

Enrolled
House Bill 2383

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Attorney General Ellen F. Rosenblum)

CHAPTER

AN ACT

Relating to telephone solicitations; creating new provisions; amending ORS 646.551; and declaring an emergency.

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

SECTION 1. ORS 646.551 is amended to read:

646.551. As used in ORS 646.551 to 646.557[, *unless the context requires otherwise*]:

(1)(a) “Business opportunity” means a commercial arrangement in which:

(A) A seller solicits a prospective purchaser to enter into a new business or to buy ancillary services within 60 days after entering into a new business;

(B) The prospective purchaser makes a payment or agrees to be obligated to make a payment required for the business or services; and

(C) The seller, expressly or by implication, and orally or in writing, represents that the seller or a designated person will:

(i) Provide an outlet, account or customers, by means of the Internet or otherwise, for the purchaser’s goods or services; or

(ii) Buy back goods or services that the purchaser makes, produces, fabricates, grows, breeds, modifies or provides, including but not limited to paying for services such as stuffing envelopes at the purchaser’s residence.

(b) “Business opportunity” does not include:

(A) A sale of all or substantially all of the assets of an ongoing business if the owner of the business intends to sell and sells the assets as one opportunity;

(B) A sale of sales demonstration equipment, materials or samples for a total price of \$500 or less and not for profit; or

(C) A sale of a franchise, as defined 16 C.F.R. 436.1, unless the franchise is exempted from the definition because:

(i) The total of the required payments the franchisee pays or commits to pay to a franchisor or an affiliate is less than \$500 at any time before or within six months after the purchaser begins business as a franchisee; or

(ii) No written document exists that describes any material term or aspect of the franchise arrangement.

(2) “Telephone solicitation” means telephonic contact made under any of the following circumstances:

(a) A person has telephonic contact with a prospective purchaser and solicits the prospective purchaser to purchase a business opportunity;

(b) A person initiates telephonic contact with a prospective purchaser and represents or implies any of the following:

(A) That a prospective purchaser who buys a unit of a good or service will receive additional units, whether or not of the same type as the purchaser bought, without further cost. As used in this subparagraph, "further cost" does not include actual postage or common carrier delivery charges, if any.

(B) That a prospective purchaser will receive a prize or gift if the prospective purchaser does either of the following:

(i) Purchases or rents goods or services; or

(ii) Pays any money including, but not limited to, a delivery or handling charge.

(C) That a prospective purchaser who buys goods or services because of some unusual event or imminent price increase will be able to buy the goods or services at prices that are below the prices that usually are charged, or the prices that will be charged in the future, for the goods or services.

(D) That the seller is a person other than the actual seller.

(E) That goods or services are manufactured or supplied by a person other than the actual manufacturer or supplier.

(F) That the goods that the person is selling are gold, silver or other precious metals, diamonds, rubies, sapphires or other precious stones or any interest in oil, gas or mineral fields, wells or exploration sites; or

(c) The person makes the telephonic contact in response to inquiries from prospective purchasers prompted by advertisements on behalf of the person, and the person conducts a solicitation as described in paragraph (b) of this subsection.

[(1)] (3)(a) "Telephonic seller" means a person who, on the person's own behalf, or on behalf of another person, causes or attempts [to cause] a telephone solicitation [to be made under the following circumstances:].

[(a) The person initiates telephonic contact with a prospective purchaser and represents or implies any of the following:]

[(A) That a prospective purchaser who buys one or more goods or services unit will receive additional units, whether or not of the same type as purchased, without further cost. As used in this subparagraph, "further cost" does not include actual postage or common carrier delivery charges, if any;]

[(B) That a prospective purchaser will receive a prize or gift if the person also encourages the prospective purchaser to do either of the following:]

[(i) Purchase or rent any goods or services; or]

[(ii) Pay any money, including, but not limited to a delivery or handling charge;]

[(C) That a prospective purchaser who buys goods or services, because of some unusual event or imminent price increase, will be able to buy these items at prices which are below those usually charged or will be charged for those items;]

[(D) That the seller is a person other than the actual seller;]

[(E) That the items for sale or rent are manufactured or supplied by a person other than the actual manufacturer or supplier; or]

[(F) That the items for sale are gold, silver or other precious metals, diamonds, rubies, sapphires or other precious stones or any interest in oil, gas or mineral fields, wells or exploration sites; or]

[(b) The telephone solicitation is made by the person in response to inquiries from prospective purchasers generated by advertisement, on behalf of the person and the solicitation is conducted as described in paragraph (a) of this subsection.]

[(2)] (b) "Telephonic seller" does not include any of the following:

[(a)] (A) A person [selling] **that sells** a security as defined in ORS 59.015, or securities [which] **that** are exempt under ORS 59.025.

[(b)] (B) A person **that is** licensed pursuant to ORS chapter 696 [when] if the **solicited** transaction is governed [by that chapter] **under ORS chapter 696**.

[(c)] (C) A person **that is** licensed pursuant to ORS 701.021 [when] **if** the solicited transaction is governed [by] **under** ORS chapter 701.

[(d)] (D) A person **that is** licensed pursuant to ORS chapter 744 [when] **if** the solicited transaction is governed [by] **under** the Insurance Code.

[(e)] (E) A person [soliciting] **that solicits** the sale of a franchise [when] **if** the solicited transaction is governed [by] **under** ORS 650.005 to 650.100.

[(f)] (F) A person [primarily soliciting the sale of] **that primarily solicits** a subscription to or advertising in a newspaper of general circulation.

[(g)] (G) A person [primarily soliciting the sale of] **that primarily solicits a subscription to** a magazine or periodical, or **a sale of a contractual [plans] plan**, including a book or record [clubs] **club**:

[(A)] (i) Under which the seller provides the [consumer with a form] **means by** which the consumer may [use to] instruct the seller not to ship the offered merchandise, and which is regulated by the Federal Trade Commission trade regulation concerning "Use of Negative Option Plans by Sellers in Commerce"; or

[(B)] (ii) Using arrangements such as continuity plans, subscription arrangements, standing order arrangements, supplements and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive [such] **the** merchandise on a periodic basis.

[(h)] (H) A person [soliciting] **that solicits** business from prospective purchasers who have previously purchased from the business enterprise for which the person is calling, **unless the person solicits a business opportunity**.

[(i)] (I) A person [soliciting] **that solicits** without the intent to complete and who does not complete [the] **a** sales presentation during the telephone solicitation and who only completes the [sale] **sales** presentation at a later face-to-face meeting between the solicitor and the prospective purchaser, unless at [that] **the** later meeting the solicitor collects or attempts to collect payment [for delivery of] **to deliver** items purchased.

[(j)] (J) Any supervised financial institution or parent, subsidiary, or affiliate [thereof] **of a supervised financial institution**. As used in this [paragraph] **subparagraph**, "supervised financial institution" means any financial institution or trust company, as those terms are defined in ORS 706.008, or any personal property broker, consumer finance lender, commercial finance lender or insurer that is subject to regulation by an official or agency of this state or the United States.

[(k)] (K) A person [soliciting] **that solicits** the sale of funeral or burial services regulated by ORS chapter 692.

(L) A person [soliciting] **that solicits** the sale of services [provided by] **that** a cable television system [operating] **provides** under authority of a franchise or permit issued by a governmental agency of this state[,] or **a** subdivision [thereof] **of a governmental agency of this state**.

[(m)] (M) A person or affiliate of a person whose business is regulated by the Public Utility Commission, or a telecommunications utility with access lines of 15,000 or less or a cooperative telephone association.

[(n)] (N) A person [soliciting] **that solicits** the sale of a farm product, as defined in ORS 79.0102, if the solicitation does not result in a sale [which] **that** costs the purchaser [in excess of] **more than** \$100.

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

[(p)] (P) A person [soliciting] **that solicits** exclusively the sale of telephone answering services [to be provided by] **that the** person or [that] **the** person's employer **provides**.

[(q)] (Q) A person registered under the Charitable Solicitations Act.

SECTION 2. (1) The amendments to ORS 646.551 by section 1 of this 2015 Act become operative 91 days after the effective date of this 2015 Act.

(2) The Attorney General may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the Attorney General to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the Attorney General by the amendments to ORS 646.551 by section 1 of this 2015 Act.

SECTION 3. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by House March 5, 2015

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 21, 2015

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2015

Approved:

.....M.,....., 2015

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2015

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Jeanne P. Atkins, Secretary of State