

# House Bill 2383

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

## 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**.

Requires telephonic seller that solicits purchase of business opportunity to make certain disclosures before completing transaction.

Becomes operative 91 days after effective date.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to telephone solicitations; creating new provisions; amending ORS 646.551; and declaring  
3 an emergency.

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

5 **SECTION 1.** ORS 646.551 is amended to read:

6 646.551. As used in ORS 646.551 to 646.557[, *unless the context requires otherwise*]:

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

8 (A) **A seller solicits a prospective purchaser to enter into a new business or to buy an-**  
9 **cillary services within 60 days after entering into a new business;**

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

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

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

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

19 (b) **“Business opportunity” does not include:**

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

22 (B) **A sale of sales demonstration equipment, materials or samples for a total price of**  
23 **\$500 or less and not for profit; or**

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

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

29 (ii) **No written document exists that describes any material term or aspect of the fran-**  
30 **chise arrangement.**

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

3       **(a) A person has telephonic contact with a prospective purchaser and solicits the pro-**  
 4 **spective purchaser to purchase a business opportunity;**

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

7       **(A) That a prospective purchaser who buys a unit of a good or service will receive addi-**  
 8 **tional units, whether or not of the same type as the purchaser bought, without further cost.**  
 9 **As used in this subparagraph, “further cost” does not include actual postage or common**  
 10 **carrier delivery charges, if any.**

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

13       **(i) Purchases or rents goods or services; or**

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

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

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

20       **(E) That goods or services are manufactured or supplied by a person other than the ac-**  
 21 **tual manufacturer or supplier.**

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

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

28       **[(1)] (3)(a) “Telephonic seller” means a person who, on the person’s own behalf, or on behalf of**  
 29 **another person, causes or attempts [to cause] a telephone solicitation [to be made under the following**  
 30 **circumstances:].**

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

33       **[(A) That a prospective purchaser who buys one or more goods or services unit will receive addi-**  
 34 **tional units, whether or not of the same type as purchased, without further cost. As used in this sub-**  
 35 **paragraph, “further cost” does not include actual postage or common carrier delivery charges, if any;]**

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

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

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

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

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

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

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

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

6        [(2) **(b)** “Telephonic seller” does not include any of the following:

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

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

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

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

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

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

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

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

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

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

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

38        [(j) **(J)** Any supervised financial institution or parent, subsidiary, or affiliate *[thereof]* **of a**  
 39 **supervised financial institution.** As used in this *[paragraph]* **subparagraph**, “supervised financial  
 40 institution” means any financial institution or trust company, as those terms are defined in ORS  
 41 706.008, or any personal property broker, consumer finance lender, commercial finance lender or  
 42 insurer that is subject to regulation by an official or agency of this state or the United States.

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

45        (L) A person *[soliciting]* **that solicits** the sale of services *[provided by]* **that** a cable television

1 system *[operating]* **provides** under authority of a franchise or permit issued by a governmental  
2 agency of this state[,] or a subdivision *[thereof]* **of a governmental agency of this state.**

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

6 *[(n)]* **(N)** A person *[soliciting]* **that solicits** the sale of a farm product, as defined in ORS 79.0102,  
7 if the solicitation does not result in a sale *[which]* **that** costs the purchaser *[in excess of]* **more than**  
8 \$100.

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

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

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

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

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

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