the Attorney General and at least once each quarter thereafter, the administrator shall update the list by:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Fees paid to the administrator under this section shall be considered income to the administrator in the manner specified in the contract between the administrator and the Attorney General.

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

SECTION 8. The amendments to ORS 646.561, 646.567 and 646.569 by sections 3 to 5 of this 2007 Act apply to telephone solicitations made on or after the effective date of this 2007 Act.

SECTION 9. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.

Passed by Senate May 3, 2007

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Secretary of Senate

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President of Senate

Passed by House June 8, 2007

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Speaker of House

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State