

# Senate Bill 863

Sponsored by Senator METSGER, Representative SCHAUFLEER

## 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**.

Prohibits caller from using automatic dialing and announcing device to call subscriber unless subscriber has requested, authorized, permitted or consented to call. Exempts calls made in certain circumstances.

Prohibits caller from using automatic dialing and announcing device unless device disconnects within 10 seconds after subscriber terminates call. Prohibits caller from using device to dial telephone numbers randomly or sequentially unless device excludes certain telephone numbers. Specifies hours during which caller may use device.

Requires caller to state certain information immediately in prerecorded message disseminated to subscriber. Prohibits caller from misrepresenting or falsifying required information. Prohibits caller from altering, misrepresenting or falsifying information provided to subscriber by means of caller identification service.

Permits Attorney General and subscriber subjected to unwanted calls to bring action in circuit court for injunction, for three times actual damages and for statutory damages of not more than \$2,000 for each violation.

Takes effect only if Senate Joint Resolution 33 (2007) is approved by people at special election held on same date as next primary election.

## A BILL FOR AN ACT

1  
2 Relating to automatic dialing and announcing devices; creating new provisions; amending ORS  
3 646.608; repealing ORS 759.290; and prescribing an effective date.

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

### **SECTION 1. As used in sections 1 to 5 of this 2007 Act:**

6 (1) **"Automatic dialing and announcing device" means an automated device that selects**  
7 **and dials telephone numbers and that, working alone or in conjunction with another device,**  
8 **disseminates a prerecorded or synthesized voice message to the telephone number called.**

9 (2) **"Call" means an attempt made to contact or a contact made with a subscriber by**  
10 **means of a telephone or telephone line.**

11 (3) **"Caller" means a person that attempts to contact or that contacts a subscriber by**  
12 **using a telephone or telephone line.**

13 (4) **"Caller identification service" means a telephone service that permits subscribers to**  
14 **see a caller's telephone number before answering the telephone.**

15 (5) **"Established business relationship" means a previous transaction or series of trans-**  
16 **actions between a caller and a subscriber in the course of which, during the 18 months pre-**  
17 **ceding a call, the subscriber consented or acquiesced to calls from the caller.**

18 (6) **"Subscriber" means an individual who has obtained residential or wireless telephone**  
19 **services from a telecommunications provider, or a person who resides with the individual.**

20 **SECTION 2. (1) A caller may not use or connect an automatic dialing and announcing**  
21 **device to a telephone line in order to call a subscriber unless the subscriber has knowingly**  
22 **requested, permitted, authorized or otherwise consented to the call.**

23 (2) **Subsection (1) of this section does not apply to a caller in the following circumstances:**

**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 (a) The caller has an established business relationship with the subscriber;

2 (b) The caller is attempting to collect a debt from the subscriber;

3 (c) The caller is a public safety or law enforcement agency and is attempting to contact  
4 the subscriber in connection with an emergency; or

5 (d) The caller is a school district and the subscriber is an employee of the school district,  
6 a student or a student's parent, guardian or other family member.

7 **SECTION 3.** (1) A caller may not use an automatic dialing and announcing device in order  
8 to call a subscriber unless the device is designed and operated so as to disconnect within 10  
9 seconds after the subscriber terminates the call.

10 (2) A caller may not use an automatic dialing and announcing device that dials telephone  
11 numbers randomly or sequentially unless the range of telephone numbers from which the  
12 device chooses the number to dial does not include numbers for:

13 (a) Fire protection, law enforcement or other emergency agencies;

14 (b) Hospital and health care facilities, physician's offices, poison control centers or sui-  
15 cide prevention or domestic violence counseling services;

16 (c) Residential facilities for senior citizens;

17 (d) Paging and answering services;

18 (e) Cellular telephones, mobile radio services, other radio common carrier services or any  
19 service for which the recipient is charged for the call; and

20 (f) Subscribers who appear on a list compiled for the purpose of informing potential  
21 callers that the subscriber does not want to receive telephone solicitations.

22 (3) A caller who uses an automatic dialing and announcing device may use the device to  
23 call a subscriber only between the hours of 8 a.m. and 9 p.m. at the subscriber's location.

24 **SECTION 4.** (1) A caller who uses an automatic dialing and announcing device in order  
25 to call a subscriber shall immediately state in the prerecorded or synthesized voice message  
26 disseminated during the call:

27 (a) The caller's identity and the identity of any person on behalf of whom the caller is  
28 making the call;

29 (b) The telephone number from which the caller is making the call;

30 (c) The location from which the caller is making the call; and

31 (d) The purpose for which the caller is making the call.

32 (2) A caller may not misrepresent or falsify any of the information required under sub-  
33 section (1) of this section.

34 (3) A caller may not intentionally alter, misrepresent or falsify the information that a  
35 caller identification service would ordinarily provide to a subscriber who uses such a service.

36 (4) A person who provides a caller identification service is not subject to civil liability for  
37 a caller's violation of this section.

38 **SECTION 5.** (1) The Attorney General, or a subscriber who receives from an automatic  
39 dialing and announcing device a call that the subscriber did not request, permit, authorize  
40 or otherwise consent to, except in circumstances permitted under section 2 (2) of this 2007  
41 Act, may bring an action in a circuit court of this state against the caller to:

42 (a) Enjoin the caller from using an automatic dialing and announcing device to call the  
43 subscriber or from violating section 2, 3 or 4 of this 2007 Act; and

44 (b) Recover actual damages or statutory damages under this section that arise from the  
45 caller's violation of section 2, 3 or 4 of this 2007 Act.

1       **(2) A plaintiff may bring an action under this section in the county where the plaintiff**  
2 **resides or conducts business.**

3       **(3) If the court finds that the caller has violated section 2, 3 or 4 of this 2007 Act, the**  
4 **court shall enjoin the caller from continuing the violation.**

5       **(4) Unless a plaintiff seeks actual or statutory damages under this section, the plaintiff**  
6 **need not allege or prove actual damages to bring an action for an injunction under this sec-**  
7 **tion.**

8       **(5) In an action for damages brought under this section, a plaintiff is entitled to recover**  
9 **from the defendant:**

10       **(a) Not more than \$2,000 for each violation;**

11       **(b) Three times the amount of actual damages, if any, that the plaintiff sustained;**

12       **(c) Reasonable attorney fees;**

13       **(d) Costs; and**

14       **(e) Any other relief the court deems proper.**

15       **(6) For purposes of subsection (5) of this section, each instance in which a caller uses**  
16 **an automatic dialing and announcing device in order to call a subscriber in violation of sec-**  
17 **tion 2, 3 or 4 of this 2007 Act constitutes a separate violation.**

18       **(7) A plaintiff must commence an action under this section within two years after the**  
19 **date on which the violation described in this section occurred or within two years after the**  
20 **plaintiff bringing the action discovered or, in the exercise of reasonable diligence, should**  
21 **have discovered the violation.**

22       **(8) The remedies provided in this section are cumulative and are in addition to any other**  
23 **applicable administrative, civil or criminal penalties provided for the same conduct.**

24       **(9) Moneys recovered by the Attorney General in any action brought under this section**  
25 **shall be deposited with the State Treasurer as provided in ORS 180.180 except that the At-**  
26 **torney General shall use the moneys so deposited and credited to pay expenses related to**  
27 **investigating and enforcing violations of section 2, 3 or 4 of this 2007 Act and for adminis-**  
28 **tering the list described in ORS 646.574.**

29       **SECTION 6.** ORS 646.608 is amended to read:

30       646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-  
31 **ness, vocation or occupation the person does any of the following:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (w) Manufactures mercury fever thermometers.

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

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

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

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

1 with heating, cooling or ventilation equipment, control room temperature.

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

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

5 (bb) Violates ORS 646.850 (1).

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

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

8 (ee) Violates ORS 646.883 or 646.885.

9 (ff) Violates any provision of ORS 646.195.

10 (gg) Violates ORS 646.569.

11 (hh) Violates the provisions of ORS 646.859.

12 [(ii) Violates ORS 759.290.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 [(ddd)] (ccc) Violates ORS 92.405 (1), (2) or (3).

36 [(eee)] (ddd) Engages in an unlawful practice under ORS 646.648.

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

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

41 (4) An action or suit may not be brought under subsection (1)(u) of this section unless the At-  
42 torney General has first established a rule in accordance with the provisions of ORS chapter 183  
43 declaring the conduct to be unfair or deceptive in trade or commerce.

44 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought  
45 under subsection [(1)(aaa)] (1)(zz) of this section by a person other than a prosecuting attorney,

1 relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

2 **SECTION 7. ORS 759.290 is repealed.**

3 **SECTION 8. Sections 1 to 5 of this 2007 Act apply to any calls made to a subscriber by**  
4 **means of an automatic dialing and announcing device on or after the effective date of this**  
5 **2007 Act.**

6 **SECTION 9. This 2007 Act does not take effect unless the amendment to the Oregon**  
7 **Constitution proposed by Senate Joint Resolution 33 (2007) is approved by the people at a**  
8 **special election held throughout this state on the same date as the next primary election.**  
9 **This 2007 Act takes effect on the effective date of that constitutional amendment.**

10