

# House Bill 3285

Sponsored by Representative SMITH DB

## 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**.

Modifies definition of "abuse" for purposes of Elderly Persons and Persons With Disabilities Abuse Prevention Act to include certain telephone solicitation.

## A BILL FOR AN ACT

1  
2 Relating to abusive telephone solicitation; amending ORS 124.005, 124.020 and 124.110.

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

4 **SECTION 1.** ORS 124.005 is amended to read:

5 124.005. As used in ORS 124.005 to 124.040:

6 (1) "Abuse" means one or more of the following:

7 (a) Any physical injury caused by other than accidental means, or that appears to be at variance  
8 with the explanation given of the injury.

9 (b) Neglect that leads to physical harm through withholding of services necessary to maintain  
10 health and well-being.

11 (c) Abandonment, including desertion or willful forsaking of an elderly person or a person with  
12 a disability or the withdrawal or neglect of duties and obligations owed an elderly person or a  
13 person with a disability by a caregiver or other person.

14 (d) Willful infliction of physical pain or injury.

15 (e) Use of derogatory or inappropriate names, phrases or profanity, ridicule, harassment,  
16 coercion, threats, cursing, intimidation or inappropriate sexual comments or conduct of such a na-  
17 ture as to threaten significant physical or emotional harm to the elderly person or person with a  
18 disability.

19 (f) Causing any sweepstakes promotion to be mailed to an elderly person or a person with a  
20 disability who had received sweepstakes promotional material in the United States mail, spent more  
21 than \$500 in the preceding year on any sweepstakes promotions, or any combination of sweepstakes  
22 promotions from the same service, regardless of the identities of the originators of the sweepstakes  
23 promotion and who represented to the court that the person felt the need for the court's assistance  
24 to prevent the person from incurring further expense.

25 (g) Wrongfully taking or appropriating money or property, or knowingly subjecting an elderly  
26 person or person with a disability to alarm by conveying a threat to wrongfully take or appropriate  
27 money or property, which threat reasonably would be expected to cause the elderly person or person  
28 with a disability to believe that the threat will be carried out.

29 (h) Sexual contact with a nonconsenting elderly person or person with a disability or with an  
30 elderly person or person with a disability considered incapable of consenting to a sexual act as de-  
31 scribed in ORS 163.315. As used in this paragraph, "sexual contact" has the meaning given that term

**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 in ORS 163.305.

2 (i) **Telephone solicitation in violation of ORS 646.563 or 646.569 if the telephone solici-**  
3 **tation is targeted at an elderly person or person with a disability or the telephone solicitation**  
4 **victimized 10 or more elderly persons or persons with disabilities.**

5 (2) “Declaration under penalty of perjury” means a declaration under penalty of perjury in the  
6 form required by ORCP 1 E.

7 (3) “Elderly person” means any person 65 years of age or older.

8 (4) “Guardian petitioner” means a guardian or guardian ad litem for an elderly person or a  
9 person with a disability who files a petition under ORS 124.005 to 124.040 on behalf of the elderly  
10 person or person with a disability.

11 (5) “Interfere” means to interpose in a way that hinders or impedes.

12 (6) “Intimidate” means to compel or deter conduct by a threat.

13 (7) “Menace” means to act in a threatening manner.

14 (8) “Molest” means to annoy, disturb or persecute with hostile intent or injurious effect.

15 (9) “Person with a disability” means a person described in:

16 (a) ORS 410.040 (7); or

17 (b) ORS 410.715.

18 (10) “Petitioner” means an elderly person or a person with a disability who files a petition under  
19 ORS 124.005 to 124.040.

20 (11) “Sweepstakes” means:

21 (a) A procedure for awarding a prize that is based on chance;

22 (b) A procedure in which a person is required to purchase anything, pay anything of value or  
23 make a donation as a condition of winning a prize or of receiving or obtaining information about a  
24 prize; or

25 (c) A procedure that is advertised in a way that creates a reasonable impression that a payment  
26 of anything of value, purchase of anything or making a donation is a condition of winning a prize  
27 or receiving or obtaining information about a prize.

28 (12) “Sweepstakes promotion” means an offer to participate in a sweepstakes.

29 (13) **“Telephone solicitation” has the meaning given that term in ORS 646.561 or 646.567.**

30 **SECTION 2.** ORS 124.020 is amended to read:

31 124.020. (1) When a petitioner or guardian petitioner files a petition under ORS 124.010, the  
32 circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed  
33 or on the following judicial day. Upon a showing that the elderly person or person with a disability  
34 named in the petition has been the victim of abuse committed by the respondent within 180 days  
35 preceding the filing of the petition and that there is an immediate and present danger of further  
36 abuse to the person, the court shall, if requested by the petitioner or guardian petitioner, order, for  
37 a period of one year or until the order is withdrawn or amended, whichever is sooner:

38 (a) That the respondent be required to move from the residence of the elderly person or person  
39 with a disability, if in the sole name of the person or if jointly owned or rented by the person and  
40 the respondent, or if the parties are married to each other;

41 (b) That a peace officer accompany the party who is leaving or has left the parties’ residence  
42 to remove essential personal effects of the party;

43 (c) That the respondent be restrained from abusing, intimidating, molesting, interfering with or  
44 menacing the elderly person or person with a disability, or attempting to abuse, intimidate, molest,  
45 interfere with or menace the person;

1 (d) That the respondent be restrained from entering, or attempting to enter, on any premises  
 2 when it appears to the court that such restraint is necessary to prevent the respondent from abus-  
 3 ing, intimidating, molesting, interfering with or menacing the elderly person or person with a disa-  
 4 bility;

5 (e) That the respondent be:

6 (A) Restrained, effective on a date not less than 150 days from the date of the order, from  
 7 mailing the elderly person or person with a disability any sweepstakes promotion;

8 (B) Required to remove the elderly person or person with a disability from the respondent's  
 9 sweepstakes promotion mailing list or place the person on a list of persons to whom sweepstakes  
 10 promotions may not be mailed; and

11 (C) Required to promptly refund any payment received in any form from the elderly person or  
 12 person with a disability after the date the order is entered by the court; [*or*]

13 **(f) That the respondent be restrained from making any telephone solicitation to the el-**  
 14 **derly person or person with a disability, be required to remove the elderly person or person**  
 15 **with a disability from the respondent's call list or to place the elderly person or person with**  
 16 **a disability on a list of persons to whom telephone solicitations may not be made, and be**  
 17 **required to promptly refund any payment received in any form from the elderly person or**  
 18 **person with a disability after the date the order is entered by the court; or**

19 [*f*] (g) Except as provided in subsection (2) of this section, other relief that the court considers  
 20 necessary to provide for the safety and welfare of the elderly person or person with a disability.

21 (2)(a) If the court finds that the elderly person or person with a disability has been the victim  
 22 of abuse as defined in ORS 124.005 (1)(g), the court may order only relief that the court considers  
 23 necessary to prevent or remedy the wrongful taking or appropriation of the money or property of  
 24 the person, including but not limited to:

25 (A) Directing the respondent to refrain from exercising control over the money or property of  
 26 the person;

27 (B) Requiring the respondent to return custody or control of the money or property of the per-  
 28 son to the person;

29 (C) Requiring the respondent to follow the instructions of the guardian or conservator of the  
 30 person; or

31 (D) Prohibiting the respondent from transferring the money or property of the elderly person  
 32 or person with a disability to any person other than the elderly person or person with a disability.

33 (b) The court may not use a restraining order issued under ORS 124.005 to 124.040:

34 (A) To allow any person other than the elderly person or person with a disability to assume  
 35 responsibility for managing any of the money or property of the elderly person or person with a  
 36 disability; or

37 (B) For relief that is more appropriately obtained in a protective proceeding filed under ORS  
 38 chapter 125 including, but not limited to, giving control and management of the financial accounts  
 39 or property of the elderly person or person with a disability for any purpose other than the relief  
 40 granted under paragraph (a) of this subsection.

41 (3) The showing required under subsection (1) of this section may be made by testimony of:

42 (a) The elderly person or person with a disability;

43 (b) The guardian or guardian ad litem of the elderly person or person with a disability;

44 (c) Witnesses to the abuse; or

45 (d) Adult protective services workers who have conducted an investigation.

1 (4) Immediate and present danger under this section includes but is not limited to situations in  
 2 which the respondent has recently threatened the elderly person or person with a disability with  
 3 additional abuse.

4 (5) When a guardian petitioner files a petition on behalf of an elderly person or a person with  
 5 a disability, the guardian petitioner shall provide information about the person and not about the  
 6 guardian petitioner where the petition, order or related forms prescribed under subsection (6) of this  
 7 section require information about the petitioner.

8 (6) The State Court Administrator shall prescribe the content and form of the petition, order and  
 9 related forms for use under ORS 124.005 to 124.040. The clerk of the court shall make available the  
 10 forms and an instruction brochure.

11 (7) If the court orders relief:

12 (a) The clerk of the court shall provide without charge the number of certified true copies of  
 13 the petition and order necessary to effect service and shall have a true copy of the petition and  
 14 order delivered to the county sheriff for service upon the respondent, unless the court finds that  
 15 further service is unnecessary because the respondent appeared in person before the court.

16 (b) The county sheriff shall serve the respondent personally unless the petitioner or guardian  
 17 petitioner elects to have the respondent served personally by a private party or by a peace officer  
 18 who is called to the scene of a domestic disturbance at which the respondent is present, and who  
 19 is able to obtain a copy of the order within a reasonable amount of time. Proof of service shall be  
 20 made in accordance with ORS 124.030.

21 (c) A respondent accused of committing abuse by means of a sweepstakes promotion may be  
 22 served:

23 (A) Personally;

24 (B) By mailing certified true copies of the petition and order by certified mail to the address to  
 25 which the elderly person or person with a disability would have sent the payment for goods or ser-  
 26 vices promoted in the sweepstakes promotion had the elderly person or person with a disability been  
 27 ordering the goods or services; or

28 (C) In the manner directed by the court.

29 **(d) A respondent accused of committing abuse by means of telephone solicitation may**  
 30 **be served:**

31 **(A) Personally;**

32 **(B) By mailing certified true copies of the petition and order by certified mail to the At-**  
 33 **torney General; or**

34 **(C) In the manner directed by the court.**

35 [(d)] (e) No filing fee, service fee or hearing fee shall be charged for proceedings seeking only  
 36 the relief provided under ORS 124.005 to 124.040.

37 (8) If the county sheriff:

38 (a) Determines that the order and petition are incomplete, the order and petition shall be re-  
 39 turned to the clerk of the court. The clerk of the court shall notify the petitioner or guardian  
 40 petitioner, at the address provided by the petitioner or guardian petitioner, of the error or omission.

41 (b) After accepting the order and petition, cannot complete service within 10 days, the sheriff  
 42 shall notify the petitioner or guardian petitioner, at the address provided by the petitioner or  
 43 guardian petitioner, that the documents have not been served. If the petitioner or guardian  
 44 petitioner does not respond within 10 days, the county sheriff shall hold the order and petition for  
 45 future service and file a return to the clerk of the court showing that service was not completed.

1 (9)(a) Within 30 days after a restraining order is served on the respondent under this section  
 2 or within 30 days after notice is served on the elderly person or person with a disability under ORS  
 3 124.024, the respondent, elderly person or person with a disability may request a court hearing upon  
 4 any relief granted. The hearing request form shall be available from the clerk of the court in the  
 5 form prescribed by the State Court Administrator.

6 (b) If the respondent, elderly person or person with a disability requests a hearing under para-  
 7 graph (a) of this subsection, the clerk of the court shall notify the petitioner or guardian petitioner  
 8 of the date and time of such hearing, and shall supply the petitioner or guardian petitioner with a  
 9 copy of the request for a hearing. The petitioner or guardian petitioner shall give to the clerk of the  
 10 court information sufficient to allow such notification.

11 (c) The hearing is not limited to the issues raised in the request for hearing form and may in-  
 12 clude testimony from witnesses to the abuse and adult protective services workers. The hearing may  
 13 be held in person or by telephone. If the respondent, elderly person or person with a disability seeks  
 14 to raise an issue at the hearing not previously raised in the request for hearing form, the petitioner  
 15 or guardian petitioner is entitled to a reasonable continuance for the purpose of preparing a re-  
 16 sponse to the issue.

17 (d) The court shall exercise its discretion in a manner that protects the elderly person or person  
 18 with a disability from traumatic confrontation with the respondent.

19 **SECTION 3.** ORS 124.110 is amended to read:

20 124.110. (1) An action may be brought under ORS 124.100 for financial abuse in the following  
 21 circumstances:

22 (a) When a person wrongfully takes or appropriates money or property of a vulnerable person,  
 23 without regard to whether the person taking or appropriating the money or property has a fiduciary  
 24 relationship with the vulnerable person.

25 (b) When a vulnerable person requests that another person transfer to the vulnerable person any  
 26 money or property that the other person holds or controls and that belongs to or is held in express  
 27 trust, constructive trust or resulting trust for the vulnerable person, and the other person, without  
 28 good cause, either continues to hold the money or property or fails to take reasonable steps to make  
 29 the money or property readily available to the vulnerable person when:

30 (A) The ownership or control of the money or property was acquired in whole or in part by the  
 31 other person or someone acting in concert with the other person from the vulnerable person; and

32 (B) The other person acts in bad faith, or knew or should have known of the right of the vul-  
 33 nerable person to have the money or property transferred as requested or otherwise made available  
 34 to the vulnerable person.

35 (c) When a person has at any time engaged in conduct constituting a violation of a restraining  
 36 order regarding sweepstakes **or telephone solicitation** that was issued under ORS 124.020.

37 (2) A transfer of money or property that is made for the purpose of qualifying a vulnerable  
 38 person for Medicaid benefits or for any other state or federal assistance program, or the holding and  
 39 exercise of control over money or property after such a transfer, does not constitute a wrongful  
 40 taking or appropriation under subsection (1)(a) of this section or the holding of money or property  
 41 without good cause for the purposes of subsection (1)(b) of this section.