

House Bill 3020

Sponsored by Representatives MATTHEWS, FREEMAN; Representatives BARKER, C EDWARDS, ESQUIVEL, HANNA, MAURER, RICHARDSON, RILEY, SCHAUFLEER, WHISNANT

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**.

Makes knowingly taking advantage of disabled veteran, servicemember or spouse unconscionable tactic and unlawful trade practice.

A BILL FOR AN ACT

1
2 Relating to unlawful trade practice; creating new provisions; and amending ORS 646.605 and 646.608.

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

4 **SECTION 1.** ORS 646.605 is amended to read:

5 646.605. As used in ORS 646.605 to 646.652:

6 (1) "Appropriate court" means the circuit court of a county:

7 (a) Where one or more of the defendants reside;

8 (b) Where one or more of the defendants maintain a principal place of business;

9 (c) Where one or more of the defendants are alleged to have committed an act prohibited by
10 ORS 646.605 to 646.652; or

11 (d) With the defendant's consent, where the prosecuting attorney maintains an office.

12 (2) "Documentary material" means the original or a copy of any book, record, report, memo-
13 randum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or
14 other tangible document or recording, wherever situate.

15 (3) "Examination" of documentary material shall include inspection, study or copying of any
16 such material, and taking testimony under oath or acknowledgment in respect of any such docu-
17 mentary material or copy thereof.

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

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

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

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

31 (a) A person who is a broker-dealer or salesperson licensed under ORS 59.175, or a mortgage

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 banker or mortgage broker licensed under ORS 59.850 when the solicitation is for a security quali-
 2 fied for sale pursuant to ORS 59.055.

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

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

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

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

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

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

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

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

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

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

32 (L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section
 33 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration
 34 under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

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

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

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

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

43 (a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or ina-
 44 bility to understand the language of the agreement;

45 (b) Knowingly permits a customer to enter into a transaction from which the customer will

1 derive no material benefit; [or]

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

4 **(d) Knowingly takes advantage of a customer who is a disabled veteran or a**
5 **servicemember, or the spouse of a disabled veteran or a servicemember. For purposes of this**
6 **paragraph, “disabled veteran” has the meaning given that term in ORS 408.225 and**
7 **“servicemember” has the meaning given that term in 50 U.S.C. App. 511 as in effect on the**
8 **effective date of this 2009 Act.**

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

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

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

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

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

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

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

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

22 **SECTION 2.** ORS 646.605, as amended by section 12, chapter 658, Oregon Laws 2003, section
23 199, chapter 71, Oregon Laws 2007, and section 32, chapter 319, Oregon Laws 2007, is amended to
24 read:

25 646.605. As used in ORS 646.605 to 646.652:

26 (1) “Appropriate court” means the circuit court of a county:

27 (a) Where one or more of the defendants reside;

28 (b) Where one or more of the defendants maintain a principal place of business;

29 (c) Where one or more of the defendants are alleged to have committed an act prohibited by
30 ORS 646.605 to 646.652; or

31 (d) With the defendant’s consent, where the prosecuting attorney maintains an office.

32 (2) “Documentary material” means the original or a copy of any book, record, report, memo-
33 randum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or
34 other tangible document or recording, wherever situate.

35 (3) “Examination” of documentary material shall include inspection, study or copying of any
36 such material, and taking testimony under oath or acknowledgment in respect of any such docu-
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38 (4) “Person” means natural persons, corporations, trusts, partnerships, incorporated or
39 unincorporated associations and any other legal entity except bodies or officers acting under statu-
40 tory authority of this state or the United States.

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

43 (6) “Real estate, goods or services” means those that are or may be obtained primarily for per-
44 sonal, family or household purposes, or that are or may be obtained for any purposes as a result of
45 a telephone solicitation, and includes franchises, distributorships and other similar business oppor-

1 tunities, but does not include insurance. Real estate does not cover conduct covered by ORS chapter
2 90.

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

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8 fied for sale pursuant to ORS 59.055.

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

12 (c) A person licensed or exempt from licensure as a builder pursuant to ORS chapter 701, when
13 the solicitation involves the construction, alteration, repair, improvement or demolition of a struc-
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15 (d) A person licensed or otherwise authorized to sell insurance as an insurance producer pur-
16 suant to ORS chapter 744, when the solicitation involves insurance.

17 (e) A person soliciting the sale of a newspaper of general circulation, a magazine or membership
18 in a book or record club who complies with ORS 646.611, when the solicitation involves newspapers,
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20 (f) A person soliciting without the intent to complete and who does not complete the sales
21 presentation during the telephone solicitation and who only completes the sales presentation at a
22 later face-to-face meeting between the solicitor and the prospective purchaser.

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24 paragraph, "supervised financial institution" means any financial institution or trust company, as
25 those terms are defined in ORS 706.008, or any personal property broker, consumer finance lender,
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34 (j) A person or affiliate of a person whose business is regulated by the Public Utility Commission
35 of Oregon.

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

38 (L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section
39 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration
40 under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

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42 that person or that person's employer when the solicitation involves answering services.

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44 association when the solicitation involves regulated goods or services.

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1 or otherwise, any real estate, goods or services, and include any trade or commerce directly or in-
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 5 bility to understand the language of the agreement;

6 (b) Knowingly permits a customer to enter into a transaction from which the customer will
 7 derive no material benefit; [or]

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

10 **(d) Knowingly takes advantage of a customer who is a disabled veteran or a**
 11 **servicemember, or the spouse of a disabled veteran or a servicemember. For purposes of this**
 12 **paragraph, “disabled veteran” has the meaning given that term in ORS 408.225 and**
 13 **“servicemember” has the meaning given that term in 50 U.S.C. App. 511 as in effect on the**
 14 **effective date of this 2009 Act.**

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

17 (11) A loan is made “in close connection with the sale of a manufactured dwelling” if:

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

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

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

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

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

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

28 **SECTION 3.** ORS 646.608, as amended by section 8, chapter 19, Oregon Laws 2008, and section
 29 5, chapter 31, Oregon Laws 2008, 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 646A.070 (1).
- 6 (cc) Violates any requirement of ORS 646A.030 to 646A.040.
- 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 646A.020.
- 10 (gg) Violates ORS 646.569.
- 11 (hh) Violates the provisions of ORS 646A.142.
- 12 (ii) Violates ORS 646A.360.
- 13 (jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- 14 (kk) Violates ORS 646.563.
- 15 (LL) Violates ORS 759.690 or any rule adopted pursuant thereto.
- 16 (mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant
- 17 thereto.
- 18 (nn) Violates ORS 646A.210 or 646A.214.
- 19 (oo) Violates any provision of ORS 646A.124 to 646A.134.
- 20 (pp) Violates ORS 646A.254.
- 21 (qq) Violates ORS 646A.095.
- 22 (rr) Violates ORS 822.046.
- 23 (ss) Violates ORS 128.001.
- 24 (tt) Violates ORS 646.649 (2) to (4).
- 25 (uu) Violates ORS 646A.090 (2) to (4).
- 26 (vv) Violates ORS 87.686.
- 27 (ww) Violates ORS 646.651.
- 28 (xx) Violates ORS 646A.362.
- 29 (yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
- 30 (zz) Violates ORS 180.440 (1).
- 31 (aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
- 32 (bbb) Violates ORS 87.007 (2) or (3).
- 33 (ccc) Violates ORS 92.405 (1), (2) or (3).
- 34 (ddd) Engages in an unlawful practice under ORS 646.648.
- 35 (eee) Violates ORS 646A.365.
- 36 (fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
- 37 (ggg) Sells a gift card in violation of ORS 646A.276.
- 38 (hhh) Violates ORS 646A.102, 646A.106 or 646A.108.
- 39 (iii) Violates ORS 646A.430 to 646A.450.
- 40 (jjj) Violates a provision of sections 2 to 6, chapter 19, Oregon Laws 2008.
- 41 (kkk) Violates section 2, chapter 31, Oregon Laws 2008, 30 or more days after a recall notice,
- 42 warning or declaration described in section 2, chapter 31, Oregon Laws 2008, is issued for the chil-
- 43 dren's product, as defined in section 1, chapter 31, Oregon Laws 2008, that is the subject of the vi-
- 44 olation.
- 45 **(LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief**

1 **Act, 50 U.S.C. App. 501 et seq., including but not limited to 50 U.S.C. App. 521, 524, 527, 531,**
2 **533 and 535.**

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

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

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

10 (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought
11 under subsection (1)(zz) of this section by a person other than a prosecuting attorney, relief is lim-
12 ited to an injunction and the prevailing party may be awarded reasonable attorney fees.

13 **SECTION 4. The amendments to ORS 646.605 and 646.608 by sections 1 to 3 of this 2009**
14 **Act apply to actions taken before, on or after the effective date of this 2009 Act.**

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