

A-Engrossed
Senate Bill 982

Ordered by the House June 11
Including House Amendments dated June 11

Sponsored by Senators DEVLIN, NELSON, Representative BUTLER; Representative ROSENBAUM

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.

Provides definition of "telecommunications" and modifies definition of "telecommunications service" for purpose of laws governing regulation of telecommunications.

Prohibits caller from using automatic dialing and announcing device to call subscriber if by doing so caller causes subscriber unwanted expense 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.

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.

Makes violation of Act unlawful trade practice subject to civil penalty of not more than \$5,000 per violation.

A BILL FOR AN ACT

1
2 Relating to telecommunications; creating new provisions; amending ORS 646.608, 759.005 and
3 759.500; and repealing ORS 759.290.

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

5 **SECTION 1.** ORS 759.005 is amended to read:

6 759.005. [(1)(a) As used in this chapter, except as provided in paragraph (b) of this subsection,
7 "telecommunications utility" means:]

8 [(A) Any corporation, company, individual, association of individuals, or its lessees, trustees or
9 receivers, that owns, operates, manages or controls all or a part of any plant or equipment in this state
10 for the provision of telecommunications service, directly or indirectly to or for the public, whether or
11 not the plant or equipment, or any portion of the plant or equipment, is wholly within any town or
12 city.]

13 [(B) Any corporation, company, individual or association of individuals that is party to an oral or
14 written agreement for the payment by a telecommunications utility, for service, managerial construction,
15 engineering or financing fees, and having an affiliated interest with the telecommunications utility.]

16 [(b) As used in this chapter, "telecommunications utility" does not include:]

17 [(A) Any plant owned or operated by a municipality.]

18 [(B) Any corporation not providing intrastate telecommunications service to the public in this state,
19 whether or not the corporation has an office in this state or has an affiliated interest with a telecom-
20 munications utility as defined in this chapter.]

21 [(C) Any person acting only as a competitive telecommunications provider.]

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 [(D) Any corporation, company, individual or association of individuals providing only telephone
2 customer premises equipment to the public.]

3 [(2)] As used in this chapter:

4 [(a)] (1) “Competitive telecommunications provider” means a telecommunications services pro-
5 vider that has been classified as a competitive telecommunications provider by the Public Utility
6 Commission pursuant to ORS 759.020.

7 [(b)] (2) “Intrastate telecommunications service” means any telecommunications service in which
8 the information transmitted originates and terminates within the boundaries of the State of Oregon.

9 [(c)] (3) “Local exchange telecommunications service” means telecommunications service pro-
10 vided within the boundaries of exchange maps filed with and approved by the commission.

11 [(d)] (4) “Private telecommunications network” means a system for the provision of telecommu-
12 nications service or any portion of telecommunications service, including the construction, mainte-
13 nance or operation of the system, by a person for the exclusive use of that person and not for resale,
14 directly or indirectly.

15 [(e)] (5) “Radio common carrier” means any corporation, company, association, joint stock as-
16 sociation, partnership and person, their lessees, trustees or receivers and any town making available
17 facilities to provide radio communications service, radio paging or cellular communications service
18 for hire.

19 [(f)] (6) “Shared telecommunications service” means the provision of telecommunications and
20 information management services and equipment to a user group located in discrete premises in
21 building complexes, campuses or high-rise buildings, by a commercial shared services provider or
22 by a users’ association, through privately owned customer premises equipment and associated data
23 processing and information management services and includes the provision of connections to local
24 exchange telecommunications service.

25 **(7) “Telecommunications” means the transmission of information chosen by a person,
26 between or among points specified by the person, without change in the form or content of
27 the information sent or received.**

28 [(g)] (8) “Telecommunications service” means *[two-way switched access and transport of voice
29 communications but]* **telecommunications that are offered for a fee to the public, or to such
30 class of users as to be effectively available to the public, without regard to the facilities used
31 to provide the telecommunications. “Telecommunications service” does not include:**

32 [(A)] (a) Services provided by radio common carrier.

33 [(B)] (b) One-way transmission of television signals.

34 [(C)] *Surveying.*

35 [(D)] (c) Private telecommunications networks.

36 [(E)] (d) Communications of the customer that take place on the customer side of on-premises
37 equipment.

38 **(9)(a) “Telecommunications utility” means:**

39 **(A) Any corporation, company, individual or association of individuals, or its lessees,
40 trustees or receivers, that owns, operates, manages or controls all or a part of any plant or
41 equipment in this state for the provision of telecommunications service, directly or indirectly
42 to or for the public, whether or not the plant or equipment, or any portion of the plant or
43 equipment, is wholly within any town or city.**

44 **(B) Any corporation, company, individual or association of individuals that is party to an
45 oral or written agreement for the payment by a telecommunications utility, for service,**

1 **managerial construction, engineering or financing fees, and has an affiliated interest with**
2 **the telecommunications utility.**

3 **(b) “Telecommunications utility” does not include:**

4 **(A) Any plant owned or operated by a municipality.**

5 **(B) Any corporation not providing intrastate telecommunications service to the public in**
6 **this state, whether or not the corporation has an office in this state or has an affiliated in-**
7 **terest with a telecommunications utility as defined in this chapter.**

8 **(C) Any person acting only as a competitive telecommunications provider.**

9 **(D) Any corporation, company, individual or association of individuals providing only**
10 **telephone customer premises equipment to the public.**

11 *[(h)]* **(10) “Toll” means switched telecommunications between exchanges carried on the public**
12 **switched network. “Toll” does not include services that are an option to flat rate local or extended**
13 **area service, even though the options may include charges on a per-unit basis.**

14 **SECTION 2. ORS 759.500 is amended to read:**

15 759.500. As used in ORS 759.500 to 759.570, unless the context requires otherwise:

16 **(1) “Allocated territory” means a geographic area for which the Public Utility Commission has**
17 **allocated to no more than one person the authority to provide local exchange telecommunications**
18 **service, the boundaries of which are set forth on an exchange map filed with and approved by the**
19 **commission.**

20 **(2) “Person” includes:**

21 **(a) An individual, firm, partnership, corporation, association, cooperative or municipality; or**

22 **(b) The agent, lessee, trustee or referee of an individual or entity listed in paragraph (a) of this**
23 **subsection.**

24 **(3) “Local exchange telecommunications service” has the meaning given that term in ORS**
25 **759.005 [(2)(c)], except that “local exchange telecommunications service” does not include service**
26 **provided through or by the use of any equipment, plant or facilities:**

27 **(a) For the provision of telecommunications services that pass through or over but are not used**
28 **to provide service in or do not terminate in an area allocated to another person providing a similar**
29 **telecommunications service;**

30 **(b) For the provision of local exchange telecommunications service, as defined in ORS 759.005**
31 **[(2)(c)], commonly known as “private lines” or “farmer lines”; or**

32 **(c) For the provision of shared telecommunications service.**

33 **SECTION 3. As used in sections 3 to 7 of this 2007 Act:**

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

37 **(2) “Call” means an attempt made to contact or a contact made with a subscriber by**
38 **means of a telephone or telephone line.**

39 **(3) “Caller” means a person that attempts to contact or that contacts a subscriber by**
40 **using a telephone or telephone line. “Caller” does not include a person that, in collecting a**
41 **debt, is subject to regulation under the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et**
42 **seq.**

43 **(4) “Caller identification service” means a telephone service that permits subscribers to**
44 **see a caller’s telephone number before answering the telephone.**

45 **(5) “Established business relationship” means a previous transaction or series of trans-**

1 actions between a caller and a subscriber that occurred within the 18 months preceding a
2 call.

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

5 (7) "Unwanted expense" means an expense a subscriber did not incur voluntarily or an
6 expense other than an expense the subscriber would incur for the use of the subscriber's
7 personal property for the subscriber's own purposes.

8 **SECTION 4.** (1) A caller may not use or connect an automatic dialing and announcing
9 device to a telephone line in order to call a subscriber if by doing so the caller causes the
10 subscriber unwanted expense, unless the subscriber has knowingly requested, permitted,
11 authorized or otherwise consented to the call.

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

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

14 (b) The subscriber owes a debt to the caller;

15 (c) The caller is a public safety or law enforcement agency; or

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

18 **SECTION 5.** (1) A caller may not use an automatic dialing and announcing device in order
19 to call a subscriber unless the device is designed and operated so as to disconnect within 10
20 seconds after the subscriber terminates the call.

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

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

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

27 (c) Paging and answering services, if by calling a subscriber's paging or answering service
28 the caller causes the subscriber unwanted expense;

29 (d) Cellular telephones, mobile radio services, other radio common carrier services or
30 other services, if by calling the telephone or service the caller causes the subscriber un-
31 wanted expense; and

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

34 **SECTION 6.** (1) A caller who uses an automatic dialing and announcing device in order
35 to call a subscriber may not misrepresent or falsify, either in speaking with the subscriber
36 or in the prerecorded or synthesized voice message disseminated during the call:

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

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

40 (c) The location from which the caller is making the call; or

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

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

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

1 **SECTION 7. Violation of section 4, 5 or 6 of this 2007 Act is an unlawful trade practice**
2 **subject to enforcement under ORS 646.632. Notwithstanding the provisions of ORS 646.642, a**
3 **civil penalty imposed for a violation of section 4, 5 or 6 of this 2007 Act may not exceed**
4 **\$5,000.**

5 **SECTION 8.** ORS 646.608 is amended to read:

6 646.608. (1) A person engages in an unlawful practice when in the course of the person's busi-
7 ness, vocation or occupation the person does any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (q) Promises to deliver real estate, goods or services within a certain period of time with intent
2 not to deliver them as promised.
- 3 (r) Organizes or induces or attempts to induce membership in a pyramid club.
- 4 (s) Makes false or misleading representations of fact concerning the offering price of, or the
5 person's cost for real estate, goods or services.
- 6 (t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any
7 known material defect or material nonconformity.
- 8 (u) Engages in any other unfair or deceptive conduct in trade or commerce.
- 9 (v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under
10 ORS 698.640, whether in a commercial or noncommercial situation.
- 11 (w) Manufactures mercury fever thermometers.
- 12 (x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal
13 law, or is:
- 14 (A) Prescribed by a person licensed under ORS chapter 677; and
- 15 (B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and
16 on the proper cleanup of mercury should breakage occur.
- 17 (y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to
18 inform the purchaser that mercury is present in the thermostat and that the thermostat may not be
19 disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the
20 mercury does not become part of the solid waste stream or wastewater. For purposes of this para-
21 graph, "thermostat" means a device commonly used to sense and, through electrical communication
22 with heating, cooling or ventilation equipment, control room temperature.
- 23 (z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains
24 mercury light switches.
- 25 (aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- 26 (bb) Violates ORS 646.850 (1).
- 27 (cc) Violates any requirement of ORS 646.661 to 646.686.
- 28 (dd) Violates the provisions of ORS 128.801 to 128.898.
- 29 (ee) Violates ORS 646.883 or 646.885.
- 30 (ff) Violates any provision of ORS 646.195.
- 31 (gg) Violates ORS 646.569.
- 32 (hh) Violates the provisions of ORS 646.859.
- 33 [(ii) Violates ORS 759.290.]
- 34 [(jj)] (ii) Violates ORS 646.872.
- 35 [(kk)] (jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 36 [(LL)] (kk) Violates ORS 646.563.
- 37 [(mm)] (LL) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 38 [(nn)] (mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted
39 pursuant thereto.
- 40 [(oo)] (nn) Violates ORS 646.892 or 646.894.
- 41 [(pp)] (oo) Violates any provision of ORS 646.249 to 646.259.
- 42 [(qq)] (pp) Violates ORS 646.384.
- 43 [(rr)] (qq) Violates ORS 646.871.
- 44 [(ss)] (rr) Violates ORS 822.046.
- 45 [(tt)] (ss) Violates ORS 128.001.

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

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

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

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

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

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

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

8 [(bbb)] (aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS
9 822.005.

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

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

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

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

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

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

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

23 **SECTION 9. ORS 759.290 is repealed.**

24 **SECTION 10. Sections 3 to 7 of this 2007 Act apply to any calls made to a subscriber by**
25 **means of an automatic dialing and announcing device on or after the effective date of this**
26 **2007 Act.**

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