

# Chapter 646

2007 EDITION

## Trade Practices and Antitrust Regulation

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**PRICE DISCRIMINATION IN  
COMMERCE AND FOOD COMMERCE**

**646.010 Designation and scope of ORS 646.010 to 646.180.** ORS 646.010 to 646.180 shall be known and designated as the Anti-price Discrimination Law; and the inhibitions against discrimination in those sections shall embrace any scheme of special concessions or rebates, any collateral contracts or agreements or any device of any nature whereby discrimination is, in substance or fact, effected in violation of the spirit and intent of ORS 646.010 to 646.180.

**646.020 Definitions and explanations.**

(1) When used in ORS 646.010 to 646.180, unless the context otherwise requires:

(a) "Commerce" means trade or commerce within this state, exclusive of food commerce.

(b) "Food commerce" means trade or commerce within this state in articles of food for human consumption and such other articles as usually are sold in food stores in connection with articles of food for human consumption. In the case of persons selling items other than items of food commerce, the term "food commerce" is restricted solely to such items of food commerce as are defined in this paragraph.

(c) "Person" means individual, corporation, partnership, association, joint stock company, business trust or unincorporated organization.

(d) "Price" means the net price to the buyer after the deduction of all discounts, rebates, or other price concessions paid or allowed by the seller.

(e) "Replacement cost" means the cost per unit at the retail outlet at which the merchandise sold or offered for sale could have been bought by the seller at any time within 10 days prior to the date of sale or the date upon which it is offered for sale by the seller, if bought in the same quantities as the seller's usual or customary purchase of such merchandise, after deducting all discounts, rebates or other price concessions.

(f) "Retailer in food commerce" means any person engaged in food commerce who sells directly to the consumer for use.

(g) "Wholesaler in food commerce" means any person engaged in food commerce other than a retailer or producer, manufacturer or processor.

(2) As used in ORS 646.010 to 646.180, "vendor" includes any person who performs work upon, renovates, alters or improves any personal property belonging to another person.

**646.030 Application to cooperative associations.** ORS 646.010 to 646.180 shall not prevent a cooperative association from returning to its members, producers or consumers the whole, or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to or through the association.

**646.040 Price discrimination prohibited; price differentials.** (1) It is unlawful for any person engaged in commerce or food commerce, or both, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities, or services or output of a service trade, of like grade and quality or to discriminate in price between different sections, communities or cities or portions thereof or between different locations in sections, communities, cities or portions thereof in this state, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them.

(2) Subsection (1) of this section does not prevent:

(a) Differentials which make only due allowance for differences in the cost of manufacture, sale or delivery, resulting from the differing methods or quantities in which the commodities are sold or delivered to purchasers.

(b) Persons engaged in selling goods, wares or merchandise, or service or output of a service trade, in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

(c) Price changes from time to time where in response to changing conditions affecting the market for or marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

**646.050 Establishing prima facie case of discrimination; justification of discrimination.** Upon proof being made, in any suit or other proceeding in which any violation of ORS 646.010 to 646.180 is at issue, that there has been discrimination in price, or in services or facilities furnished, or in payment for services or facilities rendered or to be rendered, the burden of rebutting the prima facie case thus made by showing justification is upon the person charged with the violation; but this section does not pre-

vent a seller rebutting the prima facie case so made by showing that the lower price of the seller, or the payment for or furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor or the services or facilities furnished by a competitor.

**646.060 Commissions and allowances.**

No person engaged in commerce or food commerce, or both, in the course of such commerce, shall pay, grant, receive or accept anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, service, or output of a service trade, or merchandise. In all such transactions of sale and purchase, neither party to the transaction shall pay or grant anything of value as a commission, brokerage or other compensation, or any allowance or discount in lieu thereof, to the other party to the transaction or to any agent, representative or other intermediary therein, where such agent, representative or other intermediary is acting for or in behalf of or is subject to the direct or indirect control of the other party to the transaction.

**646.070 Special payments to customers.** No person engaged in commerce or food commerce, or both, in the course of such commerce, shall pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale or offering for sale of any products or commodities manufactured, service or output of a service trade, sold or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities, or service, or output of service trades.

**646.080 Special services to customers.**

No person engaged in commerce or food commerce, or both, in the course of such commerce, shall discriminate in favor of one purchaser against another purchaser or purchasers of a commodity, or service, or output of a service trade, bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of any services or facilities connected with the processing, handling, sale or offering for sale of such commodity, or service, or output of a service trade, purchased upon terms not accorded to all purchasers on proportionally equal terms.

**646.090 Inducing or receiving price discrimination prohibited.** No person engaged in commerce or food commerce, or both, in the course of such commerce, shall knowingly induce or receive a discrimination in price which is prohibited by ORS 646.040 to 646.080.

**646.100** [Amended by 1963 s.s. c.2 §3; repealed by 1975 c.255 §17]

**646.105** [1963 s.s. c.2 §2; repealed by 1975 c.255 §17]

**646.110** [Repealed by 1975 c.255 §17]

**646.120** [Repealed by 1975 c.255 §17]

**646.130 Cost surveys as evidence.**

Where a particular trade or industry, of which the person, firm or corporation complained against is a member, has an established cost survey for the locality and vicinity in which the offense is committed, such cost survey is competent evidence to be used in proving the costs of the person, firm or corporation complained against within the provisions of ORS 646.010 to 646.180.

**646.140 Enjoining violations; treble damages; attorney fees; limitation on commencement of actions.**

(1) Any person injured by any violation, or who will suffer injury from any threatened violation, of ORS 646.010 to 646.180 may maintain an action in any court of general equitable jurisdiction of this state, to prevent, restrain or enjoin the violation or threatened violation. If in such action, a violation or threatened violation of ORS 646.010 to 646.180 is established, the court shall enjoin and restrain or otherwise prohibit such violation or threatened violation, and the plaintiff in the action is entitled to recover three-fold the damages sustained by the plaintiff. Except as provided in subsection (2) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(2) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (1) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(3) Actions brought under this section shall be commenced within four years from the date of the injury. [Amended by 1981 c.897 §75; 1983 c.467 §2; 1995 c.696 §33]

**646.150 Action for damages.** If no injunctive relief is sought or required, any person injured by any violation of ORS 646.010 to 646.180 may maintain an action for damages alone in any court of general jurisdiction in this state. The measure of damages in such action shall be the same as that prescribed by ORS 646.140.

**646.160 Presumption of damages.** In any proceedings instituted or action brought in pursuance of the provisions of ORS 646.140 or 646.150, the plaintiff, upon proof that the plaintiff has been unlawfully discriminated against by the defendant, shall conclusively be presumed to have sustained damages equal to the monetary amount or equivalent of the unlawful discrimination; and, in addition thereto, may establish such further damages, if any, as the plaintiff may have sustained as a result of the discrimination.

**646.170 Requiring defendant to testify.** Any defendant in an action brought under the provisions of ORS 646.140 to 646.160 may be required to testify under the provisions of ORCP 65 or by deposition. In addition, the books and records of any such defendant may be brought into court and introduced, by reference, into evidence. No information so obtained may be used against the defendant as a basis for a criminal prosecution under ORS 646.990 (1). [Amended by 1979 c.284 §184; 1981 c.898 §52]

**646.180 Illegal contracts.** Any contract, express or implied, made by any person in violation of any of the provisions of ORS 646.010 to 646.180 is an illegal contract and no recovery thereon shall be had.

**646.185** [Formerly 646.200; 2001 c.639 §1; renumbered 646A.010 in 2007]

**646.187** [1999 c.194 §3; renumbered 646A.012 in 2007]

**646.189** [1999 c.194 §4; 2001 c.639 §2; 2003 c.576 §528; renumbered 646A.014 in 2007]

**646.191** [1999 c.194 §5; renumbered 646A.016 in 2007]

**646.193** [1999 c.194 §6; renumbered 646A.018 in 2007]

**646.195** [1999 c.194 §7; renumbered 646A.020 in 2007]

**646.200** [1989 c.273 §1; 1993 c.645 §§1,1a; 1995 c.713 §1; 1995 c.759 §1; 1997 c.132 §5; 1997 c.631 §507; 1999 c.194 §1; renumbered 646.185 in 1999]

**646.202** [1989 c.273 §2; 1993 c.645 §2; 1995 c.713 §7; repealed by 1997 c.132 §8]

**646.203** [1997 c.132 §1; repealed by 1999 c.194 §13]

**646.204** [1989 c.273 §3; 1993 c.645 §§3,3a; 1995 c.79 §327; 1995 c.713 §2; repealed by 1997 c.132 §8]

**646.205** [1997 c.132 §2; repealed by 1999 c.194 §13]

**646.206** [1989 c.273 §4; 1995 c.713 §8; repealed by 1997 c.132 §8]

**646.207** [1997 c.132 §3; repealed by 1999 c.194 §13]

**646.208** [1989 c.273 §5; 1995 c.713 §3; repealed by 1997 c.132 §8]

**646.209** [1997 c.132 §4; repealed by 1999 c.194 §13]

**646.210** [Repealed by 1971 c.744 §27]

**646.212** [1989 c.273 §6; 1993 c.645 §4; 1995 c.713 §4; repealed by 1997 c.132 §8]

**646.214** [1993 c.645 §6; 1995 c.713 §9; repealed by 1997 c.132 §8]

**646.216** [1993 c.645 §§7,7a; 1995 c.713 §5; repealed by 1997 c.132 §8]

**646.217** [1995 c.713 §11; repealed by 1997 c.132 §8]

**646.218** [1993 c.645 §§8,9; repealed by 1997 c.132 §8]

**646.220** [Repealed by 1971 c.744 §27]

**646.221** [1991 c.465 §1; renumbered 646A.340 in 2007]

**646.225** [1991 c.465 §2; renumbered 646A.342 in 2007]

**646.229** [1991 c.465 §3; 2005 c.384 §1; renumbered 646A.344 in 2007]

**646.230** [Repealed by 1971 c.744 §27]

**646.235** [1991 c.465 §4; renumbered 646A.346 in 2007]

**646.240** [1991 c.465 §5; 1995 c.696 §34; 2005 c.384 §2; renumbered 646A.348 in 2007]

**646.245** [1993 c.283 §1; renumbered 646A.120 in 2007]

**646.247** [1993 c.283 §2; renumbered 646A.122 in 2007]

**646.249** [1993 c.283 §3; renumbered 646A.124 in 2007]

**646.251** [1993 c.283 §4; renumbered 646A.126 in 2007]

**646.253** [1993 c.283 §5; renumbered 646A.128 in 2007]

**646.255** [1993 c.283 §§6,7; renumbered 646A.130 in 2007]

**646.257** [1993 c.283 §8; renumbered 646A.132 in 2007]

**646.259** [1993 c.283 §9; renumbered 646A.134 in 2007]

**646.260** [Repealed by 1975 c.255 §17]

**646.263** [1995 c.801 §1; renumbered 646A.150 in 2007]

**646.265** [1995 c.801 §2; renumbered 646A.152 in 2007]

**646.267** [1995 c.801 §3; 2005 c.395 §1; renumbered 646A.154 in 2007]

**646.269** [1995 c.801 §4; renumbered 646A.156 in 2007]

**646.270** [Repealed by 1975 c.255 §17]

**646.271** [1995 c.801 §5; renumbered 646A.158 in 2007]

**646.273** [1995 c.801 §9; renumbered 646A.160 in 2007]

**646.275** [1995 c.801 §10; renumbered 646A.162 in 2007]

**646.277** [1995 c.801 §11; renumbered 646A.164 in 2007]

**646.279** [1995 c.801 §12; renumbered 646A.166 in 2007]

**646.280** [Repealed by 1975 c.255 §17]

**646.281** [1995 c.801 §13; renumbered 646A.168 in 2007]

**646.283** [1995 c.801 §14; renumbered 646A.170 in 2007]

**646.285** [1995 c.801 §15; renumbered 646A.172 in 2007]

**646.290** [Repealed by 1975 c.255 §17]

**646.291** [1997 c.72 §1; renumbered 646A.280 in 2007]

**646.293** [1997 c.72 §2; renumbered 646A.282 in 2007]

**646.295** [1973 c.491 §2; repealed by 1975 c.255 §17]

**646.296** [1997 c.72 §3; renumbered 646A.284 in 2007]

**646.298** [1997 c.72 §4; renumbered 646A.286 in 2007]

**646.300** [1997 c.72 §5; renumbered 646A.288 in 2007]

**646.302** [1997 c.72 §6; renumbered 646A.290 in 2007]

**646.310** [Repealed by 1975 c.92 §1 and by 1975 c.255 §17]

**646.315** [1983 c.469 §1; 1985 c.16 §468; 1987 c.476 §1; 1989 c.171 §74; 1989 c.202 §1; 2007 c.382 §1; renumbered 646A.400 in 2007]

**646.320** [Repealed by 1975 c.92 §1 and by 1975 c.255 §17]

**646.325** [1983 c.469 §2; 1987 c.476 §6; renumbered 646A.402 in 2007]

**646.330** [Repealed by 1975 c.92 §1 and by 1975 c.255 §17]

**646.335** [1983 c.469 §3; 1987 c.476 §2; renumbered 646A.404 in 2007]

**646.340** [Repealed by 1975 c.92 §1 and by 1975 c.255 §17]

**646.345** [1983 c.469 §4; renumbered 646A.406 in 2007]

**646.350** [Repealed by 1975 c.92 §1 and by 1975 c.255 §17]

**646.355** [1983 c.469 §5; renumbered 646A.408 in 2007]

**646.357** [1987 c.476 §4; renumbered 646A.410 in 2007]

**646.359** [1987 c.476 §5; 1995 c.618 §96; 1999 c.346 §1; renumbered 646A.412 in 2007]

**646.360** [Repealed by 1975 c.92 §1 and by 1975 c.255 §17]

**646.361** [1987 c.476 §7; renumbered 646A.414 in 2007]

**646.365** [1983 c.469 §6; renumbered 646A.416 in 2007]

**646.370** [Repealed by 1975 c.92 §1 and by 1975 c.255 §17]

**646.375** [1983 c.469 §7; renumbered 646A.418 in 2007]

**646.380** [1993 c.582 §1; renumbered 646A.250 in 2007]

**646.382** [1993 c.582 §§2,2a; 1997 c.631 §509; 2001 c.300 §77; 2001 c.377 §44; 2007 c.319 §30; renumbered 646A.252 in 2007]

**646.384** [1993 c.582 §3; 2001 c.289 §1; renumbered 646A.254 in 2007]

**646.386** [1993 c.582 §4; 1997 c.631 §510; 2005 c.21 §2; renumbered 646A.256 in 2007]

**646.388** [1993 c.582 §5; 1997 c.631 §511; renumbered 646A.258 in 2007]

**646.390** [1993 c.582 §6; 1997 c.631 §512; renumbered 646A.260 in 2007]

**646.392** [1993 c.582 §7; renumbered 646A.262 in 2007]

**646.394** [1993 c.582 §8; renumbered 646A.264 in 2007]

**646.396** [1993 c.582 §§9,10; 2005 c.338 §7; renumbered 646A.266 in 2007]

**646.397** [2005 c.338 §5; renumbered 646A.268 in 2007]

**646.398** [2005 c.338 §6; renumbered 646A.270 in 2007]

**646.400** [2001 c.969 §1; 2003 c.655 §80; renumbered 646A.050 in 2007]

**646.402** [2001 c.969 §2; 2003 c.655 §81; 2005 c.41 §§7,8; renumbered 646A.052 in 2007]

**646.404** [2001 c.969 §3; renumbered 646A.054 in 2007]

**646.410** [Repealed by 1975 c.255 §17]

**646.415** [1983 c.551 §1; 1993 c.406 §1; 2003 c.466 §1; renumbered 646A.300 in 2007]

**646.419** [1989 c.404 §2; renumbered 646A.302 in 2007]

**646.420** [Repealed by 1975 c.255 §17]

**646.425** [1983 c.551 §2; 1991 c.83 §5; 1993 c.406 §6; 2003 c.466 §2; renumbered 646A.304 in 2007]

**646.430** [Repealed by 1975 c.255 §17]

**646.435** [1983 c.551 §3; 1993 c.406 §7; renumbered 646A.306 in 2007]

**646.440** [Repealed by 1975 c.255 §17]

**646.445** [1983 c.551 §4; 1993 c.406 §8; 2003 c.466 §3; renumbered 646A.308 in 2007]

**646.447** [1993 c.406 §3; 2003 c.466 §4; renumbered 646A.310 in 2007]

**646.449** [1993 c.406 §4; 2003 c.466 §5; renumbered 646A.312 in 2007]

**646.450** [Repealed by 1975 c.255 §17]

**646.451** [1993 c.406 §5; 2003 c.466 §6; 2003 c.598 §47a; renumbered 646.459 in 2003]

**646.452** [2003 c.466 §8; renumbered 646A.314 in 2007]

**646.453** [2003 c.466 §10; renumbered 646A.316 in 2007]

**646.454** [2003 c.466 §9; renumbered 646A.318 in 2007]

**646.455** [1983 c.551 §5; repealed by 2003 c.466 §12]

**646.456** [2003 c.466 §11; renumbered 646A.320 in 2007]

**646.459** [Formerly 646.451; renumbered 646A.322 in 2007]

**646.460** [Repealed by 1975 c.255 §17]

## TRADE SECRETS

**646.461 Definitions for ORS 646.461 to 646.475.** As used in ORS 646.461 to 646.475, unless the context otherwise requires:

(1) “Improper means” includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy or espionage through electronic or other means. Reverse engineering and independent development alone shall not be considered improper means.

(2) “Misappropriation” means:

(a) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means;

(b) Disclosure or use of a trade secret of another without express or implied consent by a person who used improper means to acquire knowledge of the trade secret;

(c) Disclosure or use of a trade secret of another without express or implied consent by a person who, before a material change of position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake; or

(d) Disclosure or use of a trade secret of another without express or implied consent by a person, who at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was:

(A) Derived from or through a person who had utilized improper means to acquire it;

(B) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(C) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use.

(3) “Person” means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency or any other legal or commercial entity.

(4) “Trade secret” means information, including a drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. [1987 c.537 §2]

**646.463 Enjoining misappropriation; payment of royalties; affirmative acts.** (1) Actual or threatened misappropriation may be temporarily, preliminarily or permanently enjoined. Upon application to the court, an injunction shall be vacated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of the misappropriation that renders a prohibitive injunction inequitable.

(3) In appropriate circumstances, the court may order affirmative acts to protect a trade secret. [1987 c.537 §3]

**646.465 Damages for misappropriation.**

(1) A complainant is entitled to recover damages adequate to compensate for misappropriation, unless a material and prejudicial change of position by a defendant prior to acquiring knowledge or reason to know of the misappropriation renders a monetary recovery inequitable.

(2) Damages may include both the actual loss caused by misappropriation, and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss, but shall not be less than a reasonable royalty for the unauthorized disclosure or use of a trade secret.

(3) Upon a finding of willful or malicious misappropriation, punitive damages may be awarded in an amount not exceeding twice any award made under subsections (1) and (2) of this section. [1987 c.537 §4]

**646.467 Attorney fees.** The court may award reasonable attorney fees to the prevailing party if:

(1) A claim of misappropriation is made in bad faith;

(2) A motion to terminate an injunction is made or resisted in bad faith; or

(3) Willful or malicious misappropriation is found by the court or jury. [1987 c.537 §5]

**646.469 Preservation of trade secret by court; methods.** In any action brought under ORS 646.461 to 646.475, the court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing the records of the action or

ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval. [1987 c.537 §6]

**646.471 Limitation on commencement of action.** An action for misappropriation must be brought within three years after the misappropriation is discovered or by the exercise of reasonable diligence should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim. [1987 c.537 §7]

**646.473 Conflicting tort, restitution or other law providing civil remedies; exclusions for certain other remedies; limited immunity for public bodies and officers, employees and agents.** (1) Except as provided in subsection (2) of this section, ORS 646.461 to 646.475 supersede conflicting tort, restitution or other law of Oregon providing civil remedies for misappropriation of a trade secret.

(2) ORS 646.461 to 646.475 shall not affect:

(a) Contractual remedies, whether or not based upon misappropriation of a trade secret;

(b) Other civil remedies that are not based upon misappropriation of a trade secret;

(c) Criminal remedies, whether or not based upon misappropriation of a trade secret; or

(d) Any defense, immunity or limitation of liability afforded public bodies, their officers, employees or agents under ORS 30.260 to 30.300.

(3) Notwithstanding any other provision in ORS 646.461 to 646.475, public bodies and their officers, employees and agents are immune from any claim or action for misappropriation of a trade secret that is based on the disclosure or release of information in obedience to or in good faith reliance on any order of disclosure issued pursuant to ORS 192.410 to 192.490 or on the advice of an attorney authorized to advise the public body, its officers, employees or agents. [1987 c.537 §8]

**646.475 Application and construction of ORS 646.461 to 646.475; short title; effect of invalidity.** (1) ORS 646.461 to 646.475 shall be applied and construed to effectuate their general purpose to make uniform the law with respect to the subject of ORS 646.461 to 646.475 among states enacting them.

(2) ORS 646.461 to 646.475 may be cited as the Uniform Trade Secrets Act.

(3) If any provision of ORS 646.461 to 646.475 or its application to any person or circumstances is held invalid, the invalidity

shall not affect other provisions or applications of ORS 646.461 to 646.475 which can be given effect without the invalid provision or application, and to this end the provisions of ORS 646.461 to 646.475 are severable. [1987 c.537 §§9,10,11]

**646.482** [1997 c.562 §1; 1999 c.81 §1; 2007 c.70 §281; renumbered 646A.460 in 2007]

**646.484** [1997 c.562 §2; renumbered 646A.462 in 2007]

**646.486** [1997 c.562 §3; renumbered 646A.464 in 2007]

**646.488** [1997 c.562 §4; renumbered 646A.466 in 2007]

**646.490** [1997 c.562 §5; renumbered 646A.468 in 2007]

**646.492** [1997 c.562 §6; renumbered 646A.470 in 2007]

**646.494** [1997 c.562 §7; renumbered 646A.472 in 2007]

**646.496** [1997 c.562 §8; renumbered 646A.474 in 2007]

**646.498** [1997 c.562 §9; 2001 c.542 §8; 2003 c.14 §392; renumbered 646A.476 in 2007]

**646.500** [2001 c.767 §1; renumbered 646A.500 in 2007]

**646.501** [2001 c.767 §2; renumbered 646A.502 in 2007]

**646.502** [2001 c.767 §3; renumbered 646A.504 in 2007]

**646.503** [2001 c.767 §§4,8; renumbered 646A.506 in 2007]

**646.504** [2001 c.767 §§5,9; renumbered 646A.508 in 2007]

**646.505** [2001 c.767 §6; renumbered 646A.510 in 2007]

**646.506** [2001 c.767 §7; renumbered 646A.512 in 2007]

**646.507** [2001 c.767 §10; renumbered 646A.514 in 2007]

**646.510** [Repealed by 1953 c.391 §2]

### PRODUCERS' COOPERATIVE BARGAINING ASSOCIATIONS

**646.515 Definitions for ORS 646.515 to 646.545.** As used in ORS 646.515 to 646.545, unless the context requires otherwise:

(1) "Agricultural commodity" means any and all agricultural, horticultural, viticultural and vegetable products produced in this state, either in their natural state or as processed by a producer for the purpose of marketing such product, including bees and honey, but not including timber or timber products.

(2) "Cooperative bargaining association" means:

(a) An association of producers formed or operated pursuant to ORS chapter 62 with the purpose of group bargaining with respect to the sale of any agricultural commodity or Oregon seafood commodity.

(b) A fishermen's marketing association or fishermen's trade association organized under ORS chapter 62 or 65.

(3)(a) "Dealer" means, except as provided in paragraph (b) of this subsection, any person or agent of the person who purchases or contracts to purchase an agricultural commodity or Oregon seafood commodity from a producer or agent of the producer, for the purpose of packing, processing or marketing such commodity.

(b) "Dealer" does not include any organization operating as an agricultural cooperative or Oregon seafood harvester cooperative.

(4) "Oregon seafood commodity" means any food fish as defined in ORS 506.011 over which the State Fish and Wildlife Commission has jurisdiction.

(5) "Producer" means a person engaged in the business of producing agricultural commodities or harvesting Oregon seafood commodities. [1963 c.514 §1; 1997 c.296 §1; 1997 c.393 §1; 2003 c.487 §4]

**646.520** [Repealed by 1953 c.391 §2]

**646.525 Cooperative bargaining associations authorized.** Producers shall have the right to join voluntarily and belong to cooperative bargaining associations. [1963 c.514 §2]

**646.530** [Repealed by 1953 c.391 §2]

**646.535 Unfair trade practices prohibited; exception.** (1) A dealer may not knowingly engage in the following unfair trade practices:

(a) Interfere with, restrain, coerce or boycott a producer in the exercise of the rights guaranteed pursuant to ORS 646.525;

(b) Discriminate against a producer with respect to price or other terms of purchase of raw agricultural commodities or Oregon seafood commodities, by reason of the producer's membership in or contract with cooperative bargaining associations; or

(c) Pay or loan money, or give any other thing of value to a producer as an inducement or reward for refusing to or ceasing to belong to a cooperative bargaining association.

(2) A perennial ryegrass seed, annual ryegrass seed or tall fescue seed dealer or an Oregon seafood commodity dealer who participates in negotiating committee activities described in ORS 62.848 or 62.849 does not violate subsection (1) of this section. [1963 c.514 §3; 1969 c.165 §1; 2001 c.142 §5; 2003 c.487 §5; 2005 c.290 §2]

**646.540** [Repealed by 1953 c.391 §2]

**646.545 Remedy for unfair trade practices; attorney fees.** (1) In addition to any other remedies provided by law, any producer injured by a violation of ORS 646.535 may maintain an action for damages sustained by such producer.

(2) The prevailing party in any action brought pursuant to subsection (1) of this section shall be allowed, in addition to the costs and disbursements otherwise prescribed by law, a reasonable sum for attorney fees at trial and on appeal for the prosecution or defense of such action. [1963 c.514 §§4,5; 1981 c.897 §76; 1995 c.658 §112]

**646.550** [Repealed by 1953 c.391 §2]



**TELEPHONE SOLICITATION****(Registration of Telephonic Sellers)**

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

(1) “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) “Telephonic seller” does not include any of the following:

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

(b) A person licensed pursuant to ORS chapter 696 when the transaction is governed by that chapter.

(c) A person licensed pursuant to ORS 701.026 when the solicited transaction is governed by ORS chapter 701.

(d) A person licensed pursuant to ORS chapter 744 when the solicited transaction is governed by the Insurance Code.

(e) A person soliciting the sale of a franchise when the solicited transaction is governed by ORS 650.005 to 650.100.

(f) A person primarily soliciting the sale of a subscription to or advertising in a newspaper of general circulation.

(g) A person primarily soliciting the sale of a magazine or periodical, or contractual plans, including book or record clubs:

(A) Under which the seller provides the consumer with a form 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) 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 merchandise on a periodic basis.

(h) A person soliciting business from prospective purchasers who have previously purchased from the business enterprise for which the person is calling.

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

(j) Any supervised financial institution or parent, subsidiary, or affiliate thereof. As used in this paragraph, “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) A person soliciting the sale of funeral or burial services regulated by ORS chapter 692.

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

(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) A person soliciting the sale of a farm product, as defined in ORS 79.0102, if the solicitation does not result in a sale which costs the purchaser in excess of \$100.

(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) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person's employer.

(q) A person registered under the Charitable Solicitations Act. [1989 c.622 §2; 1997 c.249 §196; 1997 c.631 §513; 1999 c.59 §188; 1999 c.402 §5; 2001 c.445 §177; 2007 c.661 §27]

**Note:** The amendments to 646.551 by section 47, chapter 836, Oregon Laws 2007, become operative July 1, 2010. See section 70, chapter 836, Oregon Laws 2007. The text that is operative on and after July 1, 2010, is set forth for the user's convenience.

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

(1) "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) "Telephonic seller" does not include any of the following:

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

(b) A person licensed pursuant to ORS chapter 696 when the transaction is governed by that chapter.

(c) A person licensed pursuant to ORS 701.021 when the solicited transaction is governed by ORS chapter 701.

(d) A person licensed pursuant to ORS chapter 744 when the solicited transaction is governed by the Insurance Code.

(e) A person soliciting the sale of a franchise when the solicited transaction is governed by ORS 650.005 to 650.100.

(f) A person primarily soliciting the sale of a subscription to or advertising in a newspaper of general circulation.

(g) A person primarily soliciting the sale of a magazine or periodical, or contractual plans, including book or record clubs:

(A) Under which the seller provides the consumer with a form 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) 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 merchandise on a periodic basis.

(h) A person soliciting business from prospective purchasers who have previously purchased from the business enterprise for which the person is calling.

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

(j) Any supervised financial institution or parent, subsidiary, or affiliate thereof. As used in this paragraph, "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) A person soliciting the sale of funeral or burial services regulated by ORS chapter 692.

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

(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) A person soliciting the sale of a farm product, as defined in ORS 79.0102, if the solicitation does not result in a sale which costs the purchaser in excess of \$100.

(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) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person's employer.

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

**646.553 Registration of telephonic sellers; fee; Attorney General as attorney for service of process; rules.** (1) A telephonic seller shall not conduct business in this state without having registered with the Department of Justice at least 10 days prior to the conduct of such business. A telephonic seller is required to register in the name under which the telephonic seller conducts business. Individual employees of the telephonic seller are not required to register. A telephonic seller is conducting business in this state if telephone solicitations of prospective purchasers are made from locations in this state or solicitation is made of prospective purchasers located in this state.

(2) A registration shall be effective for one year from the date of filing with the Department of Justice. Each application for registration, or renewal thereof, shall be accompanied by a fee of \$400.

(3) The Department of Justice shall send to each registrant a certificate or other appropriate document demonstrating registration compliance, which shall be posted at the telephonic seller's principal business location.

(4) Each application for registration shall be in writing and shall contain such information regarding the conduct of the telephonic seller's business and the personnel conducting the business and shall be submitted in such form and manner as the Department of Justice may prescribe.

(5) At the time of submission of a registration application, each telephonic seller shall file with the Attorney General an irrevocable consent appointing the Attorney General to act as the telephonic seller's attorney to receive service of process in any action, suit or proceeding against the telephonic seller or the telephonic seller's successor in interest which may arise under ORS 646.605 to 646.652.

(6) The Department of Justice may refuse to issue a registration to, and may suspend, revoke or refuse to renew the registration of, any person who:

(a) Has obtained or attempted to obtain a registration under ORS 646.551 to 646.557 by fraud or material misrepresentation;

(b) Has violated any provision of ORS 646.551 to 646.557;

(c) Has violated a provision of ORS 646.607 or 646.608;

(d) Has violated an assurance of voluntary compliance entered into under ORS 646.605 to 646.652;

(e) Is guilty of fraud or deceit, or of gross negligence, incompetency or misconduct in the person's practice of business as a telephonic seller, creating a risk of financial or other injury to the public;

(f) Has been convicted of a felony under the laws of any state or of the United States. However, such conduct may be considered only to the extent permissible under the provisions of ORS 670.280;

(g) Has been convicted of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States; or

(h) Has had the person's authority to engage in business as a telephonic seller refused, canceled, revoked, suspended or not renewed in any state.

(7) When the Department of Justice proposes to refuse to issue or renew a registration or proposes to revoke or suspend a registration, opportunity for hearing shall be accorded as provided in ORS chapter 183. The Department of Justice shall adopt rules prescribing the conduct of the hearing, including but not limited to rules governing the admissibility of evidence.

(8) A person whose registration is revoked or not renewed pursuant to this section shall not be eligible to apply for a registration under ORS 646.551 to 646.557 until two years after the effective date of the revocation or nonrenewal.

(9) A telephonic seller whose registration is revoked, suspended or not renewed under this section shall not conduct business in this state. [1989 c.622 §3; 1999 c.368 §1]

**646.555 Burden of proof for person claiming exemption.** In any proceeding to enforce the provisions of ORS 646.551 to 646.565 and 646.608, the burden of proving an exemption or exception is upon the person claiming it. [1989 c.622 §4]

**646.557 Required disclosures by telephonic seller.** In addition to complying with the requirements of ORS 646.553, each telephonic seller, at the time the solicitation is made and prior to consummation of any sales transaction, shall provide all of the following information to each prospective purchaser:

(1) If the telephonic seller represents or implies that a prospective purchaser will receive, without charge therefor, certain specific items or one item from among designated items, whether the items are denominated as gifts, premiums, bonuses, prizes or otherwise, the seller shall provide the following:

(a) The information required to be filed by ORS 646.553.

(b) The complete street address of the location from which the salesperson is calling the prospective purchaser and, if different, the complete street address of the telephonic seller's principal location.

(c) The total number of individuals who have actually received from the telephonic seller, during the preceding 12 months or if the seller has not been in business that long, during the period the telephonic seller has been in business, the item having the greatest value and the item with the smallest odds of being received.

(2) If the telephonic seller is offering to sell any metal, stone or mineral, the seller shall provide the following information:

(a) The complete street address of the location from which the salesperson is calling the prospective purchaser and, if different, the complete street address of the telephonic seller's principal location.

(b) The information required to be filed by ORS 646.553.

(3) If the telephonic seller is offering to sell an interest in oil, gas or mineral fields, wells or exploration sites, the seller shall provide the following information:

(a) The complete street address of the location from which the salesperson is calling the prospective purchaser and, if different, the complete street address of the telephonic seller's principal location.

(b) The information required to be filed by ORS 646.553.

(4) If the telephonic seller represents that office equipment or supplies being offered are offered at prices which are below those usually charged for these items, the seller shall provide the following information:

(a) The complete street address of the location from which the salesperson is calling the prospective purchaser and, if different, the complete street address of the telephonic seller's principal location.

(b) The name of the manufacturer of each of the items the telephonic seller has represented for sale and in which the prospective purchaser expresses interest. [1989 c.622 §5]

**646.559 Rules.** In accordance with any applicable provision of ORS chapter 183, the Attorney General may adopt rules to carry out the provisions of ORS 646.551 to 646.557. [1989 c.622 §6]

**646.560** [Repealed by 1953 c.391 §2]

### (Unlawful Telephone Solicitations)

**646.561 Definitions for ORS 646.561 to 646.565.** As used in ORS 646.561 to 646.565, unless the context otherwise requires:

(1) "Charitable organization" means an organization organized for charitable purposes as defined in ORS 128.801.

(2) "Party" means a telephone customer of a telecommunications company.

(3) "Telephone solicitation" means the solicitation by telephone by any person of a party for the purpose of encouraging the party to purchase real estate, goods or services, or make a donation. "Telephone solicitation" does not include:

(a) Calls made by a charitable organization, a public agency or volunteers on behalf of the organization or agency to members of the organization or agency or to persons who have made a donation or expressed an interest in making a donation to the organization or agency;

(b) Calls limited to polling or soliciting the expression of ideas, opinions or votes; or

(c) Business to business contacts. [1989 c.622 §8; 2007 c.441 §3]

**646.563 Telephone solicitation of party who states desire not to be called.** A person engages in an unlawful practice if, during a telephone solicitation, the called party states a desire not to be called again and the person making the telephone solicitation makes a subsequent telephone solicitation of the called party at that number. [1989 c.622 §9; 2001 c.924 §15]

**646.565 Notice of provisions of ORS 646.561 and 646.563; rulemaking by Public Utility Commission.** The Public Utility Commission shall by rule require that telecommunications companies inform parties of the provisions of ORS 646.561 and 646.563. Notification may be by:

(1) Annual inserts in the billing statements mailed to parties; or

(2) Conspicuous publication of the notice in the consumer information pages of local telephone directories. [1989 c.622 §10]

**646.567 Definitions for ORS 646.567 to 646.578.** As used in ORS 646.567 to 646.578, unless the context otherwise requires:

(1) "Charitable organization" means an organization organized for charitable purposes as defined in ORS 128.801.

(2) "Information about a party" means information specific to a party, including but not limited to the name and address of the party and the method by which the party paid the fee required by ORS 646.574.

(3) "Party" means a telephone customer of a telecommunications company.

(4) “Qualified trade association” means an organization with at least the following characteristics:

(a) Written bylaws or governing documents including a code of conduct for its members; and

(b) Criteria and procedures for expelling or suspending members who violate the association’s bylaws or governing documents.

(5) “Telephone solicitation” means the solicitation by telephone by any person of a party for the purpose of encouraging the party to purchase real estate, goods or services, or make a donation. “Telephone solicitation” does not include:

(a) Calls made in response to a request or inquiry by the called party;

(b) Calls made by a charitable organization, a public agency or volunteers on behalf of the organization or agency to members of the organization or agency or to persons who have donated or expressed an interest in donating real estate, goods or services to the organization or agency;

(c) Calls limited to polling or soliciting the expression of ideas, opinions or votes; or

(d) Business to business contacts. [1989 c.451 §1; 1999 c.564 §6; 2001 c.170 §1; 2007 c.441 §4]

**646.568 Findings and purpose.** (1) The Legislative Assembly finds that:

(a) Fraud committed by means of unwanted telephone solicitations causes economic harm to Oregonians and constitutes an invasion of privacy and a threat to the welfare of the people of this state.

(b) Unwanted telephone solicitations cause Oregonians harm because:

(A) Telephone solicitations have become a primary tool for the marketing of real estate, goods and services to parties. Telephone solicitors have engaged in the practice of cold calling, which is the initiation of calls to parties with whom the telephone solicitors have no prior business relationship, to market scams, fraudulent schemes and worthless goods and services to unsuspecting parties who often lose thousands of dollars as a result of the solicitations.

(B) Telephone solicitors often make calls based on lists targeting the elderly or other vulnerable populations who are unable to assess the risks associated with engaging in sales transactions over the telephone.

(C) Technologies designed to assist parties in avoiding unwanted telephone solicitations are not effective and place an additional financial burden on parties, effectively shifting the cost of unwanted telephone solicitations to parties. These technologies include:

(i) Caller identification systems, for which parties bear the cost of the caller identification service and any related hardware, and for which technology exists that allows telephone solicitors to block caller identification data;

(ii) Privacy manager services that, for a fee, intercept calls; and

(iii) Unlisted telephone numbers, for which parties pay an additional fee.

(D) Unwanted telephone solicitations tie up telephone lines and prevent legitimate telephone calls from being received or placed by parties. Predictive dialers utilized by telephone solicitors that automatically dial parties’ telephone numbers frequently result in abandoned telephone solicitations and silence when the party answers the phone. These solicitations constitute an intrusion on the property of parties and an invasion of privacy.

(E) The growing practice of preacquired account telephone solicitation, in which a telephone solicitor acquires the party’s billing information prior to initiating a telephone solicitation, has increasingly resulted in unauthorized charges to parties’ financial accounts.

(c) Existing state and federal laws are inadequate to prevent the harm to the public welfare that results from telephone solicitations.

(d) Allowing parties to choose not to receive unwanted telephone solicitations by placing their telephone numbers on a “do not call” list provides a means by which parties can protect themselves from fraud related to telephone solicitations and from the resulting economic harm and invasion of privacy.

(2) The purpose of ORS 646.567 to 646.578 is to prevent the harmful effects set forth in subsection (1)(b) of this section that result from telephone solicitations without inhibiting legitimate telephone solicitations to parties who choose to receive them. Prohibiting telephone solicitations to those Oregonians whose telephone numbers appear on the list described in ORS 646.574 enables Oregonians to choose whether to receive telephone solicitations. [2007 c.441 §2]

**646.569 Prohibition on telephone solicitation of party whose name is included on list described in ORS 646.574 or on federal registry designated under ORS 646.572.** (1) A person may not engage in the telephone solicitation of a party at a telephone number included on the then current list:

(a) Published by the administrator of the telephone solicitation program established under ORS 646.572 and 646.574; or

(b) Maintained as part of the federal registry designated under ORS 646.572.

(2) For purposes of this section:

(a) "Predecessor of the business enterprise" means a financial institution as defined in 15 U.S.C. 6827 that has:

(A) Merged with or been acquired by the business enterprise for which the person is calling; or

(B) Sold or assigned an account of a party who has previously purchased from the business enterprise, to the business enterprise for which the person is calling.

(b) "Telephone solicitation" does not include a person soliciting business from prospective purchasers who have previously purchased from:

(A) The person making the solicitation;

(B) The business enterprise for which the person is calling; or

(C) A predecessor of the business enterprise for which the person is calling. [1989 c.451 §2; 1999 c.564 §1; 2001 c.503 §1; 2007 c.441 §5]

**646.570** [Repealed by 1953 c.391 §2]

**646.571** [1989 c.451 §3; 1999 c.564 §7; renumbered 646.578 in 1999]

**646.572 Administration of telephone solicitation program through contract or by designation of federal registry; contract provisions; duty of Attorney General.** (1) The Attorney General shall either:

(a) Advertise for bids and enter into a contract with a person to act as the administrator of the telephone solicitation program described in ORS 646.574; or

(b) Designate a federal "do not call" registry, including but not limited to the registry maintained by the Federal Trade Commission under 16 C.F.R. 310, in lieu of an Oregon do not call registry.

(2) The Attorney General may include in a contract with the administrator any provision that the Attorney General determines is in the public interest.

(3) If a party requests, the Attorney General shall instruct the party on how to register the party's telephone number on the federal "do not call" registry designated under subsection (1)(b) of this section. [1999 c.564 §3; 2007 c.441 §6]

**646.574 List of persons who do not wish to receive telephone solicitations; fee; disclosure of list; complaints.** (1) If the Attorney General enters into a contract pursuant to ORS 646.572 (1)(a), the administrator of the telephone solicitation program shall create, maintain and distribute a database containing a list of telephone numbers of parties who do not wish to receive any

telephone solicitation at the listed numbers. Beginning on the date specified in the contract between the administrator and the Attorney General and at least once each quarter thereafter, the administrator shall update the list by:

(a) Adding the numbers of parties who have filed notice and paid the fee as required in this section; and

(b) Removing the numbers of those parties who have requested that their numbers be removed or whose listing has expired without renewal.

(2) A party may file notice together with a fee of \$10 per listed number, or such lesser amount as may be specified in the contract, with the administrator indicating the party's desire to place telephone numbers on the list described in subsection (1) of this section. The notice shall be filed in the form and manner specified in the contract between the administrator and the Attorney General. The notice is effective for one year from the date the party files the notice. The party may renew the notice for additional periods of one year by filing an additional notice and paying an additional fee by the anniversary of the original filing date of the notice.

(3) Information about a party is confidential. The Attorney General may not disclose information about a party.

(4) The administrator may not furnish the list or disclose any information about a party to any person, except as follows:

(a) Upon request of a person engaging or intending to engage in telephone solicitations and after payment of the fees in the amounts specified in the contract between the administrator and the Attorney General, the administrator shall furnish to the person:

(A) The most recent copy of the list described in subsection (1) of this section.

(B) The names of the parties whose telephone numbers are on the list.

(b) Upon request of a qualified trade association and after payment of the fees in the amounts specified in the contract between the administrator and the Attorney General, the administrator shall furnish to the qualified trade association:

(A) The most recent copy of the list described in subsection (1) of this section.

(B) The names of the parties whose telephone numbers are on the list.

(c) A qualified trade association that receives a list or the names of the parties whose telephone numbers are on the list under this subsection may make the list or the names available to its members on any terms the association and its members may impose.

(d) Upon request of the Attorney General for the purpose of enforcing ORS 646.569, the administrator shall furnish the Attorney General with all requested information about a party or any person who the Attorney General believes has engaged in a solicitation prohibited by ORS 646.569. The administrator may not charge a fee for furnishing the information to the Attorney General.

(e) Upon request of any party who has filed a notice and paid the fee as provided in subsection (2) of this section, the administrator shall furnish the party with all requested information about the party or any person who the party believes has engaged in a solicitation prohibited by ORS 646.569. The administrator may not charge a fee for furnishing the information to the party.

(f) The administrator shall comply with any lawful subpoena or court order directing disclosure of the list and of any other information.

(g) The administrator shall provide all information that may be requested by any successor administrator who may be selected by the Attorney General. The administrator may not charge a fee for furnishing the information to the successor administrator.

(5) The administrator shall promptly forward any complaints concerning alleged violations of ORS 646.569 to the Attorney General.

(6) Fees paid to the administrator under this section shall be considered income to the administrator in the manner specified in the contract between the administrator and the Attorney General.

(7) When furnishing the list or names under subsection (4) of this section, the administrator shall make the information available in printed and electronic form. [1999 c.564 §4; 2001 c.170 §2; 2007 c.441 §7]

**646.576 Rules.** In the manner provided by ORS chapter 183, the Attorney General may adopt rules relating to any aspect of the establishment, operation or administration of the telephone solicitation program established under ORS 646.572 and 646.574. [1999 c.564 §5]

**646.578 Notice of provisions of ORS 646.567 to 646.578; rulemaking by Public Utility Commission.** The Public Utility Commission shall by rule require that telecommunications companies inform parties of the provisions of ORS 646.567 to 646.578 and 646.608. Notification may be by:

(1) Annual inserts in the billing statements mailed to parties; or

(2) Conspicuous publication of the notice in the consumer information pages of local telephone directories. [Formerly 646.571]

**646.580** [Repealed by 1953 c.391 §2]

**646.590** [Repealed by 1953 c.391 §2]

**646.600** [Repealed by 1953 c.391 §2]

## UNLAWFUL TRADE PRACTICES

**646.605 Definitions for ORS 646.605 to 646.652.** As used in ORS 646.605 to 646.652:

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

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

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

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

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

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

(3) “Examination” of documentary material shall include inspection, study or copying of any such material, and taking testimony under oath or acknowledgment in respect of any such documentary material or copy thereof.

(4) “Person” means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entity except bodies or officers acting under statutory authority of this state or the United States.

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

(6) “Real estate, goods or services” means those that are or may be obtained primarily for personal, family or household purposes, or that are or may be obtained for any purposes as a result of a telephone solicitation, and includes franchises, distributorships and other similar business opportunities, but does not include insurance. Except as provided in section 2, chapter 658, Oregon Laws 2003, real estate does not cover conduct covered by ORS chapter 90.

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

(a) A person who is a broker-dealer or salesperson licensed under ORS 59.175, or a mortgage banker or mortgage broker licensed under ORS 59.850 when the solicitation is for a security qualified for sale pursuant to ORS 59.055.

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

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

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

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

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

(g) A supervised financial institution or parent, subsidiary or affiliate thereof. As used in this paragraph, "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 of the United States.

(h) A person who is authorized to conduct prearrangement or preconstruction funeral or cemetery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or preconstruction funeral or cemetery plans.

(i) A person who solicits the services provided by a cable television system licensed or franchised pursuant to state, local or federal law, when the solicitation involves cable television services.

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

(k) A person who sells farm products as defined by ORS 576.006 if the solicitation neither intends to nor actually results in a

sale that costs the purchaser in excess of \$100.

(L) An issuer or 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) or subsection (g) of that section.

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

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

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

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

(a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or inability to understand the language of the agreement;

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

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

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

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

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

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

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

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



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

(f) The lender supplies documents to the seller used by the borrower in obtaining the loan. [1965 c.490 §2; 1967 c.599 §1; 1971 c.744 §5; 1973 c.235 §1; 1977 c.195 §1; 1989 c.137 §1; 1993 c.508 §40; 1995 c.79 §328; 1997 c.249 §197; 1997 c.631 §514; 1999 c.59 §189; 1999 c.402 §6; 2001 c.917 §4; 2003 c.364 §52; 2003 c.658 §11; 2007 c.71 §198; 2007 c.319 §31]

**Note:** The amendments to 646.605 by section 12, chapter 658, Oregon Laws 2003, become operative January 2, 2012. See section 13, chapter 658, Oregon Laws 2003, as amended by section 41, chapter 906, Oregon Laws 2007. The text that is operative on and after January 2, 2012, including amendments by section 199, chapter 71, Oregon Laws 2007, and section 32, chapter 319, Oregon Laws 2007, is set forth for the user's convenience.

**646.605.** As used in ORS 646.605 to 646.652:

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

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

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

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

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

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

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

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

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

(6) "Real estate, goods or services" means those that are or may be obtained primarily for personal, family or household purposes, or that are or may be obtained for any purposes as a result of a telephone solicitation, and includes franchises, distributorships and other similar business opportunities, but does not include insurance. Real estate does not cover conduct covered by ORS chapter 90.

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

(a) A person who is a broker-dealer or salesperson licensed under ORS 59.175, or a mortgage banker or mortgage broker licensed under ORS 59.850 when the solicitation is for a security qualified for sale pursuant to ORS 59.055.

(b) A real estate licensee or a person who is otherwise authorized to engage in professional real estate

activity pursuant to ORS chapter 696, when the solicitation involves professional real estate activity.

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

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

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

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

(g) A supervised financial institution or parent, subsidiary or affiliate thereof. As used in this paragraph, "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 of the United States.

(h) A person who is authorized to conduct prearrangement or preconstruction funeral or cemetery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or preconstruction funeral or cemetery plans.

(i) A person who solicits the services provided by a cable television system licensed or franchised pursuant to state, local or federal law, when the solicitation involves cable television services.

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

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

(L) An issuer or 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) or subsection (g) of that section.

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

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

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

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

(a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or inability to understand the language of the agreement;

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

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

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

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

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

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

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

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

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

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

**646.607 Unlawful business, trade practices.** A person engages in an unlawful practice when in the course of the person's business, vocation or occupation the person:

(1) Employs any unconscionable tactic in connection with the sale, rental or other disposition of real estate, goods or services, or collection or enforcement of an obligation;

(2) Fails to deliver all or any portion of real estate, goods or services as promised, and upon request of the customer, fails to refund any money that has been received from the customer that was for the purchase of the undelivered real estate, goods or services and that is not retained by the seller pursuant to any right, claim or defense asserted in good faith. This subsection does not create a warranty obligation and does not apply to a dispute over the quality of real estate, goods or services delivered to a customer; or

(3) Violates ORS 401.107 (1) to (4). [1977 c.195 §4; 1979 c.505 §1; 2003 c.759 §§9,10; 2007 c.223 §6]

**646.608 Additional unlawful business, trade practices; proof; rules.** (1) A person engages in an unlawful practice when in the course of the person's business, vocation or occupation the person does any of the following:

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

(b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.

(c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.

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

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

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

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

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

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

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

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

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

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

(n) Solicits potential customers by telephone or door to door as a seller unless the person provides the information required under ORS 646.611.

(o) In a sale, rental or other disposition of real estate, goods or services, gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the customer in consideration of the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate, discount or other value is contingent upon occurrence of an event subsequent to the

time the customer enters into the transaction.

(p) Makes any false or misleading statement about a prize, contest or promotion used to publicize a product, business or service.

(q) Promises to deliver real estate, goods or services within a certain period of time with intent not to deliver them as promised.

(r) Organizes or induces or attempts to induce membership in a pyramid club.

(s) Makes false or misleading representations of fact concerning the offering price of, or the person's cost for real estate, goods or services.

(t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any known material defect or material nonconformity.

(u) Engages in any other unfair or deceptive conduct in trade or commerce.

(v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under ORS 698.640, whether in a commercial or noncommercial situation.

(w) Manufactures mercury fever thermometers.

(x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal law, or is:

(A) Prescribed by a person licensed under ORS chapter 677; and

(B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and on the proper cleanup of mercury should breakage occur.

(y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to inform the purchaser that mercury is present in the thermostat and that the thermostat may not be disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the mercury does not become part of the solid waste stream or wastewater. For purposes of this paragraph, "thermostat" means a device commonly used to sense and, through electrical communication with heating, cooling or ventilation equipment, control room temperature.

(z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains mercury light switches.

(aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

(bb) Violates ORS 646A.070 (1).

(cc) Violates any requirement of ORS 646A.030 to 646A.040.

(dd) Violates the provisions of ORS 128.801 to 128.898.

(ee) Violates ORS 646.883 or 646.885.

(ff) Violates any provision of ORS 646A.020.

(gg) Violates ORS 646.569.

(hh) Violates the provisions of ORS 646A.142.

(ii) Violates ORS 646A.360.

(jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

(kk) Violates ORS 646.563.

(LL) Violates ORS 759.690 or any rule adopted pursuant thereto.

(mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.

(nn) Violates ORS 646A.210 or 646A.214.

(oo) Violates any provision of ORS 646A.124 to 646A.134.

(pp) Violates ORS 646A.254.

(qq) Violates ORS 646A.095.

(rr) Violates ORS 822.046.

(ss) Violates ORS 128.001.

(tt) Violates ORS 646.649 (2) to (4).

(uu) Violates ORS 646A.090 (2) to (4).

(vv) Violates ORS 87.686.

(ww) Violates ORS 646.651.

(xx) Violates ORS 646A.362.

(yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

(zz) Violates ORS 180.440 (1).

(aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

(bbb) Violates ORS 87.007 (2) or (3).

(ccc) Violates ORS 92.405 (1), (2) or (3).

(ddd) Engages in an unlawful practice under ORS 646.648.

(eee) Violates ORS 646A.365.

(fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

(ggg) Sells a gift card in violation of ORS 646A.276.

(hhh) Violates ORS 646A.102, 646A.106 or 646A.108.

(iii) Violates ORS 646A.430 to 646A.450.

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

(3) In order to prevail in an action or suit under ORS 646.605 to 646.652, a prosecuting

attorney need not prove competition between the parties or actual confusion or misunderstanding.

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

(5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought under subsection (1)(zz) of this section by a person other than a prosecuting attorney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees. [1971 c.744 §7 (enacted in lieu of 646.615); 1973 c.235 §2; 1973 c.513 §1; 1975 c.437 §1; 1977 c.195 §2; 1979 c.503 §4; 1983 c.404 §5; 1985 c.251 §10a; 1985 c.538 §3; 1985 c.694 §8; 1985 c.729 §22; 1987 c.626 §5; 1989 c.273 §7; 1989 c.451 §4; 1989 c.458 §3; 1989 c.621 §4; 1989 c.622 §7; 1989 c.623 §3; 1989 c.913 §1; 1991 c.532 §25; 1991 c.672 §8; 1993 c.58 §3; 1993 c.283 §10; 1993 c.582 §11; 1993 c.645 §10; 1993 c.700 §2; 1995 c.713 §6; 1995 c.788 §2; 1997 c.132 §6; 1997 c.806 §2; 1999 c.194 §9; 1999 c.400 §4; 1999 c.669 §3; 1999 c.719 §3; 1999 c.875 §3; 2001 c.924 §§11,13; 2001 c.969 §5; 2003 c.133 §§1,2; 2003 c.486 §§2,3; 2003 c.778 §§4,5; 2003 c.801 §§18,19; 2005 c.42 §§1,2; 2005 c.799 §§2,3; 2007 c.304 §2; 2007 c.538 §18; 2007 c.685 §13; 2007 c.772 §4; 2007 c.820 §8; 2007 c.823 §5]

**Note:** The amendments to 646.608 by section 13, chapter 685, Oregon Laws 2007, become operative July 1, 2008. See section 15, chapter 685, Oregon Laws 2007. The text that is operative until July 1, 2008, including amendments by section 2, chapter 304, Oregon Laws 2007, section 18, chapter 538, Oregon Laws 2007, section 4, chapter 772, Oregon Laws 2007, section 8, chapter 820, Oregon Laws 2007, and section 5, chapter 823, Oregon Laws 2007, is set forth for the user's convenience.

**646.608.** (1) A person engages in an unlawful practice when in the course of the person's business, vocation or occupation the person does any of the following:

- (a) Passes off real estate, goods or services as those of another.
- (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of real estate, goods or services.
- (c) Causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another.
- (d) Uses deceptive representations or designations of geographic origin in connection with real estate, goods or services.
- (e) Represents that real estate, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, quantities or qualities that they do not have or that a person has a sponsorship, approval, status, qualification, affiliation, or connection that the person does not have.
- (f) Represents that real estate or goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand.
- (g) Represents that real estate, goods or services are of a particular standard, quality, or grade, or that real estate or goods are of a particular style or model, if they are of another.
- (h) Disparages the real estate, goods, services, property or business of a customer or another by false or misleading representations of fact.
- (i) Advertises real estate, goods or services with intent not to provide them as advertised, or with intent

not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity.

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

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

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

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

(n) Solicits potential customers by telephone or door to door as a seller unless the person provides the information required under ORS 646.611.

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

(p) Makes any false or misleading statement about a prize, contest or promotion used to publicize a product, business or service.

(q) Promises to deliver real estate, goods or services within a certain period of time with intent not to deliver them as promised.

(r) Organizes or induces or attempts to induce membership in a pyramid club.

(s) Makes false or misleading representations of fact concerning the offering price of, or the person's cost for real estate, goods or services.

(t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any known material defect or material nonconformity.

(u) Engages in any other unfair or deceptive conduct in trade or commerce.

(v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under ORS 698.640, whether in a commercial or noncommercial situation.

(w) Manufactures mercury fever thermometers.

(x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal law, or is:

(A) Prescribed by a person licensed under ORS chapter 677; and

(B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and on the proper cleanup of mercury should breakage occur.

(y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to inform the purchaser that mercury is present in the thermostat and that the thermostat may not be disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the mercury does not become part of the solid waste stream or wastewater. For purposes of this paragraph, "thermostat" means a device commonly used to sense and, through electrical communication with heating, cooling or ventilation equipment, control room temperature.

(z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains mercury light switches.

(aa) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

(bb) Violates ORS 646A.070 (1).

(cc) Violates any requirement of ORS 646A.030 to 646A.040.

(dd) Violates the provisions of ORS 128.801 to 128.898.

(ee) Violates ORS 646.883 or 646.885.

(ff) Violates any provision of ORS 646A.020.

(gg) Violates ORS 646.569.

(hh) Violates the provisions of ORS 646A.142.

(ii) Violates ORS 646A.360.

(jj) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

(kk) Violates ORS 646.563.

(LL) Violates ORS 759.690 or any rule adopted pursuant thereto.

(mm) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.

(nn) Violates ORS 646A.210 or 646A.214.

(oo) Violates any provision of ORS 646A.124 to 646A.134.

(pp) Violates ORS 646A.254.

(qq) Violates ORS 646A.095.

(rr) Violates ORS 822.046.

(ss) Violates ORS 128.001.

(tt) Violates ORS 646.649 (2) to (4).

(uu) Violates ORS 646A.090 (2) to (4).

(vv) Violates ORS 87.686.

(ww) Violates ORS 646.651.

(xx) Violates ORS 646A.362.

(yy) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

(zz) Violates ORS 180.440 (1).

(aaa) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

(bbb) Violates ORS 87.007 (2) or (3).

(ccc) Violates ORS 92.405 (1), (2) or (3).

(ddd) Engages in an unlawful practice under ORS 646.648.

(eee) Violates ORS 646A.365.

(fff) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

(ggg) Sells a gift card in violation of ORS 646A.276.

(hhh) Violates ORS 646A.102, 646A.106 or 646A.108.

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

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

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

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

**Note:** Section 14, chapter 685, Oregon Laws 2007, provides:

**Sec. 14.** (1) Sections 1 to 11 of this 2007 Act [646A.430 to 646A.450] and the amendments to ORS 646.608 by section 13 of this 2007 Act apply to persons conducting business in this state as warrantors on or after the operative date specified in section 15 of this 2007 Act [July 1, 2008].

(2) Sections 1 to 11 of this 2007 Act and the amendments to ORS 646.608 by section 13 of this 2007 Act apply to insurers that offer reimbursement insurance policies in this state on or after the operative date specified in section 15 of this 2007 Act.

(3) Sections 1 to 11 of this 2007 Act and the amendments to ORS 646.608 by section 13 of this 2007 Act apply to transactions for vehicle protection products conducted on or after the operative date specified in section 15 of this 2007 Act. [2007 c.685 §14]

**646.609 “Pyramid club” and “investment” defined.** As used in ORS 646.608 (1)(r), “pyramid club” means a sales device whereby a person, upon condition that the person make an investment, is granted a license or right to solicit or recruit for economic gain one or more additional persons who are also granted such license or right upon condition of making an investment and who may further perpetuate the chain of persons who are granted such license or right upon such condition. “Pyramid club” also includes any such sales device which does not involve the sale or distribution of any real estate, goods or services, including but not limited to a chain letter scheme. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for such license or right to recruit or solicit or the receipt of economic gain therefrom, does not change the identity of the scheme as a pyramid club. As used herein, “investment” means any acquisition, for a consideration other than personal services, of property, tangible or intangible, and includes without limitation, franchises, business opportunities and services. It does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale. For the purpose of ORS 646.608 (1)(r), any person who organizes or induces or attempts to induce membership in a pyramid club is acting in the course of the person’s business, vocation or occupation. [1973 c.513 §3; 1981 c.379 §1]

**646.610** [Repealed by 1953 c.391 §2]

**646.611 Information required to be given by telephone or door to door seller to potential customer.** A person who solicits potential customers by telephone or door to door as a seller is in violation of ORS 646.608 (1)(n) unless the person:

(1) Within 30 seconds after beginning the conversation:

(a) Provides identification of both the person and whom the person represents;

(b) Explains the purpose of the person's call;

(c) Provides a description in commonly understood terms of the goods or services offered for sale; and

(d) Inquires whether the person being solicited is interested in listening to a sales presentation and immediately discontinues the solicitation if the person being solicited gives a negative response; and

(2) During the course of the solicitation, states the total cost of the goods or services offered for sale and the number, timing and amount of installment payments if payment on an installment basis is available to the person being solicited. [1979 c.503 §6]

**646.612 Application of ORS 646.607 and 646.608.** ORS 646.607 and 646.608 do not apply to:

(1) Conduct in compliance with the orders or rules of, or a statute administered by a federal, state or local governmental agency.

(2) Acts done by the publisher, owner, agent or employee of a newspaper, periodical, telephone directory or radio or television station in the publication or dissemination of an advertisement, when the publisher, owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement. [1971 c.744 §10; 1977 c.195 §5; 2005 c.577 §1]

**646.615** [1965 c.490 §3; 1967 c.144 §1; 1967 c.599 §2; repealed by 1971 c.744 §6 (646.608 enacted in lieu of 646.615)]

**646.618 Investigative demand; petition to modify.** (1) When it appears to the prosecuting attorney that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by ORS 646.607 or 646.608, the prosecuting attorney may execute in writing and cause to be served an investigative demand upon any person who is believed to have information, documentary material or physical evidence relevant to the alleged or suspected violation. The investigative demand shall require such person, under oath or otherwise, to appear and testify, to answer written interrogatories, or to produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand, or to do any of the foregoing, concerning conduct of any trade or commerce which is the subject matter of the investigation.

(2) At any time before the return date specified in an investigative demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause

including privileged material, may be filed in the appropriate court. [1971 c.744 §14; 1973 c.235 §3; 1977 c.195 §6]

**646.620** [Repealed by 1953 c.391 §2]

**646.622 Method of serving investigative demand.** Service of any investigative demand under ORS 646.618 shall be made personally within this state. If personal service within this state cannot be made, substituted service therefor may be made by any of the following methods:

(1) Personal service thereof without this state;

(2) The mailing thereof by registered or certified mail to the last-known place of business, residence or abode within or without this state of such person for whom the same is intended;

(3) As to any person other than a natural person, in the manner provided for service of summons in an action or suit; or

(4) Such service as the court may direct in lieu of personal service within this state. [1971 c.744 §15; 1975 c.437 §2]

**646.625** [1965 c.490 §1; repealed by 1971 c.744 §27]

**646.626 Effect of failure to obey investigative demand.** (1) If any person, after being served with an investigative demand under ORS 646.622, fails or refuses to obey an investigative demand issued by the prosecuting attorney, the prosecuting attorney may, after notice, apply to an appropriate court and, after hearing thereon, request an order:

(a) Granting injunctive relief to restrain the person from engaging in conduct of any aspect of the trade or commerce that is involved in the alleged or suspected violation; or

(b) Granting such other relief as may be required, until the person obeys the investigative demand.

(2) Any disobedience of any final order of a court under this section shall be punished as a contempt of court. [1971 c.744 §16; 1973 c.235 §4; 1977 c.195 §7; 2005 c.22 §448]

**646.630** [Repealed by 1953 c.391 §2]

**646.632 Enjoining unlawful trade practices; assurance of voluntary compliance; attorney fees.** (1) A prosecuting attorney who has probable cause to believe that a person is engaging in, has engaged in, or is about to engage in an unlawful trade practice may bring suit in the name of the State of Oregon in the appropriate court to restrain such person from engaging in the alleged unlawful trade practice.

(2) Except as provided in subsections (5) and (6) of this section, before filing a suit under subsection (1) of this section, the prosecuting attorney shall in writing notify

the person charged of the alleged unlawful trade practice and the relief to be sought. Such notice shall be served in the manner set forth in ORS 646.622 for the service of investigative demands. The person charged thereupon shall have 10 days within which to execute and deliver to the prosecuting attorney an assurance of voluntary compliance. Such assurance shall set forth what actions, if any, the person charged intends to take with respect to the alleged unlawful trade practice. The assurance of voluntary compliance shall not be considered an admission of a violation for any purpose. If the prosecuting attorney is satisfied with the assurance of voluntary compliance, it may be submitted to an appropriate court for approval and if approved shall thereafter be filed with the clerk of the court. If an approved assurance of voluntary compliance provides for the payment of an amount of money, as restitution or otherwise, and if the amount is not paid within 90 days of the date the court approves the assurance, or, if the assurance of voluntary compliance requires periodic payments and if any periodic payment is not paid within 30 days of the date specified in the assurance of voluntary compliance for any periodic payment, then the prosecuting attorney may submit that portion of the assurance of voluntary compliance which provides for the payment of money to the court with a certificate stating the unpaid balance in a form which fully complies with the requirements of ORS 18.038 and 18.042. Upon submission of an assurance of voluntary compliance under this subsection, the court shall sign the assurance of voluntary compliance and it shall be entered in the register of the court and the clerk of the court shall note in the register that it creates a lien. The assurance of voluntary compliance shall thereupon constitute a judgment in favor of the State of Oregon and may be enforced as provided in ORS chapter 18. The notice of the prosecuting attorney under this subsection shall not be deemed a public record until the expiration of 10 days from the service of the notice.

(3) The prosecuting attorney may reject as unsatisfactory any assurance:

(a) Which does not contain a promise to make restitution in specific amounts or through arbitration for persons who suffered any ascertainable loss of money or property as a result of the alleged unlawful trade practice; or

(b) Which does not contain any provision, including but not limited to the keeping of records, which the prosecuting attorney reasonably believes to be necessary to ensure the continued cessation of the alleged unlawful trade practice, if such provision was

included in a proposed assurance attached to the notice served pursuant to this section.

(4) Violation of any of the terms of an assurance of voluntary compliance which has been approved by and filed with the court shall constitute a contempt of court.

(5) The prosecuting attorney need not serve notice pursuant to subsection (2) of this section before filing a suit if, within two years of the filing of such suit, the person charged with the alleged unfair trade practice submitted to any prosecuting attorney an assurance of voluntary compliance which was accepted by and filed with an appropriate court. The prosecuting attorney shall in such case serve notice on the defendant in the manner set forth in ORS 646.622 for the service of investigative demands, on the 10th or earlier day previous to the filing of suit.

(6) If the prosecuting attorney alleges that the prosecuting attorney has reason to believe that the delay caused by complying with the provisions of subsection (2) or (5) of this section would cause immediate harm to the public health, safety or welfare, the prosecuting attorney may immediately institute a suit under subsection (1) of this section.

(7) A temporary restraining order may be granted without prior notice to the person if the court finds there is a threat of immediate harm to the public health, safety or welfare. Such a temporary restraining order shall expire by its terms within such time after entry, not to exceed 10 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the person restrained consents that it may be extended for a longer period.

(8) The court may award reasonable attorney fees to the prevailing party in an action under this section. If the defendant prevails in such suit and the court finds that the defendant had in good faith submitted to the prosecuting attorney a satisfactory assurance of voluntary compliance prior to the institution of the suit or that the prosecuting attorney, in a suit brought under subsections (5) and (6) of this section, did not have reasonable grounds to proceed under those subsections, the court shall award reasonable attorney fees at trial and on appeal to the defendant. [1971 c.744 §11; 1975 c.437 §3; 1981 c.897 §77; 1989 c.745 §1; 1995 c.618 §97; 2003 c.576 §215]

**646.635** [1965 c.490 §§4, 5; 1967 c.599 §3; repealed by 1971 c.744 §27]

**646.636 Remedial power of court.** The court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, of which the person was deprived by means of any practice de-

clared to be unlawful in ORS 646.607 or 646.608, or as may be necessary to ensure cessation of unlawful trade practices. [1971 c.744 §12; 1977 c.195 §8; 2005 c.22 §449]

**646.638 Civil action by private party; damages; attorney fees; effect of prior injunction; time for commencing action; counterclaim.** (1) Except as provided in subsection (8) of this section, any person who suffers any ascertainable loss of money or property, real or personal, as a result of willful use or employment by another person of a method, act or practice declared unlawful by ORS 646.608, may bring an individual action in an appropriate court to recover actual damages or \$200, whichever is greater. The court or the jury, as the case may be, may award punitive damages and the court may provide the equitable relief the court considers necessary or proper.

(2) Upon commencement of any action brought under subsection (1) of this section the party bringing the action shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of any judgment in the action, shall mail a copy of the judgment to the Attorney General. Failure to mail a copy of the complaint shall not be a jurisdictional defect, but a court may not enter judgment for the plaintiff until proof of mailing is filed with the court. Proof of mailing may be by affidavit or by return receipt of mailing.

(3) Except as provided in subsection (4) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(4) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (3) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(5) Any permanent injunction or final judgment or order of the court made under ORS 646.632 or 646.636 is prima facie evidence in an action brought under this section that the respondent used or employed a method, act or practice declared unlawful by ORS 646.608, but an assurance of voluntary compliance, whether or not approved by the court, shall not be evidence of the violation.

(6) Actions brought under this section shall be commenced within one year from the discovery of the unlawful method, act or practice. However, whenever any complaint is filed by a prosecuting attorney to prevent, restrain or punish violations of ORS 646.608, running of the statute of limitations with respect to every private right of action under this section and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof.

(7) Notwithstanding subsection (6) of this section, in any action brought by a seller or lessor against a purchaser or lessee of real estate, goods or services, the purchaser or lessee may assert any counterclaim the purchaser or lessee has arising out of a violation of ORS 646.605 to 646.652.

(8) This section does not apply to any method, act or practice described in ORS 646.608 (1)(aa). Actions for violation of laws relating to odometers are provided under ORS 815.410 and 815.415. [1971 c.744 §13; 1973 c.235 §5; 1975 c.437 §4; 1977 c.195 §9; 1981 c.897 §78; 1985 c.251 §10b; 1995 c.696 §35; 2001 c.917 §3; 2001 c.924 §§16,18; 2005 c.42 §§3,4]

**646.639 Unlawful debt collection practices.** (1) As used in subsection (2) of this section:

(a) "Consumer" means a natural person who purchases or acquires property, services or credit for personal, family or household purposes.

(b) "Consumer transaction" means a transaction between a consumer and a person who sells, leases or provides property, services or credit to consumers.

(c) "Commercial creditor" means a person who in the ordinary course of business engages in consumer transactions.

(d) "Credit" means the right granted by a creditor to a consumer to defer payment of a debt, to incur a debt and defer its payment, or to purchase or acquire property or services and defer payment therefor.

(e) "Debt" means any obligation or alleged obligation arising out of a consumer transaction.

(f) "Debtor" means a consumer who owes or allegedly owes an obligation arising out of a consumer transaction.

(g) "Debt collector" means any person who by any direct or indirect action, conduct or practice, enforces or attempts to enforce an obligation that is owed or due to any commercial creditor, or alleged to be owed or due to any commercial creditor, by a consumer as a result of a consumer transaction.

(h) "Person" means an individual, corporation, trust, partnership, incorporated or unincorporated association or any other legal entity.

(2) It shall be an unlawful collection practice for a debt collector, while collecting or attempting to collect a debt to do any of the following:

(a) Use or threaten the use of force or violence to cause physical harm to a debtor or to the debtor's family or property.

(b) Threaten arrest or criminal prosecution.



(c) Threaten the seizure, attachment or sale of a debtor's property when such action can only be taken pursuant to court order without disclosing that prior court proceedings are required.

(d) Use profane, obscene or abusive language in communicating with a debtor or the debtor's family.

(e) Communicate with the debtor or any member of the debtor's family repeatedly or continuously or at times known to be inconvenient to that person with intent to harass or annoy the debtor or any member of the debtor's family.

(f) Communicate or threaten to communicate with a debtor's employer concerning the nature or existence of the debt.

(g) Communicate without the debtor's permission or threaten to communicate with the debtor at the debtor's place of employment if the place is other than the debtor's residence, except that the debt collector may:

(A) Write to the debtor at the debtor's place of employment if no home address is reasonably available and if the envelope does not reveal that the communication is from a debt collector other than a provider of the goods, services or credit from which the debt arose.

(B) Telephone a debtor's place of employment without informing any other person of the nature of the call or identifying the caller as a debt collector but only if the debt collector in good faith has made an unsuccessful attempt to telephone the debtor at the debtor's residence during the day or during the evening between the hours of 6 p.m. and 9 p.m. The debt collector may not contact the debtor at the debtor's place of employment more frequently than once each business week and may not telephone the debtor at the debtor's place of employment if the debtor notifies the debt collector not to telephone at the debtor's place of employment or if the debt collector knows or has reason to know that the debtor's employer prohibits the debtor from receiving such communication. For the purposes of this subparagraph, any language in any instrument creating the debt which purports to authorize telephone calls at the debtor's place of employment shall not be considered as giving permission to the debt collector to call the debtor at the debtor's place of employment.

(h) Communicate with the debtor in writing without clearly identifying the name of the debt collector, the name of the person, if any, for whom the debt collector is attempting to collect the debt and the debt collector's business address, on all initial communications. In subsequent communica-

tions involving multiple accounts, the debt collector may eliminate the name of the person, if any, for whom the debt collector is attempting to collect the debt, and the term "various" may be substituted in its place.

(i) Communicate with the debtor orally without disclosing to the debtor within 30 seconds the name of the individual making the contact and the true purpose thereof.

(j) Cause any expense to the debtor in the form of long distance telephone calls, telegram fees or other charges incurred by a medium of communication, by concealing the true purpose of the debt collector's communication.

(k) Attempt to or threaten to enforce a right or remedy with knowledge or reason to know that the right or remedy does not exist, or threaten to take any action which the debt collector in the regular course of business does not take.

(L) Use any form of communication which simulates legal or judicial process or which gives the appearance of being authorized, issued or approved by a governmental agency, governmental official or an attorney at law when it is not in fact so approved or authorized.

(m) Represent that an existing debt may be increased by the addition of attorney fees, investigation fees or any other fees or charges when such fees or charges may not legally be added to the existing debt.

(n) Collect or attempt to collect any interest or any other charges or fees in excess of the actual debt unless they are expressly authorized by the agreement creating the debt or expressly allowed by law.

(o) Threaten to assign or sell the debtor's account with an attending misrepresentation or implication that the debtor would lose any defense to the debt or would be subjected to harsh, vindictive or abusive collection tactics.

(3) It shall be an unlawful collection practice for a debt collector, by use of any direct or indirect action, conduct or practice, to enforce or attempt to enforce an obligation made void and unenforceable by the provisions of ORS 759.720 (3) to (5). [1977 c.184 §2; 1985 c.799 §1; 1991 c.672 §9; 1991 c.906 §1; 1995 c.696 §50]

**646.640** [Repealed by 1953 c.391 §2]

**646.641 Civil action for unlawful debt collection practice; damages; attorney fees; time for commencing action.** (1) Any person injured as a result of willful use or employment by another person of an unlawful collection practice may bring an action in an appropriate court to enjoin the practice or to recover actual damages or \$200, whichever is greater. The court or the jury

may award punitive damages, and the court may provide such equitable relief as it deems necessary or proper.

(2) In any action brought by a person under this section, the court may award reasonable attorney fees to the prevailing party.

(3) Actions brought under this section shall be commenced within one year from the date of the injury. [1977 c.184 §3; 1981 c.897 §79; 1995 c.618 §99]

**646.642 Civil penalties.** (1) Any person who willfully violates the terms of an injunction issued under ORS 646.632 shall forfeit and pay to the state a civil penalty to be set by the court of not more than \$25,000 per violation. For the purposes of this section, the court issuing the injunction shall retain jurisdiction and the cause shall be continued, and in such cases the prosecuting attorney acting in the name of the state may petition for recovery of civil penalties.

(2) Any person who willfully violates any provision of an assurance of voluntary compliance approved and filed with an appropriate court under ORS 646.632 shall forfeit and pay to the state a civil penalty to be set by the court of not more than \$25,000 per violation. Any prosecuting attorney may apply to an appropriate court for recovery of such civil penalty. In any action brought by a prosecuting attorney under this section, and in any contempt action brought by a prosecuting attorney pursuant to ORS 646.632 (4), the court may award to the prevailing party, in addition to any other relief provided by law, reasonable attorney fees and costs at trial and on appeal.

(3) In any suit brought under ORS 646.632, if the court finds that a person is willfully using or has willfully used a method, act or practice declared unlawful by ORS 646.607 or 646.608, the prosecuting attorney, upon petition to the court, may recover, on behalf of the state, a civil penalty to be set by the court of not exceeding \$25,000 per violation. [1971 c.744 §17; 1975 c.437 §5; 1977 c.195 §10; 1989 c.745 §2; 1995 c.618 §100]

**646.643 Applicability of ORS 646.639.** A debt collector who is subject to and in compliance with the requirements of the Fair Debt Collection Practices Act (Public Law 95-109, 15 U.S.C. 1692 et seq.) shall also be considered to be in compliance with the requirements of ORS 646.639. [1991 c.906 §3]

**646.645** [1965 c.490 §6; repealed by 1971 c.744 §27]

**646.646 Loss of license or franchise by person violating injunction.** Upon petition by the prosecuting attorney, the court may, in its discretion, order the dissolution or suspension or forfeiture of the license or franchise of any person who violates the

terms of any injunction issued under ORS 646.632. [1971 c.744 §18]

**646.648 Unlawful practice by manufactured dwelling dealer.** (1) As used in this section:

(a) "Buyer" means a person who buys or agrees to buy a manufactured dwelling from a manufactured dwelling dealer.

(b) "Cash sale price" means the price for which a manufactured dwelling dealer would sell to a buyer, and the buyer would buy from a dealer, a manufactured dwelling that is covered by a purchase agreement, if the sale were a sale for cash instead of a retail installment sale.

(c) "Manufactured dwelling" has the meaning given that term in ORS 446.003.

(d) "Manufactured dwelling dealer" means a person licensed under ORS 446.691 or 446.696 or a temporary manufactured structure dealer licensee under ORS 446.701.

(e) "Retail installment sale" has the meaning given that term in ORS 83.510.

(2) A manufactured dwelling dealer engages in an unlawful practice when, in a sale of a manufactured dwelling, the dealer does any of the following:

(a) Misrepresents to a buyer that, as a condition of financing, the buyer must purchase:

- (A) Credit life insurance;
- (B) Credit disability insurance;
- (C) Credit unemployment insurance;
- (D) Credit property insurance;
- (E) Health insurance;
- (F) Life insurance; or
- (G) An extended warranty.

(b) In close connection with the sale, misrepresents to a lender:

- (A) The cash sale price;
- (B) The amount of the buyer's down payment; or
- (C) The buyer's credit or employment history. [2001 c.917 §1; 2003 c.655 §82]

**Note:** Sections 2 and 14, chapter 658, Oregon Laws 2003, provide:

**Sec. 2.** (1) As used in this section, "facility," "floating home," "landlord," "manufactured dwelling" and "tenant" have the meanings given those terms in ORS 90.100.

(2) A facility landlord engages in an unlawful trade practice when the landlord violates ORS 90.680 (6) in a sale of a manufactured dwelling or floating home by a tenant to a prospective purchaser who desires to leave the dwelling or home on the rented space and become a tenant.

(3) Notwithstanding ORS 646.638, only a prosecuting attorney may bring an action under ORS 646.605 to 646.652 for a violation described in this section. [2003 c.658 §2]

**Sec. 14.** Section 2, chapter 658, Oregon Laws 2003, is repealed January 2, 2012. [2003 c.658 §14; 2007 c.906 §42]

**646.649 Late fees on delinquent cable service accounts; amount; disclosure; notice.** (1) As used in this section:

(a) "Cable service" means:

(A) One-way transmission to subscribers of a video programming service;

(B) Two-way interactive service delivered over a cable system; or

(C) Any communication with subscribers necessary for the selection and use of video programming or interactive services.

(b) "Cable system" means a facility consisting of closed transmission paths and associated signal operation, reception and control equipment that is designed to provide cable service.

(2)(a) A seller of cable service may assess a late fee on delinquent subscriber accounts held by the seller that have an unpaid balance of \$10 or more.

(b) A late fee assessed under subsections (2), (3) and (4) of this section shall not exceed five percent of the unpaid balance or \$6, whichever is greater.

(3) The seller of cable service shall conspicuously disclose on each statement or invoice the terms under which a late fee may be assessed, including the amount of the fee.

(4) Prior to assessing a late fee under subsections (2), (3) and (4) of this section, the seller shall give written notice to the subscriber. The notice shall conspicuously indicate the amount of the unpaid balance, an address where payment may be made, the date on which the late fee will be imposed and the amount of the late fee. The notice shall be mailed to the subscriber's last-known billing address as shown in the seller's records. The notice shall be mailed at least 10 days prior to the date on which the late fee will be assessed. The late fee may not be assessed earlier than 27 days after the due date for the unpaid balance. [1999 c.400 §§2,3]

**Note:** 646.649 and 646.651 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 646 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**646.650** [Repealed by 1953 c.391 §2]

**646.651 Contest and sweepstakes solicitations; required disclosures; prohibited representations.** (1) As used in this section:

(a) "Contest" means a procedure for awarding a prize in which the outcome depends at least in part on the skill of the contestant. "Contest" includes any competi-

tion in which a person is required to purchase anything, pay anything of value or make a donation in order to participate. "Contest" also includes a competition that is advertised in a way that creates a reasonable impression that a payment of anything of value, purchase of anything or making a donation is a condition of winning a prize or competing for or obtaining information about a prize.

(b) "Sweepstakes" means a procedure for awarding a prize that is based on chance. "Sweepstakes" includes any such procedure in which a person is required to purchase anything, pay anything of value or make a donation as a condition of winning a prize or of receiving or obtaining information about a prize. "Sweepstakes" also includes any such procedure that is advertised in a way that creates a reasonable impression that a payment of anything of value, purchase of anything or making a donation is a condition of winning a prize or receiving or obtaining information about a prize.

(c) "Clearly and conspicuously" means the message is conveyed in a manner that is reasonably apparent to the audience to whom it is directed. In order for a message to be considered clear and conspicuous, it shall, at a minimum:

(A) Not contradict or substantially alter any terms it purports to clarify, explain or otherwise relate to; and

(B) In the case of printed solicitations:

(i) Be in close proximity to the terms it purports to clarify, explain or otherwise relate to; and

(ii) Be of sufficient prominence in terms of placement, font or color contrast as compared with the remainder of the solicitation so as to be reasonably apparent to the audience to whom it is directed.

(2) A person engages in an unlawful practice when, in the course of the person's business, vocation or occupation, the person uses the United States mail to solicit participation in a contest and the person does not clearly and conspicuously disclose in the solicitation:

(a) The maximum number of rounds or levels, if the contest has more than one round or level;

(b) The date the final winner will be determined;

(c) The maximum total cost the final winner will have paid to the sponsor to participate in the contest;

(d) Whether the final winner must purchase or pay anything of value to a person other than the sponsor if purchasing or paying is a condition of eligibility;

(e) If the contest involves multiple rounds of increasing difficulty, an example illustrative of the last determinative round or a statement that subsequent rounds will be more difficult;

(f) If the contest is judged by someone other than the sponsor, the identity of or description of the qualifications of the judges;

(g) The method used in judging; and

(h) The name and address of the sponsor or the sponsor's agent.

(3) A person engages in an unlawful practice when, in the course of the person's business, vocation or occupation, the person uses the United States mail to solicit participation in a sweepstakes and does not clearly and conspicuously disclose in the solicitation:

(a) The odds of winning in Arabic numerals, except that if the odds of winning depend on the number of entries received, a statement to that effect will be deemed sufficient;

(b) The name and address of the sponsor or the sponsor's agent, consistently stated wherever it is used; and

(c) The procedure for entry without purchase.

(4) A person engages in an unlawful practice when, in the course of the person's business, vocation or occupation, the person solicits participation in a contest or sweepstakes:

(a) By using the United States mail to represent that a person has been selected to receive or has won a particular prize, when that is not the case; or

(b) By using the United States mail to represent that a person is a winner, is a finalist, is in first place or is otherwise in a limited group of persons with an enhanced likelihood of winning or receiving a prize, when more than 25 percent of the persons receiving the solicitation have the same chance of winning. [1999 c.875 §2]

**Note:** See note under 646.649.

**646.652 District attorney's reports to Attorney General; filing of voluntary compliances.** A district attorney shall make a full report to the Attorney General of any action, suit, or proceeding prosecuted by such district attorney under ORS 646.605 to 646.652, including the final disposition of the matter, and shall file with the Attorney General copies of all assurances of voluntary compliance accepted under ORS 646.632. [1971 c.744 §19]

**646.655** [1967 c.599 §5; repealed by 1971 c.744 §27]

**646.656 Remedies supplementary to existing statutory or common law remedies.** The remedies provided in ORS 646.605 to 646.652 are in addition to all other remedies, civil or criminal, existing at common law or under the laws of this state. [1971 c.744 §21a]

**646.660** [Repealed by 1953 c.391 §2]

**646.661** [1985 c.694 §1; 2007 c.71 §200; renumbered 646A.030 in 2007]

**646.666** [1985 c.694 §2; renumbered 646A.032 in 2007]

**646.670** [Repealed by 1953 c.391 §2]

**646.671** [1985 c.694 §3; renumbered 646A.034 in 2007]

**646.676** [1985 c.694 §5; renumbered 646A.036 in 2007]

**646.680** [Repealed by 1953 c.391 §2]

**646.681** [1985 c.694 §4; renumbered 646A.038 in 2007]

**646.686** [1985 c.694 §6; 2007 c.71 §201; renumbered 646A.040 in 2007]

**646.690** [Repealed by 1953 c.391 §2]

**646.691** [1985 c.694 §7; 2007 c.71 §202; renumbered 646A.042 in 2007]

**646.700** [Repealed by 1953 c.391 §2]

## ANTITRUST LAW

**646.705 Definitions for ORS 136.617 and 646.705 to 646.805.** (1) As used in ORS 136.617 and 646.705 to 646.805, "trade or commerce" means trade or commerce within the state; or between the state and any state, territory, or foreign nation.

(2) As used in ORS 646.775, "natural persons" shall not include proprietorships or partnerships. [1975 c.255 §2; 1979 c.790 §1]

**646.710** [Repealed by 1953 c.391 §2]

**646.715 Declaration of purpose.** (1) The Legislative Assembly deems it to be necessary and the purpose of ORS 646.705 to 646.805 and 646.990 is to encourage free and open competition in the interest of the general welfare and economy of the state, by preventing monopolistic and unfair practices, combination and conspiracies in restraint of trade and commerce, and for that purpose to provide means to enjoin such practices and provide remedies for those injured by them.

(2) Without limiting the scope of ORS 646.705 to 646.805 and 646.990, it is the legislative purpose that it apply to intrastate trade or commerce, and to interstate trade or commerce involving an actual or threatened injury to a person or property located in this state. The decisions of federal courts in construction of federal law relating to the same subject shall be persuasive authority in the construction of ORS 646.705 to 646.805 and 646.990. [1975 c.255 §3; 2001 c.415 §1]

**646.720** [Repealed by 1953 c.391 §2]

**646.725 Prohibited acts.** Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is declared to be illegal. [1975 c.255 §4]

**646.730 Monopolies prohibited.** Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of trade or commerce, shall be in violation of ORS 136.617, 646.705 to 646.805 and 646.990. [1975 c.255 §5]

**646.740 Permitted activities.** The provisions of ORS 136.617, 646.705 to 646.805 and 646.990 may not be construed to make illegal:

(1) The activities of any labor organization or individual working men and women permitted by ORS chapters 661 to 663;

(2) The right of producers, as defined in ORS 646.515, and commercial fishermen to join, belong to and act through cooperative bargaining associations under ORS 646.515 to 646.545. For the purpose of this subsection, activities of cooperative bargaining associations and their members that are lawful under 15 U.S.C. 521 and 522 or 7 U.S.C. 291 and 292 are lawful under ORS 646.515 to 646.545;

(3) The activities of any person subject to regulation by the Public Utility Commission under ORS chapters 756 to 759 to the extent that such activities are so regulated and are lawful thereunder or the activities of any person conducted or carried out in accordance with any agreement or procedure approved as provided in 49 U.S.C. 5b or 5c;

(4) The activities of any person subject to regulation by the Director of the Department of Consumer and Business Services under ORS chapters 731 to 750 to the extent that such activities are so regulated and are lawful thereunder;

(5) The activities of any state or national banking institution or savings and loan association, and of any other lending institution, to the extent that such activities are regulated by the Director of the Department of Consumer and Business Services under ORS chapters 706 to 725 and are lawful thereunder;

(6) Any other activity specifically authorized under state law or local ordinance;

(7) The activities of any metropolitan service district formed under ORS chapter 268 and the activities of any person subject to regulation by a metropolitan service district formed under ORS chapter 268 to the extent that those activities are so regulated and are lawful thereunder;

(8) The activities of any person conducted or carried out in accordance with the terms and conditions of a certificate issued pursuant to 15 U.S.C. 4001 to 4021;

(9) The activities of a health care provider authorized by and in accordance with ORS 442.700 to 442.760 to the extent the ac-

tivities are regulated and lawful under ORS 442.700 to 442.760;

(10) The negotiating activities of a dealer in agricultural commodities that are carried out and supervised under ORS 62.848; or

(11) The negotiating activities of a dealer in Oregon seafood commodities that are carried out and supervised under ORS 62.849. [1975 c.255 §6; 1977 c.545 §1; 1979 c.531 §7; 1983 c.200 §19; 1985 c.762 §185; 1987 c.373 §29; 1987 c.447 §136; 1993 c.769 §15; 1995 c.733 §75; 1997 c.296 §2; 2001 c.142 §6; 2003 c.487 §6]

**646.745 Joint operation of Memorial Coliseum and Arena in Portland; definitions; legislative findings and goals; state supervision.** (1) As used in this section:

(a) "Affiliate" means an individual, or a corporation or other entity controlling, controlled by or under common control with the owner or operator of the arena. For purposes of this subsection, the term "control" means ownership of more than 50 percent of the shares or other ownership interests in the owner or operator of the arena or having management power over the affairs of the owner or operator of the arena.

(b) "Arena" means a multipurpose arena with a seating capacity of approximately 19,000 constructed or to be constructed on real property adjacent to the Coliseum.

(c) "Coliseum" means the Memorial Coliseum in Portland.

(d) "Coliseum agreement" means an operating agreement, management agreement, lease or any similar agreement between the City of Portland and any corporation, partnership, limited partnership or individual who owns or operates the arena or any affiliate of the owner or operator of the arena.

(2) The Legislative Assembly finds that direct competition between the Arena and Coliseum may require the City of Portland to spend limited public resources to maintain the Coliseum, undermine the City of Portland's goal of creating a world-class center for athletic events, conventions, trade shows and other events and otherwise result in economic rivalry injurious to the interests of the City of Portland and the citizens of this state.

(3) The Legislative Assembly declares that it is the policy and intent of this state to displace competition between the Arena and Coliseum by allowing the City of Portland to enter agreements for the joint operation of the facilities by an owner or operator of the Arena in order to further the following goals:

(a) To avoid economic rivalry which might undermine the continuing economic viability of the Coliseum and require the

public to subsidize the operations of the Coliseum with funds which the City of Portland has allocated to other public needs;

(b) To allow the joint operation of the Coliseum and Arena to avoid scheduling conflicts and other related problems which would unduly burden public safety resources and the transportation system of the City of Portland;

(c) To encourage the joint marketing of the Arena and Coliseum to attract trade shows, conventions and other events which require multiple venues or could otherwise not be accommodated by the Coliseum or Arena;

(d) To avoid duplication of management and other services and minimize the public funds necessary to operate the Coliseum;

(e) To encourage development of the Arena adjacent to the Coliseum rather than in another location; and

(f) To limit financing risk and provide for development of the Arena with private funding sources so that public funds may be used for other pressing needs.

(4) The Legislative Assembly declares that the City of Portland is the political subdivision of the State of Oregon best suited to monitor and supervise the operation of the Coliseum Agreement. The Legislative Assembly therefore delegates to the City of Portland the power to supervise and review the activities of the owner or operator of the Arena under the Coliseum Agreement and declares that this review shall be equivalent to active supervision by the State of Oregon to the fullest possible extent under the federal or state antitrust laws. The City of Portland may, subject to any agreement with the owner or operator of the Arena, review and approve annually or more frequently certain practices under the Coliseum Agreement, including without limitation:

(a) Prices charged for Coliseum events;

(b) Decisions about event allocation between the Arena and Coliseum; and

(c) Decisions to decline to accommodate events at either the Coliseum or the Arena, or both. [1993 c.183 §2]

**646.750 Investigative demand by Attorney General; petition to modify.** (1) When it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by ORS 646.725 or 646.730, the Attorney General may execute in writing and cause to be served an investigative demand upon any person who is believed to have documentary material or information relevant to the alleged or suspected violation. The investigative demand

shall require such person to produce relevant documentary material for examination and copying or reproduction, to answer in writing written interrogatories, to give oral testimony concerning documentary material or information, or to furnish any combination of such material, answers or testimony under penalty of perjury, at such reasonable time and place as may be stated in the investigative demand.

(2) At any time before the return day specified in the investigative demand, or within 20 days after the demand has been served whichever time is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the appropriate court.

(3) The investigative demand shall state the nature of the conduct constituting the alleged antitrust violation under investigation and the provisions of law believed to be applicable thereto. [1975 c.255 §13; 1977 c.729 §1]

**646.760 Civil penalties; attorney fees; mitigation.** (1) The Attorney General may prosecute an action for appropriate injunctive relief and civil penalties in the name of the state for any violation of ORS 646.725 or 646.730. The court may assess for the benefit of the state a civil penalty of not more than \$250,000 for each violation of ORS 136.617, 646.705 to 646.805 and 646.990. Any act or series of acts by one or more individual persons (officers, agents or partners) on behalf of a corporation or other business entity may be found to constitute a violation or violations by such individual person or persons as well as by the corporation or other business entity, and separate penalties may be imposed against each of such individual defendants and corporate or other business entity defendants for such a violation. The court may award reasonable attorney fees, expert witness fees and costs of investigation to the Attorney General if the Attorney General prevails in an action under this section. The court may award reasonable attorney fees, expert witness fees and costs of investigation to a defendant who prevails in an action under this section if the court determines that the Attorney General had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(2) The complaint may also seek and the court may order, in an appropriate case, the forfeiture of any corporate franchise, professional or business license, right to do business or to use an assumed business name, where the court finds the use by any defendant of such franchise, license or right has been material to a violation of ORS 646.725 or 646.730.

(3) The court shall take into consideration in mitigation of any penalty assessed under this section, any fine or penalty imposed against the defendant by a United States court in a final judgment under sections 1 to 45 of Title 15 of the United States Code, which the court finds to be based on the same or substantially the same acts of defendant. [1975 c.255 §8; 1981 c.897 §80; 1995 c.696 §36; 1999 c.370 §1]

**646.770 Equitable remedies; attorney fees.** (1) Any person including the state or any municipal corporation or political subdivision threatened with injury in its business or property by a violation of ORS 646.725 or 646.730 may prosecute a suit for equitable relief, and in addition to such relief shall recover the costs of suit, including necessary reasonable investigative costs and reasonable experts' fees.

(2) Except as provided in subsection (3) of this section, in an action brought under the provisions of this section by a person other than the state or any municipal corporation or political subdivision of the state, the court may award reasonable attorney fees to the prevailing party. Except as provided in subsection (3) of this section, in a civil action brought under the provisions of this section by the state or any municipal corporation or political subdivision of the state:

(a) The court may award reasonable attorney fees to the state or political subdivision of the state if the state or political subdivision prevails in the action; and

(b) The court may award reasonable attorney fees to a defendant who prevails in an action under this section if the court determines that the state or any municipal corporation or political subdivision of the state had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(3) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (2) of this section if the action under this section is maintained as a class action pursuant to ORCP 32. [1975 c.255 §9; 1981 c.897 §81; 1995 c.696 §37]

**646.775 Actions by Attorney General; damages; attorney fees.** (1)(a) The Attorney General may bring a civil action in the name of the State of Oregon, on behalf of a political subdivision in this state or as *parens patriae* on behalf of a natural person, in any circuit court in which venue is proper under ORS 646.790, to secure equitable and monetary relief as provided in this section for injury sustained by the natural person or political subdivision to the natural person's

or political subdivision's property by reason of a violation of ORS 646.725 or 646.730. The Attorney General may bring the action authorized by this paragraph regardless of whether the natural person or political subdivision dealt directly or indirectly with the adverse party.

(b) The court shall exclude from the amount of monetary relief awarded in an action pursuant to paragraph (a) of this subsection any amount of monetary relief:

(A) That duplicates amounts that have been awarded for the same injury; or

(B) That is properly allocable to natural persons who have excluded their claims pursuant to subsection (2)(b) of this section, or to any business entity.

(c)(A) Subject to paragraph (b) of this subsection, the court shall award the state as monetary relief three times the total damages sustained by natural persons and political subdivisions and the costs the state incurs in the action.

(B) The court may award reasonable attorney fees to the Attorney General if the Attorney General prevails in an action under this section.

(C) The court may award reasonable attorney fees to a defendant who prevails in an action under this section if the court determines that the Attorney General had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(d) Notwithstanding paragraph (c) of this subsection, the court shall award the state only the actual damages sustained by natural persons and political subdivisions in an action in which:

(A) The Attorney General prevails solely on the basis of a judgment entered in a proceeding under 15 U.S.C. 1 to 45 or in another action by the state under ORS 646.760, 646.770 or 646.780, used as collateral estoppel against the defendant under ORS 646.805; or

(B) The natural person or political subdivision dealt indirectly with the adverse party and the Attorney General establishes a violation other than a *per se* violation of ORS 646.725.

(2)(a) In any action pursuant to subsection (1)(a) of this section, the Attorney General shall, at the times, in the manner and with the content the court directs, give notice by publication. If the court finds that notice given solely by publication would deny due process of law to a natural person or political subdivision, the court may direct further notice to the natural person or political subdivision according to the circumstances of the case.

(b) Any natural person or political subdivision on whose behalf an action is brought pursuant to subsection (1)(a) of this section may elect to exclude from adjudication the portion of the claim for monetary relief attributable to the natural person or political subdivision by filing notice of the election with the court within the time specified in the notice given pursuant to paragraph (a) of this subsection.

(c) The final judgment in an action pursuant to subsection (1)(a) of this section shall be res judicata as to any claim under this section by any natural person or political subdivision on behalf of whom such action was brought and who fails to give the notice specified in paragraph (b) of this subsection within the period specified in the notice given pursuant to paragraph (a) of this subsection.

(3) An action pursuant to subsection (1)(a) of this section shall not be dismissed or compromised without the approval of the court, and the notice of any proposed dismissal or compromise shall be given in the manner the court directs.

(4) In any action pursuant to subsection (1)(a) of this section in which there has been a determination that a defendant agreed to fix prices in violation of ORS 646.725, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation and pro rata allocation of illegal overcharges, or by any other reasonable system of estimating aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, natural persons or political subdivisions on whose behalf the suit was brought.

(5)(a) Monetary relief recovered in an action pursuant to subsection (1)(a) of this section shall be distributed in the manner the court in its discretion may authorize, subject to the requirement that any distribution procedure adopted afford each natural person or political subdivision on whose behalf the suit was brought a reasonable opportunity to secure an appropriate portion of the net monetary relief.

(b) The Attorney General shall deposit that portion of the monetary relief awarded by the court as costs of suit and a reasonable attorney fee in the Consumer Protection and Education Revolving Account established pursuant to ORS 180.095.

(c) To the extent that the monetary relief awarded by the court is not exhausted by distribution pursuant to paragraphs (a) and (b) of this subsection, the remaining funds shall be deemed a civil penalty by the court

and assessed as such for the benefit of the state pursuant to ORS 646.760.

(6) The powers granted in this section are in addition to and not in derogation of the common law powers of the Attorney General to act as *parens patriae*, or the powers of the Attorney General to sue as a representative party on behalf of a class pursuant to ORCP 32. [1979 c.790 §3; 1981 c.897 §82; 1995 c.696 §38; 2001 c.393 §1]

**646.780 Recovery of treble damages; exception; recovery of fees and costs; action under federal law as bar.** (1)(a) A person including the state or any political subdivision in the state injured in its business or property by a violation of ORS 646.725 or 646.730 may sue for the injury and shall recover three times the damages sustained. The state may bring the action authorized by this paragraph regardless of whether the state dealt directly or indirectly with the adverse party.

(b) Notwithstanding paragraph (a) of this subsection, the state may recover only the state's actual damages sustained and any attorney fees, expert witness fees or investigative costs that the court may award under subsection (3) of this section, if the state:

(A) Brings an action under ORS 646.760;

(B) Commences a prosecution under ORS 646.815 and 646.990 (2); or

(C) Brings an action for an injury that the state suffered by dealing indirectly with the adverse party and the state establishes a violation other than a *per se* violation of ORS 646.725.

(c) Notwithstanding paragraph (a) of this subsection, in any action under this section in which the plaintiff prevails solely on the basis of a judgment or decree entered in a proceeding under 15 U.S.C. 1 to 45 or in another action by the state under ORS 646.760, 646.770 or this section, used as collateral estoppel against a defendant pursuant to ORS 646.805, plaintiff's recovery shall be limited to the actual damages sustained and any attorney fees, expert witness fees or investigative costs that may be awarded under subsection (3) of this section.

(2) Unless there is a subsequent judgment that the court lacks jurisdiction, the taking of any testimony at the commencement of trial on a civil complaint for damages filed under the antitrust laws of the United States shall constitute an absolute bar and waiver of any right of a plaintiff in such action to recover damages from the same defendant under this section for the same or substantially the same acts of plaintiff.

(3)(a) Except as provided in subsection (4) of this section, in an action brought under



the provisions of this section by a person other than the state or any political subdivision in the state, the court may award reasonable attorney fees, expert witness fees and investigative costs to the prevailing party.

(b) Except as provided in subsection (4) of this section, in a civil action brought under the provisions of this section or under ORS 646.760 by the state or any political subdivision in the state:

(A) The court may award reasonable attorney fees, expert witness fees and investigative costs to the state or political subdivision if the state or political subdivision prevails in the action; and

(B) The court may award reasonable attorney fees, expert witness fees and investigative costs to a defendant who prevails in an action under this section if the court determines that the state or political subdivision had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(4) The court may not award attorney fees, expert witness fees or investigative costs to a prevailing defendant under the provisions of this section if the action is maintained as a class action pursuant to ORCP 32. [1975 c.255 §10; 1981 c.897 §83; 1983 c.467 §1; 1985 c.251 §27; 1995 c.696 §39; 2001 c.393 §2]

**646.790 Venue.** A suit or action based upon any violation of ORS 646.725 or 646.730 may be commenced in any circuit court within the state, in which one or more of the defendants resides or has its principal place of business or its registered agent. [1975 c.255 §7]

**646.800 Time of commencing action.**

(1) An action under ORS 646.760 to recover a civil penalty shall be commenced within four years after the cause of action accrued, or within one year after the conclusion of any civil or criminal proceeding instituted by the United States under the antitrust laws of the United States, except section 15a of Title 15 of the United States Code, based in whole or in part on the same matter complained of, whichever is later.

(2) An action under ORS 646.780 to recover damages shall be commenced within four years after the cause of action accrued, or within one year after the conclusion of any proceeding based in whole or in part on the same matter complained of, filed either by the United States under the antitrust laws of the United States, except section 15a of Title 15 of the United States Code, or by the state (except in an action for damages by the state) under ORS 646.760, 646.770 or

646.780 (whichever is first concluded), whichever is later. [1975 c.255 §12]

**646.805 Effect of prior final judgment or decree.** (1) A final judgment or decree heretofore or hereafter rendered in any civil or criminal proceeding brought by or on behalf of the United States under the antitrust laws of the United States to the effect that a defendant has violated such laws, other than a judgment or decree entered in an action under section 15a of Title 15 of the United States Code or a consent judgment or decree entered before any testimony has been taken, shall estop defendant from denial of any matters established in such proceeding, in any action or proceeding brought against such defendant by the state or any person under ORS 646.760, 646.770 or 646.780, to the extent such judgment or decree would be an estoppel between the parties thereto with respect to such matters.

(2) A final judgment or decree to the effect that a person has violated ORS 136.617, 646.705 to 646.805 and 646.990 in an action brought by the state under ORS 646.760, 646.770 or 646.780, other than a consent judgment or decree entered before any testimony has been taken which specifically provides therein that this subsection shall not be applicable, shall estop defendant from denial of any matters established in such action, in any other action against the defendant under ORS 646.770 or 646.780, to the extent such judgment or decree would be an estoppel between the parties thereto with respect to such matters. [1975 c.255 §11]

**646.810** [Repealed by 1971 c.744 §27]

**646.815 Criminal prosecutions; compromise of criminal charges; effect of prior action seeking civil penalties.** (1) Exclusive jurisdiction for criminal prosecution of any violation of ORS 646.725 or 646.730 is vested in the Attorney General. At any time, the Attorney General may receive and respond to an offer to compromise pending or potential criminal charges and any other related claims for relief under ORS 646.760, 646.770, 646.775 or 646.780.

(2) The commencement of trial seeking civil penalties in any action under ORS 646.760 shall bar any subsequent criminal prosecution for violation of ORS 646.725 or 646.730, based upon the same acts complained of. The commencement of trial in a criminal prosecution for violation of ORS 646.725 or 646.730 shall bar any subsequent action for recovery of civil penalties under ORS 646.760, based upon the same acts complained of, but shall not bar a subsequent suit for injunctive relief under ORS 646.760. [1975 c.255 §16 (2), (3); 1999 c.552 §1]

**646.820** [Repealed by 1971 c.744 §27]

**646.821 Taking testimony for investigative demand.** The oral testimony of any person taken pursuant to a demand served under ORS 646.750 shall be taken in the county in which such person resides, is found or transacts business, or in such other place as may be agreed upon. [1977 c.729 §3]

**646.823 Attendance of Attorney General at grand jury proceedings.** Notwithstanding ORS 132.090 (1) the Attorney General may attend grand jury proceedings, advise it in relation to its duties, subpoena and examine witnesses and prepare such indictments or presentments as it requires in investigations of violations of ORS 646.725 or 646.730. [1977 c.729 §7]

**646.826 Counsel for persons testifying; grounds for refusing to answer questions; compelling testimony; exclusion of spectators.** (1) Any person compelled to appear under a demand for oral testimony pursuant to ORS 646.750 may be accompanied, represented and advised by counsel with respect to any questions asked of such person. Such advice may be given in confidence.

(2) Such person may refuse to answer any question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person shall not otherwise refuse to answer any question.

(3) If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of the person may be compelled by the same procedure as provided in ORS 136.617.

(4) The antitrust investigator or investigators conducting the examination shall exclude from the place where examination is held all other persons except the person being examined, the counsel of the person, the officer before whom the testimony is to be taken and any stenographer taking the testimony. [1977 c.729 §4]

**646.830** [Repealed by 1971 c.744 §27]

**646.831 Fees and mileage for persons testifying.** Any person appearing for oral examination pursuant to a demand served under ORS 646.750 shall be entitled to the fees and mileage provided for witnesses in ORS 44.415 (2). [1977 c.729 §5; 1989 c.980 §16]

**646.836 Confidential status of investigative material; permitted disclosures; use of information in other proceedings; return of investigative material.** (1) While in the possession of the Attorney General any documentary material, answers to interrogatories and transcripts of oral testimony shall be held in confidence and not disclosed to any person except:

(a) The person providing such material or answers;

(b) The representative or attorney of the person providing the material or answers;

(c) Persons employed by the Attorney General;

(d) Officials of the United States or any state who are authorized to enforce federal or state antitrust laws, provided that prior to such disclosure the Attorney General shall obtain the written agreement of such officials to abide by the confidentiality restriction of this section; and

(e) Other persons authorized in subsection (2) of this section.

(2) Any such material or answers may be used in any investigation conducted pursuant to ORS 646.705 to 646.826 or in any case or proceeding before a court or administrative agency, or may be disclosed to any committee or subcommittee of the Legislative Assembly in such manner and for such purposes as the Attorney General deems appropriate.

(3) Upon completion of a case brought under this section, the Attorney General shall return any such documents, answers and transcripts which have not passed into the control of the court through the introduction thereof into the records, to the person who provided such documents, answers or testimony upon the person's request in writing. If no case in which such material may be used has been commenced within a reasonable time after completion of the examination or analysis of all documentary material, but in no event later than four years after production thereof, the Attorney General shall, upon written request of the person who produced such material, return all documents, answers and transcripts to the person who provided them. [1977 c.729 §6; 1987 c.500 §1]

**646.840** [Repealed by 1971 c.744 §27]

**646.845** [2001 c.924 §5; renumbered 646A.080 in 2007]

**646.848** [2003 c.803 §1; 2007 c.475 §2; renumbered 646A.060 in 2007]

**646.849** [2003 c.803 §2; 2007 c.475 §3; renumbered 646A.062 in 2007]

**646.850** [1985 c.538 §1(1), (3); 2001 c.924 §20; renumbered 646A.070 in 2007]

**646.855** [1985 c.538 §§1(2),2; renumbered 646A.072 in 2007]

**646.857** [1989 c.458 §1; renumbered 646A.140 in 2007]

**646.859** [1989 c.458 §2; renumbered 646A.142 in 2007]

**646.860** [1969 c.395 §1; 1985 c.251 §2; renumbered 815.410]

**646.861** [1989 c.1013 §1; renumbered 646A.240 in 2007]

**646.863** [1989 c.1013 §2; renumbered 646A.242 in 2007]

**646.865** [1989 c.1013 §3; renumbered 646A.244 in 2007]

**646.868** [Formerly 646.890; renumbered 646A.085 in 2007]

**646.870** [1973 c.456 §2; renumbered 646A.350 in 2007]

- 646.871** [1993 c.700 §1; renumbered 646A.095 in 2007]  
**646.872** [1989 c.621 §3; renumbered 646A.360 in 2007]  
**646.874** [1991 c.593 §1; 1993 c.87 §1; renumbered 646A.325 in 2007]  
**646.875** [1981 c.807 §1; 1985 c.751 §1 (1), (2) and (3); renumbered 646.930]  
**646.876** [1991 c.593 §2; 1993 c.87 §2; 1995 c.618 §105; renumbered 646A.327 in 2007]  
**646.877** [1999 c.669 §§1,2; 2003 c.486 §1; 2003 c.655 §83; 2007 c.382 §2; renumbered 646A.090 in 2007]  
**646.878** [1993 c.225 §§1 to 8; renumbered 646A.097 in 2007]  
**646.879** [1999 c.875 §5; 2001 c.404 §1; renumbered 646A.362 in 2007]  
**646.880** [1977 c.429 §10; renumbered 646.935]

### PRICE COMPARISON ADVERTISING

**646.881 Definitions for ORS 646.881 to 646.885.** As used in ORS 646.881 to 646.885, unless the context requires otherwise:

(1) "Advertisement" means any oral, written or graphic statement or representation made in connection with the solicitation of business in any manner by a seller and includes, but is not limited to, statements and representations made in any newspaper or other publication, on radio or television, or printed in any catalog, circular, or any other sales literature or brochure, any billboard, or any banner or sign visible from a street or highway adjacent to the seller's place of business.

(2) "Price comparison" means the direct or indirect comparison in any advertisement whether or not expressed wholly or in part in dollars, cents, fractions or percentages of a seller's current price for a product with any other price or statement of value, whether or not such price is actually stated in the advertisement. "Price comparison" includes any price reduction claim or savings claim which a seller makes with respect to the seller's current price for any product. [1987 c.626 §2]

**646.883 Price comparison in advertisement prohibited; exceptions.** It shall be unlawful for a seller to include a price comparison in an advertisement unless:

(1) The seller clearly and conspicuously identifies in the advertisement the origin of the price that the seller is comparing to the seller's current price. The origin of the price that the seller is comparing to the seller's current price includes but is not limited to the seller's former selling price, a manufacturer's list price or a competitor's price for the same real estate, goods or services.

(2) The price comparison is in compliance with ORS 646.608 (1)(j) and the rules adopted under ORS 646.608 (4) and compliance is established based on facts provable by the seller. [1987 c.626 §3]

**646.885 Use of terms in advertisement containing price comparison.** (1) The use of terms such as "regular," "reduced," "sale," "usually," "originally," "clearance," "liquidation" and "formerly" shall identify the origin of the price that the seller is comparing to the seller's current price as the seller's own former price, or in the case of introductory advertisements, the seller's future price.

(2) Unless the seller states otherwise in the advertisement, use of terms such as "discount," "\_\_\_\_\_ percent discount," "\$\_\_\_\_\_ discount," "\_\_\_\_\_ percent off" and "\$\_\_\_\_\_ off" shall be considered to identify the origin of the price that the seller is comparing to the seller's current price as the seller's former price, or in the case of introductory advertisements, the seller's future price. [1987 c.626 §4]

- 646.886** [2003 c.290 §1; renumbered 646A.200 in 2007]  
**646.887** [2003 c.290 §2; 2003 c.803 §28; renumbered 646A.202 in 2007]  
**646.888** [2003 c.290 §3; 2003 c.803 §29; renumbered 646A.204 in 2007]  
**646.889** [2003 c.290 §5; renumbered 646A.206 in 2007]  
**646.890** [1979 c.254 §1; 1981 c.897 §84; renumbered 646.868 in 2003]  
**646.892** [1993 c.58 §1; 1995 c.631 §2; renumbered 646A.210 in 2007]  
**646.893** [1995 c.631 §1; renumbered 646A.212 in 2007]  
**646.894** [1993 c.58 §2; 2003 c.312 §1; renumbered 646A.214 in 2007]  
**646.895** [1987 c.888 §1; renumbered 646A.220 in 2007]  
**646.897** [1987 c.888 §2; renumbered 646A.222 in 2007]  
**646.899** [1987 c.888 §§3,4; 2003 c.290 §4; renumbered 646A.230 in 2007]  
**646.901** [1989 c.206 §1; renumbered 646A.232 in 2007]

### VEHICLE FUELS

#### (Blended Gasoline)

**646.905 Definitions for ORS 646.910 to 646.923.** As used in ORS 646.910 to 646.923:

(1) "Alcohol" means a volatile flammable liquid having the general formula  $C_nH_{(2n+1)}OH$  used or sold for the purpose of blending or mixing with gasoline for use in propelling motor vehicles, and commonly or commercially known or sold as an alcohol, and includes ethanol or methanol.

(2) "Biodiesel" means a motor vehicle fuel consisting of mono-alkyl esters of long chain fatty acids derived from vegetable oils, animal fats or other nonpetroleum resources, not including palm oil, designated as B100 and complying with ASTM D 6751.

(3) "Certificate of analysis" means:

(a) A document verifying that B100 biodiesel has been analyzed and complies with, at a minimum, the following ASTM D 6751 biodiesel fuel test methods and specifications:

- (A) Flash point (ASTM D 93);
- (B) Acid number (ASTM D 664);
- (C) Cloud point (ASTM D 2500);
- (D) Water and sediment (ASTM D 2709);
- (E) Visual appearance (ASTM D 4176);
- (F) Free glycerin (ASTM D 6854); and
- (G) Total glycerin (ASTM D 6854); and

(b) Certification of feedstock origination describing the percent of the feedstock sourced outside of the states of Oregon, Washington, Idaho and Montana.

(4) "Co-solvent" means an alcohol other than methanol which is blended with either methanol or ethanol or both to minimize phase separation in gasoline.

(5) "Ethanol" means ethyl alcohol, a flammable liquid having the formula  $C_2H_5OH$  used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

(6) "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded.

(7) "Methanol" means methyl alcohol, a flammable liquid having the formula  $CH_3OH$  used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

(8) "Motor vehicles" means all vehicles, vessels, watercraft, engines, machines or mechanical contrivances that are propelled by internal combustion engines or motors.

(9) "Nonretail dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is dispensed through a card- or key-activated fuel dispensing device to nonretail customers.

(10) "Other renewable diesel" means a diesel fuel substitute, produced from nonfossil renewable resources, that has an established ASTM standard, is approved by the United States Environmental Protection Agency, meets specifications of the National Conference on Weights and Measures, and complies with standards promulgated under ORS 646.957.

(11) "Retail dealer" means any person who owns, operates, controls or supervises an establishment at which gasoline is sold or offered for sale to the public.

(12) "Wholesale dealer" means any person engaged in the sale of gasoline if the seller knows or has reasonable cause to believe the buyer intends to resell the gasoline in the same or an altered form to another. [1985 c.468 §1; 1997 c.310 §13; 2007 c.739 §10]

**646.910 Sale of gasoline blended with alcohol prohibited unless mixture meets federal specifications or requirements.** No wholesale or retail dealer may sell or offer to sell any gasoline blended or mixed with alcohol unless the blend or mixture meets the specifications or registration requirements established by the United States Environmental Protection Agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. section 7545 and 40 C.F.R. Part 79. [1985 c.468 §2(1)]

**Note:** The amendments to 646.910 by section 20, chapter 739, Oregon Laws 2007, become operative November 1, 2009. See section 21, chapter 739, Oregon Laws 2007. The text that is operative on and after November 1, 2009, is set forth for the user's convenience.

**646.910.** (1) A wholesale or retail dealer may not sell or offer to sell any gasoline blended or mixed with:

(a) Ethanol unless the blend or mixture meets the specifications or registration requirements established by the United States Environmental Protection Agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. section 7545 and 40 C.F.R. Part 79, and that complies with ASTM International specification D 4806;

(b) Methyl tertiary butyl ether in concentrations that exceed 0.15 percent by volume; or

(c) A total of all of the following oxygenates that exceeds one-tenth of one percent, by weight, of:

- (A) Diisopropylether.
- (B) Ethyl tert-butylether.
- (C) Iso-butanol.
- (D) Iso-propanol.
- (E) N-butanol.
- (F) N-propanol.
- (G) Sec-butanol.
- (H) Tert-amyl methyl ether.
- (I) Tert-butanol.
- (J) Tert-pentanol or tert-amyl alcohol.

(K) Any other additive that has not been approved by the California Air Resources Board or the United States Environmental Protection Agency.

(2) Nothing in this section shall prohibit transshipment through this state, or storage incident to the transshipment, of gasoline that contains methyl tertiary butyl ether in concentrations that exceed 0.15 percent by volume or any of the oxygenates listed in subsection (1)(c) of this section, provided:

(a) The gasoline is used or disposed of outside this state; and

(b) The gasoline is segregated from gasoline intended for use within this state.

**646.911 Sale of gasoline with oxygenate other than ethanol.** Notwithstanding ORS 646.910, a person may sell, supply or offer to sell or supply gasoline in this state that contains any oxygenate other than ethanol, if the California Air Resources Board, the California Environmental Policy Council or the United States Environmental Protection Agency allows the use of the oxygenate. [2007 c.739 §23]

**646.912 Study and monitoring of ethanol production, use and sales; notice required.** (1) The State Department of Agriculture shall study and monitor ethanol fuel production, use and sales in this state.

(2) When capacity of ethanol production facilities in Oregon reaches a level of at least 40 million gallons, the department shall notify all retail dealers, nonretail dealers and wholesale dealers in this state, in a notice that meets the requirements of subsection (3) of this section.

(3) The notice under subsection (2) of this section shall inform retail dealers, nonretail dealers and wholesale dealers that:

(a) The capacity of ethanol production facilities in Oregon has reached the levels described in subsection (2) of this section; and

(b) Three months after the date of the notice, a retail dealer, nonretail dealer or wholesale dealer may sell or offer for sale only gasoline described in ORS 646.913. [2007 c.739 §17]

**646.913 Limitations on gasoline sales; requirements for ethanol content in gasoline; rules.** (1) A retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale gasoline unless the gasoline contains 10 percent ethanol by volume.

(2) Gasoline containing ethanol that is sold or offered for sale meets the requirements of this section if the gasoline, exclusive of denaturants and permitted contaminants, contains not less than 9.2 percent by volume of agriculturally derived, denatured ethanol that complies with the standards for ethanol adopted by the State Department of Agriculture.

(3) The department shall adopt standards for ethanol blended with gasoline sold in this state. The standards adopted shall require that the gasoline blended with ethanol:

(a) Contains ethanol that is derived from agricultural or woody waste or residue;

(b) Contains ethanol denatured as specified in 27 C.F.R. parts 20 and 21;

(c) Complies with the volatility requirements specified in 40 C.F.R. part 80;

(d) Complies with or is produced from a gasoline base stock that complies with ASTM International specification D 4814;

(e) Is not blended with casinghead gasoline, absorption gasoline, drip gasoline or natural gasoline after it has been sold, transferred or otherwise removed from a refinery or terminal; and

(f) Contains ethanol that complies with ASTM International specification D 4806.

(4) The department may review specifications adopted by ASTM International, or equivalent organizations, and federal regulations and revise the standards adopted pursuant to this section as necessary. [2007 c.739 §18]

**Note:** Section 19, chapter 739, Oregon Laws 2007, provides:

**Sec. 19.** Section 18 of this 2007 Act [646.913] becomes operative on a date that is three months following the date of the notice required under section 17 of this 2007 Act [646.912]. [2007 c.739 §19]

**646.915 Identification of blended gasoline required; method of identification.** (1) A retail dealer or nonretail dealer of gasoline who knowingly sells or offers for sale gasoline that is blended with ethanol, methanol, co-solvent, alcohol or other oxygenates in quantities greater than 1.5 mass percent shall be identified as “with,” “containing” or other similar language indicating the oxygenate contributing the largest mass percentage to the blend in the gasoline. When mixtures of only ethers are present, the retail dealer or nonretail dealer shall post the predominant oxygenate followed by the phrase “or other ethers.” Gasoline-methanol blends containing more than 0.15 mass percent oxygen from methanol shall be identified as “with” or “containing” methanol.

(2) The disclosure required by this section shall be posted on the upper 50 percent of the dispensing device front panel in a position clear and conspicuous from the driver’s position in type at least one-half inch in height and one-sixteenth inch in width.

(3) In any county, city or other political subdivision designated as a carbon monoxide nonattainment area pursuant to the provisions of subchapter I of the Clean Air Act Amendments of 1990 (Public Law 101-549), and in which the sale of oxygenated gasoline is required by section 211(m) of the Clean Air Act Amendments of 1990, 42 U.S.C. 7545(m), any retail dealer of gasoline who sells or dispenses a petroleum product that contains at least one percent, by volume, ethanol, methanol or other oxygenate, shall be required to post only such label or notice as may be required pursuant to 42 U.S.C. 7545(m)(4) or any amendments thereto or successor provision thereof. [1985 c.468 §3(1),(2); 1993 c.566 §1; 1997 c.310 §11]

**646.920 Wholesale dealer; declaration of contents required.** Before or at the time of delivery of gasoline from a wholesale dealer to a retail dealer or nonretail dealer, the wholesale dealer must give the retail dealer or nonretail dealer on an invoice, bill of lading, shipping notice or other documentation, a declaration of the predominant oxygenate or combination of oxygenates present in concentration sufficient to yield an oxygen content of at least 1.5 mass per-

cent in the gasoline. When mixtures of only ethers are present, the wholesale dealer shall identify the predominant oxygenate in the gasoline followed by the phrase "or other ethers." Any gasoline containing more than 0.15 mass percent oxygen from methanol shall be identified as "with" or "containing" methanol. [1985 c.468 §4(1); 1997 c.310 §12]

### (Biodiesel)

**646.921 Study and monitoring of biodiesel production, use and sales; notices required.** (1) The State Department of Agriculture shall study and monitor biodiesel fuel production, use and sales and certifies of analysis in this state.

(2) When the production of biodiesel in this state from sources in Oregon, Washington, Idaho and Montana reaches a level of at least 5 million gallons on an annualized basis for at least three months, the department shall notify all retail dealers, nonretail dealers and wholesale dealers in this state, in a notice that meets the requirements of subsection (5) of this section.

(3) When the production of biodiesel in this state from sources in Oregon, Washington, Idaho and Montana reaches a level of at least 15 million gallons on an annualized basis for at least three months, the department shall notify all retail dealers, nonretail dealers and wholesale dealers in this state, in a notice that meets the requirements of subsection (5) of this section.

(4) All retail dealers, nonretail dealers and wholesale dealers in Oregon are required to provide, upon the request of the department, a certificate of analysis for biodiesel received.

(5) The notices required under this section shall inform retail dealers, nonretail dealers and wholesale dealers that:

(a) The production of biodiesel has reached the level described in subsection (2) or (3) of this section, as appropriate; and

(b) Three months after the date of the notice, a retail dealer, nonretail dealer or wholesale dealer may sell or offer for sale diesel fuel only as described in ORS 646.922. [2007 c.739 §13]

**646.922 Limitations on sale of diesel fuel following notice; requirements for biodiesel content; rules.** (1) Three months after the date of the notice given under ORS 646.921 (2), a retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel contains at least two percent biodiesel by volume or other renewable diesel with at least two percent renewable component by volume.

(2) Three months after the date of the notice given under ORS 646.921 (3), a retail dealer, nonretail dealer or wholesale dealer may not sell or offer for sale diesel fuel unless the diesel fuel contains at least five percent biodiesel by volume or other renewable diesel with at least five percent renewable component by volume. Diesel fuel containing more than five percent biodiesel by volume or other renewable diesel with more than five percent renewable component by volume must be labeled as provided by the State Department of Agriculture by rule.

(3) The department shall adopt standards for biodiesel or other renewable diesel sold in this state. The department shall consult the specifications established for biodiesel or other renewable diesel by ASTM International in forming its standards. The department may review specifications adopted by ASTM International, or equivalent organizations, and revise the standards adopted pursuant to this subsection as necessary.

(4) The minimum biodiesel fuel content or renewable component in other renewable diesel requirements under subsections (1) and (2) of this section do not apply to diesel fuel sold or offered for sale for use by railroad locomotives, marine engines or home heating. [2007 c.739 §14]

**Note:** Section 16, chapter 739, Oregon Laws 2007, provides:

**Sec. 16.** Sections 14 and 15 of this 2007 Act [646.922 and 646.923] become operative on a date that is three months following the date of the first notice required under section 13 (2) of this 2007 Act [646.921 (2)]. [2007 c.739 §16]

**646.923 Retention of certificate of analysis; powers of Director of Agriculture; biodiesel testing; rules.** (1) Each biodiesel or other renewable diesel producer, each operator of a biodiesel bulk facility and each person who imports biodiesel or other renewable diesel into this state for sale in this state shall keep for at least one year, at the person's registered place of business, the certificate of analysis for each batch or production lot of B100 biodiesel sold or delivered in this state.

(2) The Director of Agriculture, or the director's authorized agent, upon reasonable oral or written notice, may make such examinations of books, papers, records and equipment the director requires to be kept by a biodiesel or other renewable diesel producer, facility operator or importer as may be necessary to carry out the duties of the director under ORS 646.910 to 646.923.

(3) The director, or the director's authorized agent, may test biodiesel or other renewable diesel for the purpose of inspecting the biodiesel or other renewable diesel of any producer, bulk facility, business or

other establishment that sells, offers for sale, distributes, transports, hauls, delivers or stores biodiesel or other renewable diesel that is subsequently sold or offered for sale, for compliance with the motor fuel quality standards adopted pursuant to ORS 646.957.

(4) For the purpose of ensuring the quality of B100 biodiesel, the director, or the director's authorized agent, may obtain, at no cost to the department and as often as deemed necessary, a representative sample of B100 biodiesel from any producer, bulk facility, business or other establishment that sells, offers for sale, distributes, transports, hauls, delivers or stores biodiesel. The State Department of Agriculture shall adopt rules establishing the number of samples to be tested. The entire cost of transportation and testing of the samples shall be the responsibility of and invoiced directly to the business from which the sample was obtained. [2007 c.739 §15]

**Note:** See note under 646.922.

**646.925 Enforcement; rules.** The State Department of Agriculture shall enforce the provisions of ORS 646.910 to 646.923 and is authorized to make any rules necessary to carry out the provisions of ORS 646.910 to 646.923 in accordance with the applicable provisions of ORS chapter 183. [1985 c.468 §5]

**646.930 Motor vehicle fuel prices; requirements for display.** (1) A person who operates a service station, business or other place for the purpose of retailing and delivering gasoline, diesel or other fuel into the tanks of motor vehicles may display on a sign visible from the street the lowest cash prices charged for the sale of all grades of gasoline, diesel or other fuel.

(2) The following apply to a sign displaying prices under this section:

(a) The price per unit of measurement and the unit of measurement for a particular kind of fuel must be the same on the sign as on any dispensing device used for delivering that kind of fuel into the tanks of motor vehicles.

(b) If a cash price displayed on a sign is available only under some conditions, the sign and the dispensing device must clearly state the conditions.

(c) If a price displayed on a sign is available only in a certain area of the service station or business, the area where the price displayed is available must be clearly identified.

(3) A person who displays a cash price that is available only under some conditions may not require, as a condition of buying fuel at the displayed price, that the buyer fill the fuel tank of the buyer's vehicle. [Formerly 646.875]

**646.932 Posting of amount per gallon of gasoline that is federal, state and local tax; furnishing of information by Department of Transportation.** (1) As used in this section, "gas station" includes a filling station, service station, garage or any other place where gasoline is sold for use in motor vehicles.

(2) The owner or operator of a gas station shall post, in a manner visible to customers, the following information:

(a) The amount of the price per gallon that is federal tax;

(b) The amount of the price per gallon that is state tax;

(c) The amount of the price per gallon that is local tax; and

(d) The total amount of federal, state and local taxes per gallon.

(3) The Department of Transportation shall furnish the information described in subsection (2) of this section to each gas station in the state. [1999 c.957 §8]

**646.935 Diesel fuel sales; price discrimination.** (1) No person operating a service station selling to the public at retail diesel fuel, where delivery is regularly made into a receptacle on a vehicle from which receptacle the fuel is supplied to propel the vehicle, shall refuse to sell and deliver any quantity of such fuel to any vehicle during regular business hours, upon demand and tender of the posted price plus any applicable tax for such fuel delivered, subject to a rationing policy established by state or federal statute or regulation.

(2) A price differential or method of delivery designed to discriminate against or discourage purchases by vehicles of small fuel capacity is prohibited. However, a reasonable discount or differential based upon quantity of delivery shall not be considered discriminatory. [Formerly 646.880]

#### (Octane Ratings)

**646.945 Definitions for ORS 646.947 to 646.963.** As used in ORS 646.947 to 646.963:

(1) "Bulk facility" means a facility, including pipeline terminals, refinery terminals, rail and barge terminals and associated underground and aboveground tanks, connected or separate, from which motor vehicle fuels are withdrawn from bulk and delivered to retail, wholesale or nonretail facilities or into a cargo tank or barge used to transport those products.

(2) "Dealer" means any motor vehicle fuel retail dealer, nonretail dealer or wholesale dealer.

(3) "Director" means the Director of Agriculture.

(4) "Motor vehicle fuel" means gasoline, diesel or any other liquid product used for the generation of power in an internal combustion engine, except aviation jet fuels, liquefied petroleum or natural gases.

(5) "Nonretail dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is dispensed through a card- or key-activated fuel dispensing device to nonretail customers.

(6) "Octane rating" means the rating of the anti-knock characteristics of a grade or type of gasoline determined by dividing by two the sum of the research octane number and the motor octane number.

(7) "Octane rating certification documentation" means an invoice, bill of lading, delivery ticket, letter or other documentation that specifies the actual octane rating or a rounded rating that is the largest whole number or half of a number that is less than or equal to the number determined by or certified to the person transferring the gasoline.

(8) "Retail dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is sold or offered for sale to the public.

(9) "Wholesale dealer" means any person who sells motor vehicle fuel if the seller knows or has reasonable cause to believe that the buyer intends to resell the motor vehicle fuel in the same or an altered form to a retail dealer, a nonretail dealer or another wholesale dealer.

(10) "Withdrawn from bulk" means removed from a bulk facility for delivery directly into a cargo tank or a barge to be transported to a location other than another bulk facility for use or sale in this state. [1997 c.310 §1]

**646.947 Prohibited activities.** Notwithstanding any other provision of ORS 646.947 to 646.963, it is unlawful for:

(1) A dealer to sell or offer for sale any motor vehicle fuel using procedures that violate any rule or standard adopted pursuant to ORS 646.957.

(2) A dealer to sell or offer for sale any gasoline from a dispensing device that does not have a sign displayed, on both sides of the device, that accurately identifies the octane rating of the gasoline being dispensed from that device pursuant to ORS 646.949.

(3) A wholesale dealer to deliver gasoline to a retail dealer or nonretail dealer without giving to the retail dealer or nonretail dealer

octane rating certification documentation for the gasoline being delivered. [1997 c.310 §2]

**646.949 Signs identifying octane rating.** (1) A dealer who sells or offers for sale any gasoline shall conspicuously display a sign on each side of the dispensing device, using descriptive commercial terms that accurately identify the octane rating of the gasoline being dispensed from that device. The sign shall be of such size and design and shall be posted in such a manner as the Director of Agriculture determines will adequately inform the purchaser of the octane rating of the gasoline.

(2) Rules adopted pursuant to this section shall conform, to the greatest extent practicable, to rules of the Federal Trade Commission regarding automotive fuel rating certification and posting. [1997 c.310 §3]

**646.951 Testing of motor vehicle fuel.**

(1) The Director of Agriculture may test motor vehicle fuel for the purpose of inspecting the motor vehicle fuel supply of any service station, business or other establishment that sells or offers for sale, or distributes, transports, hauls, delivers or stores motor vehicle fuel that is subsequently sold or offered for sale, for compliance with the motor vehicle fuel quality standards adopted pursuant to ORS 646.957.

(2) The director or the director's authorized agent shall have access during normal business hours to all places where motor vehicle fuel is sold to or by a retail dealer, nonretail dealer or wholesale dealer for the purpose of examination, inspection and investigation of the establishment's motor vehicle fuel supply, shall collect or cause to be collected samples of the motor vehicle fuel and shall test or analyze the samples for compliance with motor vehicle fuel quality standards adopted pursuant to ORS 646.957.

(3) Before taking any enforcement action under ORS 646.953 or 646.963, the director shall cause motor vehicle fuel samples to be tested in accordance with standards, reproducibility limits and procedures that are, in the director's judgment, consistent with American Society for Testing and Materials standards and procedures.

(4) The director or the director's authorized agent shall notify the owner or person in charge of the facility of the sample collection as soon as is practicable after a sample is taken. The volume of the sample taken for testing must be adequate for the tests to be performed and to allow for a portion of the sample to be retained for subsequent testing, if the need arises. A sample with a test result that is outside the test reproducibility limits, when compared to the applicable limits, shall be properly stored to



preserve the sample for at least 90 days. [1997 c.310 §4]

**646.953 Orders of Director of Agriculture.** (1) The Director of Agriculture may issue a stop-use order, hold order or removal order for any motor vehicle fuel offered or exposed for sale, or in the process of delivery or susceptible to commercial use, that is found to be not in compliance with the motor vehicle fuel quality standards adopted pursuant to ORS 646.957. The director may rescind the stop-use order, hold order or removal order if the fuel is brought into full compliance with motor vehicle fuel quality standards.

(2) No person shall use, remove from the premises specified or fail to remove from the premises specified any motor vehicle fuel in a manner contrary to the terms of a stop-use order, hold order or removal order issued under authority of this section. [1997 c.310 §5]

**646.955 Records required.** (1) Each operator of a bulk facility and each person who imports motor vehicle fuels into this state for sale in this state shall keep, for at least one year, at the person's registered place of business complete and accurate records of any motor vehicle fuels sold if sold or delivered in this state, for purposes of showing compliance with ORS 646.947 to 646.963.

(2) The Director of Agriculture, upon reasonable oral or written notice, may make such examinations of the books, papers, records and equipment required to be kept under this section as may be necessary to carry out the provisions of ORS 646.947 to 646.963.

(3) Retail dealers and nonretail dealers shall maintain at their facilities the octane rating certification documentation for the three most recent deliveries to the facility for each grade of gasoline sold or offered for sale. [1997 c.310 §6]

**646.957 Rules.** (1) In accordance with any applicable provision of ORS chapter 183, the Director of Agriculture, not later than December 1, 1997, shall adopt rules to carry out the provisions of ORS 646.947 to 646.963. Such rules may include, but are not limited to, motor vehicle fuel grade advertising, pump grade labeling, testing procedures, quality standards and identification requirements for motor vehicle fuels and ethanol, biodiesel and other renewable diesel, as those terms are defined in ORS 646.905. Rules adopted by the director under this section shall be consistent, to the extent the director considers appropriate, with the most recent standards adopted by the American Society for Testing and Materials. As standards of the society are revised, the director shall revise the rules in a manner consistent with the revisions unless the director determines that those revised rules will significantly in-

terfere with the director's ability to carry out the provisions of ORS 646.947 to 646.963. Rules adopted pursuant to this section must adequately protect confidential business information and trade secrets that the director or the director's authorized agent may discover when inspecting books, papers and records pursuant to ORS 646.955.

(2) Testing requirements, specifications and frequency of testing for each production lot of biodiesel, biodiesel blend or other renewable diesel produced in or brought into this state shall be defined by the director by rule. [1997 c.310 §8; 2007 c.739 §11]

**646.959 Annual fee for metering instrument or device.** (1) In addition to and not in lieu of the license fee required by ORS 618.141, each dealer that operates a metering instrument or device, other than a remote readout device, required to be licensed by ORS 618.121 that is operated for the measurement of motor vehicle fuel shall pay to the State Department of Agriculture an annual fee of \$5 for each such instrument or device. The fee required by this section shall be paid at the same time that the licensing fee for the instrument or measuring device is paid.

(2) All moneys received by the department pursuant to this section shall be paid into the Motor Vehicle Fuel Inspection Program Account.

(3) As used in this section, "remote readout device" means a console, cabinet, panel or instrument connected to or associated with a weighing or measuring device that indicates, displays or prints values of weight or measure at a location physically separate from the weighing or measuring device. [1997 c.310 §10; 1999 c.237 §3]

**646.961 Motor Vehicle Fuel Inspection Program Account.** The Motor Vehicle Fuel Inspection Program Account is created in the Department of Agriculture Service Fund. Notwithstanding any other provision of law, all moneys in the account are appropriated continuously to the State Department of Agriculture for the administration of ORS 646.947 to 646.963. [1997 c.310 §9]

**646.963 Civil penalties.** (1) In addition to any other liability or penalty provided by law, the Director of Agriculture may impose a civil penalty as provided in subsection (3) of this section on any person who violates any provision of ORS 646.947, 646.949 or 646.953, rules adopted under ORS 646.957 or orders issued under ORS 646.953.

(2) Any civil penalty under subsection (1) of this section shall be imposed in the manner provided by ORS 183.745.

(3) The director may impose civil penalties that are:

(a) Not more than \$500 for a first violation.

(b) Not more than \$2,500 for a second violation within two years from the date of the first violation.

(c) Not more than \$10,000 for a third violation within two years from the date of the first violation.

(4) In imposing a penalty under subsection (3) of this section, the director shall consider the following factors:

(a) The gravity of the violation.

(b) The scope of the violation.

(c) The past history of the person incurring the penalty.

(d) In the case of a penalty to be imposed on a retail dealer or nonretail dealer, the degree of knowledge by the dealer of the violation.

(5) Civil penalties collected shall be deposited into the Motor Vehicle Fuel Inspection Program Account. [1997 c.310 §7]

### PENALTIES

**646.990 Penalties.** (1) Each violation of any of the provisions of ORS 646.010 to 646.180 by any person, firm or corporation, whether as principal, agent, officer or director, is punishable, upon conviction, by a fine of not less than \$100 nor more than \$500, or

by imprisonment in the county jail not exceeding six months, or by both.

(2) Violation of ORS 646.725 or 646.730 is a Class A misdemeanor.

(3) Any person who willfully and intentionally violates any provision of ORS 646A.220 to 646A.230 shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than six months or both. Violation of any order or injunction issued pursuant to ORS 646A.230 (1) shall constitute prima facie proof of a violation of this subsection.

(4) Violation of ORS 646.910 is a Class D violation.

(5) Violation of ORS 646.915 is a Class D violation.

(6) Violation of ORS 646.920 is a Class D violation.

(7) A person violating ORS 646.930 commits a Class C misdemeanor. [Amended by 1953 c.391 §2; 1967 c.144 §2; 1967 c.599 §4; subsection (8) enacted as 1969 c.395 §2; 1971 c.744 §24; 1975 c.255 §15; subsection (4) enacted as 1975 c.255 §16 (1); 1985 c.251 §28; subsection (4) enacted as 1985 c.468 §2 (2); subsection (5) enacted as 1985 c.468 §3 (3); subsection (6) enacted as 1985 c.468 §4 (2); subsection (7) enacted as 1985 c.751 §1 (4); subsection (3) enacted as 1987 c.888 §5; 1999 c.1051 §213]

**646.992** [1973 c.456 §3; renumbered 646A.352 in 2007]