

# Chapter 646

2003 EDITION

## Trade Practices and Antitrust Regulation

<b>PRICE DISCRIMINATION IN COMMERCE AND FOOD COMMERCE</b>	
646.010	Designation and scope of ORS 646.010 to 646.180
646.020	Definitions and explanations
646.030	Application to cooperative associations
646.040	Price discrimination prohibited; price differentials
646.050	Establishing prima facie case of discrimination; justification of discrimination
646.060	Commissions and allowances
646.070	Special payments to customers
646.080	Special services to customers
646.090	Inducing or receiving price discrimination prohibited
646.130	Cost surveys as evidence
646.140	Enjoining violations; treble damages; attorney fees; limitation on commencement of actions
646.150	Action for damages
646.160	Presumption of damages
646.170	Requiring defendant to testify
646.180	Illegal contracts
<b>SELLERS OF TRAVEL</b>	
646.185	Definitions for ORS 646.185 to 646.195
646.187	Certification of association of sellers of travel; application
646.189	Requirements for certification; bylaws; code of ethics; disclosures; definitions
646.191	Issuance of certification; rules; duration; review
646.193	Denial, suspension or revocation of certification
646.195	Prohibited conduct; referral of complaints for mediation
<b>MAIL AGENTS</b>	
646.221	Definitions for ORS 646.221 to 646.240
646.225	Prohibited conduct; required verifications and notice
646.229	Mail agent bond; exceptions
646.235	Damages
646.240	Action by Attorney General; civil penalty; injunction; attorney fees and costs
<b>LEASE-PURCHASE AGREEMENTS</b>	
646.245	Definitions for ORS 646.245 to 646.259
646.247	Applicability of ORS 646.245 to 646.259
646.249	General disclosure requirements
646.251	Specific disclosure requirements
646.253	Provisions prohibited in lease-purchase agreements
646.255	Reinstatement of lease-purchase agreement by consumer; receipt for each payment
646.257	Renegotiation or extension of lease-purchase agreement
646.259	Disclosures required in advertisement for lease-purchase agreements
<b>SERVICE CONTRACTS</b>	
646.263	Applicability of ORS 646.263 to 646.285
646.265	Definitions for ORS 646.263 to 646.285
646.267	Service contract defined; registration requirement; required proof of financial stability; filing requirements; rules; applicability of Insurance Code
646.269	Required contents of service contracts
646.271	Prohibited conduct
646.273	Service contract obligor as agent of insurer; indemnification or subrogation rights of insurer
646.275	Investigation of violations of ORS 646.267, 646.269 or 646.271; inspection of records; subpoenas; discontinue or desist order; civil penalties
646.277	Complaints and investigations confidential; exceptions
646.279	Refusal to continue or suspension or revocation of registration
646.281	Assessment fee; rules; purpose; registration fee
646.283	Remedies not exclusive
646.285	Rules; exemption of certain obligors
<b>SIMULATED INVOICES</b>	
646.291	Definitions for ORS 646.291 to 646.302
646.293	Simulated invoices prohibited
646.296	Cause of action by Attorney General; judgment; attorney fees
646.298	Cause of action by private party; judgment; attorney fees
646.300	Presumptions in cause of action brought under ORS 646.296 or 646.298
646.302	Construction; other remedies
<b>ENFORCEMENT OF EXPRESS WARRANTIES ON NEW MOTOR VEHICLES</b>	
646.315	Definitions for ORS 646.315 to 646.375
646.325	Availability of remedy
646.335	Consumer's remedies; manufacturer's affirmative defenses
646.345	Presumption of reasonable attempt to conform; extension of time for repairs; notice to manufacturer
646.355	Use of informal dispute settlement procedure as condition for remedy; binding effect on manufacturer
646.357	Informal dispute settlement procedure; recordkeeping; review by Department of Justice
646.359	Action in court; damages if manufacturer does not act in good faith; attorney fees

## TRADE REGULATIONS AND PRACTICES

- 646.361 Limitations on actions against dealers  
646.365 Limitation on commencement of action  
646.375 Remedies supplementary to existing statutory or common law remedies; election of remedies
- CREDIT SERVICES ORGANIZATIONS**
- 646.380 Legislative findings  
646.382 Definitions for ORS 646.382 to 646.396  
646.384 Prohibited conduct; cancellation of contract by consumer  
646.386 Registration of credit services organizations; rules  
646.388 Surety bond or irrevocable letter of credit  
646.390 Required disclosures  
646.392 Contents of contract between consumer and credit services organization  
646.394 Unenforceable contract provisions; burden of proof; injunctions  
646.396 Audit of credit services organization; grounds for registration denial, revocation, suspension or refusal to renew; civil penalty; rules
- MANUFACTURED DWELLINGS**
- 646.400 Definitions  
646.402 Form of purchase agreement  
646.404 Department of Justice; rules
- REPURCHASE OF FARM IMPLEMENTS BY SUPPLIER FROM RETAILER**
- 646.415 Definitions for ORS 646.415 to 646.459  
646.419 Application of ORS 646.415 to 646.459 to successor in interest or assignee of supplier  
646.425 Payment for farm implements, parts, software, tools and signs upon termination of retailer agreement  
646.435 Repurchase of inventory by supplier; effect of new retailer agreement  
646.445 Civil action for supplier's failure to pay; venue  
646.447 Prohibited conduct by supplier  
646.449 Termination, cancellation or failure to renew retailer agreement; notice; good cause  
646.452 New or relocated dealership; notice; area of responsibility  
646.453 Warranty claims; payment; time for completion  
646.454 Warranty claims; processing  
646.456 Retailer's improvements to products  
646.459 Remedies; arbitration; cause of action; attorney fees; injunctive relief
- TRADE SECRETS**
- 646.461 Definitions for ORS 646.461 to 646.475  
646.463 Enjoining misappropriation; payment of royalties; affirmative acts  
646.465 Damages for misappropriation  
646.467 Attorney fees  
646.469 Preservation of trade secret by court; methods  
646.471 Limitation on commencement of action
- 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  
646.475 Application and construction of ORS 646.461 to 646.475; short title; effect of invalidity
- WARRANTIES ON WHEELCHAIRS, SCOOTERS AND HEARING AIDS**
- 646.482 Definitions for ORS 646.482 to 646.498  
646.484 Express warranty; duration  
646.486 Repair of assistive device  
646.488 Replacement or refund after attempt to repair  
646.490 Procedures for replacement or refund  
646.492 Sale or lease of returned assistive device  
646.494 Dispute resolution  
646.496 Applicability of other laws; waiver  
646.498 Civil action for damages; attorney fees; limitation on actions
- INFANT CRIB SAFETY**
- 646.500 Legislative findings; declaration of purpose  
646.501 Short title  
646.502 Definitions  
646.503 Prohibited conduct  
646.504 Penalties  
646.505 Exemptions  
646.506 Private right of action; attorney fees  
646.507 Scope of remedies
- PRODUCERS' COOPERATIVE BARGAINING ASSOCIATIONS**
- 646.515 Definitions for ORS 646.515 to 646.545  
646.525 Cooperative bargaining associations authorized  
646.535 Unfair trade practices prohibited; exception  
646.545 Remedy for unfair trade practices; attorney fees
- TELEPHONE SOLICITATION**  
(Registration of Telephonic Sellers)
- 646.551 Definitions for ORS 646.551 to 646.557  
646.553 Registration of telephonic sellers; fee; Attorney General as attorney for service of process; rules  
646.555 Burden of proof for person claiming exemption  
646.557 Required disclosures by telephonic seller  
646.559 Rules
- (Unlawful Telephone Solicitations)
- 646.561 Definitions for ORS 646.561 to 646.565  
646.563 Telephone solicitation of party who states desire not to be called  
646.565 Notice of provisions of ORS 646.561 and 646.563; rulemaking by Public Utility Commission  
646.567 Definitions for ORS 646.567 to 646.578  
646.569 Prohibition on telephone solicitation of party whose name is included on list described in ORS 646.574

## TRADE PRACTICES AND ANTITRUST REGULATION

- 646.572 Administrator of telephone solicitation program
- 646.574 List of persons who do not wish to receive telephone solicitations; fee; disclosure of list; complaints
- 646.576 Attorney General's rules
- 646.578 Notice of provisions of ORS 646.567 to 646.578; rulemaking by Public Utility Commission
- ELECTRONIC MAIL**
- (Temporary provisions relating to electronic mail are compiled as notes following ORS 646.578)
- UNLAWFUL TRADE PRACTICES**
- 646.605 Definitions for ORS 646.605 to 646.652
- 646.607 Unconscionable tactic; unlawful electronic mail; failure to deliver, or to refund payment for undelivered, real estate, goods or services
- 646.608 Unlawful business, trade practices; proof; Attorney General's rules
- 646.609 "Pyramid club" and "investment" defined
- 646.611 Information required to be given by telephone or door to door seller to potential customer
- 646.612 Application of ORS 646.607 and 646.608
- 646.618 Investigative demand; petition to modify
- 646.622 Method of serving investigative demand
- 646.626 Effect of failure to obey investigative demand
- 646.632 Enjoining unlawful trade practices; notice to defendant; voluntary compliance; voluntary compliance agreement as judgment; rejection of unsatisfactory assurance; temporary order; attorney fees
- 646.636 Remedial power of court
- 646.638 Civil action by private party; damages; attorney fees; effect of prior injunction; time for commencing action; counterclaim
- 646.639 Unlawful debt collection practices
- 646.641 Civil action for unlawful debt collection practice; damages; attorney fees; time for commencing action
- 646.642 Civil penalties
- 646.643 Applicability of ORS 646.639
- 646.646 Loss of license or franchise by person violating injunction
- 646.648 Unlawful practice by manufactured dwelling dealer
- 646.649 Late fees on delinquent cable service accounts; amount; disclosure; notice
- 646.651 Contest and sweepstakes solicitations; required disclosures; prohibited representations
- 646.652 District attorney's reports to Attorney General; filing of voluntary compliances
- 646.656 Remedies supplementary to existing statutory or common law remedies
- HEALTH SPAS**
- 646.661 Definitions for ORS 646.661 to 646.691
- 646.666 Price list for health spa services
- 646.671 Contracts; contents
- 646.676 Contracts and rules; delivery to buyer
- 646.681 Moneys paid prior to facility opening; disposition; priority of claim; refund
- 646.686 Waiver of provisions of ORS 646.661 to 646.691; request prohibited; unenforceable
- 646.691 Remedies and obligations supplementary to existing remedies
- ANTITRUST LAW**
- 646.705 Definitions for ORS 136.617 and 646.705 to 646.805
- 646.715 Declaration of purpose
- 646.725 Prohibited acts
- 646.730 Monopolies prohibited
- 646.740 Permitted activities
- 646.745 Joint operation of Memorial Coliseum and Arena in Portland; definitions; legislative findings and goals; state supervision
- 646.750 Investigative demand by Attorney General; petition to modify
- 646.760 Civil penalties; attorney fees; mitigation
- 646.770 Equitable remedies; attorney fees
- 646.775 Parens patrial action by Attorney General; damages; attorney fees
- 646.780 Recovery of treble damages; exception; recovery of fees and costs; action under federal law as bar
- 646.790 Venue
- 646.800 Time of commencing action
- 646.805 Effect of prior final judgment or decree
- 646.815 Criminal prosecutions; compromise of criminal charges; effect of prior action seeking civil penalties
- 646.821 Taking testimony for investigative demand
- 646.823 Attendance of Attorney General at grand jury proceedings
- 646.826 Counsel for persons testifying; grounds for refusing to answer questions; compelling testimony; exclusion of spectators
- 646.831 Fees and mileage for persons testifying
- 646.836 Confidential status of investigative material; permitted disclosures; use of information in other proceedings; return of investigative material
- MISCELLANEOUS**
- 646.845 Sale of novelty item containing mercury; penalty
- 646.848 Used goods; merchant's obligation
- 646.849 Penalty for violation of ORS 646.848
- 646.850 Sale of telephonic equipment; disclosure requirements; enforcement; penalty
- 646.855 Exceptions to disclosure requirements
- 646.857 Definitions for ORS 646.857 and 646.859
- 646.859 Rental vehicle collision damage waiver notice
- 646.861 Treatment of child support obligations by creditor in applications for extensions of credit
- 646.863 "Creditor" defined
- 646.865 Cause of action for violation of ORS 646.861; injunction; attorney fees; defenses
- 646.868 Sale of rights by distributor to exhibit motion picture without first giving exhibitor opportunity to view motion picture prohibited; attorney fees

## TRADE REGULATIONS AND PRACTICES

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- 646.870 Delivery of unrequested hazardous substances prohibited (Credit and Charge Card Solicitation Disclosure Requirements)
- 646.871 Disclosure required where purchaser of product offered technical support through information delivery system 646.895 Credit card solicitation; required disclosure; definitions
- 646.872 Unsolicited facsimile machine transmissions 646.897 Charge card solicitation; required disclosure; definitions
- 646.874 Repurchase of motor vehicle by manufacturer; notice to dealer; contents of notice; notice to prospective buyer (Enforcement)
- 646.876 Attorney fees for action under ORS 646.874 646.899 Action by Attorney General or district attorney; civil penalties
- 646.877 Offer to sell or lease motor vehicle subject to future acceptance by lender; disposition of trade-in vehicle and items of value; liability 646.901 Effect of compliance with federal law
- 646.878 Payment of sales commissions following termination of contract between sales representative and principal; definitions; civil action
- 646.879 Exclusion of name from sweepstakes promotion mailing list; written request; rules
- PRICE COMPARISON ADVERTISING**
- 646.881 Definitions for ORS 646.881 to 646.885
- 646.883 Price comparison in advertisement prohibited; exceptions
- 646.885 Use of terms in advertisement containing price comparison
- CREDIT, DEBIT AND CHARGE CARDS**
- (Credit and Debit Card Receipts)
- 646.886 Definitions for ORS 646.887 and 646.888
- 646.887 Payment processing systems
- 646.888 Customer information
- 646.889 Rules
- (Numbers, Expiration Dates or Personal Information in Credit or Debit Card Transactions)
- 646.892 Requiring credit card number as condition for accepting check or share draft prohibited; exceptions
- 646.893 "Credit card" defined
- 646.894 Verification of identity in credit or debit card transactions
- VEHICLE FUELS**
- (Blended Gasoline)
- 646.905 Definitions for ORS 646.910 to 646.920
- 646.910 Sale of gasoline blended with alcohol prohibited unless mixture meets federal specifications or requirements
- 646.915 Identification of blended gasoline required; method of identification
- 646.920 Wholesale dealer; declaration of contents required
- 646.925 Enforcement
- 646.930 Motor vehicle fuel prices; requirements for display
- 646.932 Posting of amount per gallon of gasoline that is federal, state and local tax; furnishing of information by Department of Transportation
- 646.935 Diesel fuel sales; price discrimination
- (Octane Ratings)
- 646.945 Definitions for ORS 646.947 to 646.963
- 646.947 Prohibited activities
- 646.949 Signs identifying octane rating
- 646.951 Testing of motor vehicle fuel
- 646.953 Orders of Director of Agriculture
- 646.955 Records required
- 646.957 Rules
- 646.959 Annual fee for metering instrument or device
- 646.961 Motor Vehicle Fuel Inspection Program Account
- 646.963 Civil penalties
- PENALTIES**
- 646.990 Penalties
- 646.992 Penalty for unlawful delivery of hazardous substances

**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.

## SELLERS OF TRAVEL

**646.185 Definitions for ORS 646.185 to 646.195.** As used in ORS 646.185 to 646.195:

(1) "Accommodations" means the provision of land, sea or air transportation or a combination of transportation and any goods and services sold in conjunction with that transportation, including but not limited to lodging, meals and entertainment.

(2) "Adequate financial security" means a bond executed by an authorized surety insurer or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 for the benefit of every person for whom services have not been delivered by the wrongful act of the seller of travel acting in the course and scope of the seller's occupation or business or by any official, agent or employee of the seller acting in the course or scope of that person's employment or agency. The financial security shall be in an amount not less than \$10,000. The financial security shall be continuous until canceled and shall remain in full force and unimpaired at all times to comply with this subsection. If the financial security is a bond, the surety insurer shall give the Director of the Department of Consumer and Business Services at least 30 days' written notice before it cancels or terminates its liability under the bond.

(3) "Consumer" means a person in Oregon that purchases accommodations and on whose behalf money or other consideration has been given to another, including another member of the same partnership, corporation, joint venture, association, organization, group or other entity, for procuring accommodations.

(4) "Department" means the Department of Consumer and Business Services.

(5) "Director" means the Director of the Department of Consumer and Business Services.

(6) "Seller of travel" or "seller" means a person that sells, provides, furnishes, contracts for, arranges or advertises in this state that the person can or may arrange or has arranged accommodations either separately or in conjunction with other services.

(7) "State of Oregon certified association" or "certified association" means an association of sellers of travel that has been certified by the director as described in ORS 646.191. [Formerly 646.200; 2001 c.639 §1]

**646.187 Certification of association of sellers of travel; application.** An association of sellers of travel may apply to the Director of the Department of Consumer and Business Services for certification as a certified association by filing an application on a form approved by the director. The application shall be accompanied by:

(1) A business plan describing provisions for enforcement of the requirements of ORS 646.185 to 646.195 by the association;

(2) A copy of the governing rules or bylaws of the association;

(3) A description of the source of revenue for administration of the association; and

(4) Any other information required by rule or order of the director. [1999 c.194 §3]

**646.189 Requirements for certification; bylaws; code of ethics; disclosures; definitions.** (1) An association of sellers of travel shall be eligible for certification as a certified association if the Director of the Department of Consumer and Business Services determines that:

(a) The rules or bylaws of the association require members of the association to:

(A) Maintain adequate financial security;

(B) Maintain errors and omissions insurance; or

(C) Maintain accreditation by the Airlines Reporting Corporation, its successor or a similar entity designated by the association and approved by the director.

(b) The rules or bylaws of the association require members of the association to partic-

ipate in a program of mediation of disputes between members and consumers.

(c) The rules or bylaws of the association require members of the association to comply with a written code of ethics that sets requirements for at least:

- (A) Advertising and promotion policies;
- (B) Disclosure of consumer rights;
- (C) Disclosure of policies and procedures for refunds to consumers; and
- (D) Disclosure of the limits of liability of the seller of travel in all transactions.

(d) The rules, bylaws or code of ethics of the association provides that a seller of travel may not be admitted to the association or maintain membership in the association if, during the three years prior to application for membership in the association or at any time after admission to the association, the seller of travel, or the owner, principal or any person having control over the seller of travel, has been:

(A) Convicted of any offense involving fraud, deception, misrepresentation, misappropriation of property or breach of trust or other fiduciary obligation;

(B) The subject of an order of any federal, state or local court or administrative agency denying, suspending or revoking any license or any other authority to engage in business as a seller of travel; or

(C) The subject of any civil judgment or penalty imposed by any federal, state or local court or administrative agency.

(e) The rules or bylaws of the association provide for the suspension or revocation of membership in the association if a member does not comply with the rules or bylaws of the association, ORS 646.185 to 646.195 or rules adopted by the director under ORS 646.185 to 646.195.

(2) The director by rule may establish additional requirements for certification.

(3) As used in this section:

(a) "Conviction" includes, but is not limited to, a plea of nolo contendere, a consent judgment, a judgment, an administrative order and an assurance of voluntary compliance.

(b) "Owner" means a person who owns or controls 10 percent or more of the equity of, or otherwise has claim to 10 percent or more of the net income of, the seller of travel.

(c) "Principal" means an owner, an officer of a corporation, a general partner of a partnership or a sole proprietor of a sole proprietorship. [1999 c.194 §4; 2001 c.639 §2; 2003 c.576 §528]

**646.191 Issuance of certification; rules; duration; review.** (1) If the Director of the Department of Consumer and Business Services determines that an association of sellers of travel that has applied for certification under ORS 646.189 has satisfied the requirements of ORS 646.185 to 646.195 and rules adopted by the director under ORS 646.185 to 646.195, the director shall certify the association as a State of Oregon certified association.

(2)(a) Certification under this section shall remain in effect until the certificate is surrendered by the association or revoked or suspended by the director as provided in ORS 646.193.

(b) A certificate issued under subsection (1) of this section need not be renewed.

(3) The director by rule shall provide for periodic review of the operation of each certified association. The review shall be conducted at least once every 24 months and shall be designed to determine whether the certified association is complying with the provisions of ORS 646.185 to 646.195, with rules adopted by the director under ORS 646.185 to 646.195 and with the rules, bylaws and business plan of the certified association. The director may assess the association for the actual and reasonable costs of the review. [1999 c.194 §5]

**646.193 Denial, suspension or revocation of certification.** (1) The Director of the Department of Consumer and Business Services may deny certification or suspend or revoke any certification issued pursuant to ORS 646.191 if the director finds that:

(a) The business plan of the association does not satisfy the requirements of ORS 646.187;

(b) The association has violated any provision of ORS 646.185 to 646.195, any rule adopted by the director under ORS 646.185 to 646.195 or any order of the director; or

(c) The association has violated or is not complying with its rules, bylaws or business plan.

(2) If the director proposes to deny, suspend or revoke a certificate, an opportunity for a hearing shall be accorded as provided in ORS chapter 183.

(3) Judicial review of orders under subsection (2) of this section shall be as provided in ORS chapter 183. [1999 c.194 §6]

**646.195 Prohibited conduct; referral of complaints for mediation.** (1) A person shall not claim membership in a certified association or utilize any logo or other indicia of membership in a certified association unless the person is a member in good standing of the certified association.



(2) Prior to taking any enforcement action under ORS 646.608, the Attorney General may refer any complaint alleging violation of any provision of ORS 646.185 to 646.195 or any rule adopted by the director under ORS 646.185 to 646.195 by a member of a certified association to the member for resolution or mediation. [1999 c.194 §7]

**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]

## MAIL AGENTS

**646.221 Definitions for ORS 646.221 to 646.240.** As used in ORS 646.221 to 646.240:

(1) "Mail agent" means any person, sole proprietorship, partnership, corporation or other entity who owns, manages, rents or operates one or more mailboxes, as defined in this section, for receipt of United States mail or materials received from or delivered by a private express carrier, for any person, sole proprietorship, partnership, corporation or other entity not the mail agent.

(2) "Mailbox" means any physical location or receptacle where United States mail or materials received from or delivered by a private express carrier are received, stored or sorted, including letter boxes.

(3) "Tenant" means any person, sole proprietorship, partnership, corporation or other entity who contracts with or otherwise causes a mail agent to receive, store, sort, hold or forward any United States mail or materials received from or delivered by any private express carrier on the tenant's behalf. [1991 c.465 §1]

**646.225 Prohibited conduct; required verifications and notice.** (1) A mail agent shall not contract with a tenant to receive

United States mail or materials received from or delivered by a private express carrier on the tenant's behalf if the mail agent knows or should know that the tenant has provided a false name, title or address to the mail agent.

(2) Prior to contracting with a tenant to receive United States mail or materials received from or delivered by a private express carrier on the tenant's behalf, the mail agent shall independently verify:

(a) The identity of the tenant.

(b) The residence address of the tenant if the tenant is an individual or the business address of the tenant if the tenant is a business entity.

(c) In the case of a corporation, that the corporation is authorized to do business in this state.

(d) In the case of an entity using an assumed business name, that the name has been registered for use in the State of Oregon.

(3) The mail agent shall accept mail or materials received from or delivered by a private express carrier on behalf of the tenant only if the mail is, or the materials received from or delivered by a private express carrier are addressed to the tenant. The mail agent shall not deposit United States mail or materials received from or delivered by a private express carrier in any mailbox unless the addressee has rented a mailbox from the mail agent.

(4) Whenever a mail agent has reason to believe that a tenant is using a mailbox to escape identification, the mail agent shall immediately notify the Attorney General and the United States Postal Inspector. [1991 c.465 §2]

### **646.229 Mail agent bond; exceptions.**

(1) Except as provided in subsection (2) of this section, each mail agent shall maintain a surety bond in the sum of \$10,000.

(2) Subsection (1) of this section shall not apply to a mail agent whose activity as a mail agent consists solely of receiving, storing, sorting, holding or forwarding United States mail or materials received from or delivered by a private express carrier for tenants of the mail agent if:

(a) The tenant is also renting or leasing from the mail agent an office, store, residential unit or other space or unit intended for human occupancy, which space or unit is located on the same premises as the mailbox; and

(b) The mail agent services which the mail agent is providing to the tenant are incidental to and a part of the landlord-tenant relationship which exists between the mail

agent and the tenant with respect to the leased space or unit. [1991 c.465 §3]

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

**646.235 Damages.** Upon proof by a preponderance of evidence that a mail agent has failed to satisfy any of the mail agent's duties set forth in ORS 646.225, the mail agent shall be liable for actual damages caused to any person who sent United States mail or materials received from or delivered by a private express carrier addressed to a fictitious person at any tenant's mailbox and who is damaged because the person who sent the United States mail or materials received from or delivered by a private express carrier is unable to identify the tenant. A mail agent's liability under this section shall not exceed \$1,000 per occurrence. [1991 c.465 §4]

**646.240 Action by Attorney General; civil penalty; injunction; attorney fees and costs.** (1) The Attorney General may bring an action in the name of the state against any mail agent for violation of ORS 646.225 or 646.229. Upon proof by a preponderance of the evidence of a violation of ORS 646.225 or 646.229, a mail agent shall forfeit and pay a civil penalty of not more than \$1,000 for an initial violation. For a second or subsequent violation, the mail agent shall forfeit and pay a civil penalty of not more than \$5,000 for each violation.

(2) The Attorney General may bring an action in the name of the state against any mail agent or other person or entity to restrain or prevent any violation of ORS 646.225 or 646.229.

(3) The court may award reasonable attorney fees and costs of investigation, preparation and litigation to the Attorney General if the Attorney General prevails in an action under this section. The court may award reasonable attorney fees and costs of investigation, preparation and litigation 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. [1991 c.465 §5; 1995 c.696 §34]

## LEASE-PURCHASE AGREEMENTS

**646.245 Definitions for ORS 646.245 to 646.259.** As used in ORS 646.245 to 646.259:

(1) "Advertisement" means a commercial message in any medium that aids, promotes or assists, directly or indirectly, a lease-purchase agreement.

(2) "Cash price" means the price at which the lessor would have sold the property to the consumer for cash on the date of the lease-purchase agreement.

(3) "Consumer" means an individual who rents personal property under a lease-purchase agreement to be used primarily for personal, family or household purposes.

(4) "Consummation" means the time a consumer becomes contractually obligated on a lease-purchase agreement.

(5) "Lease-purchase agreement" means an agreement for the use of personal property by an individual for personal, family or household purposes, for an initial period of four months or less, that is automatically renewable with each payment after the initial period, but does not obligate or require the consumer to continue leasing or using the property beyond the initial period, and that permits the consumer to become the owner of the property.

(6) "Lessor" means a person who regularly provides the use of property through lease-purchase agreements and to whom lease payments are initially payable on the face of the lease-purchase agreement. [1993 c.283 §1]

**646.247 Applicability of ORS 646.245 to 646.259.** (1) Lease-purchase agreements that comply with ORS 646.245 to 646.259 are not governed by laws relating to:

(a) A security interest under ORS chapter 79.

(b) A retail installment contract under ORS 83.010 to 83.190.

(2) ORS 646.245 to 646.259 does not apply to the following:

(a) Lease-purchase agreements primarily for business, commercial or agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;

(b) A lease of a safe deposit box;

(c) A lease or bailment of personal property which is incidental to the lease of real property, and which provides that the consumer has no option to purchase the leased property; or

(d) A lease of a motor vehicle. [1993 c.283 §2]

**646.249 General disclosure requirements.** (1) The lessor shall disclose to the consumer the information required by ORS 646.251. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by the disclosures.

(2) The disclosures shall be made at or before consummation of the lease-purchase agreement.

(3) The disclosures shall be made clearly and conspicuously in writing and a copy of the lease-purchase agreement shall be pro-

vided to the consumer. The disclosures required under ORS 646.251 shall be made on the face of the contract above the line for the consumer's signature.

(4) If a disclosure becomes inaccurate as the result of any act, occurrence or agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy is not a violation of ORS 646.245 to 646.259.

(5) If any portion of the transaction is conducted in any language other than English, the disclosures required under ORS 646.245 to 646.259 shall be in the language other than English. This subsection does not apply if any portion of the transaction is conducted through an interpreter supplied by the lessee. [1993 c.283 §3]

**646.251 Specific disclosure requirements.** For each lease-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

(1) Whether the periodic payment is weekly, monthly or otherwise, the dollar amount of each payment and the total number and total dollar amount of all periodic payments necessary to acquire ownership of the property;

(2) A statement that the consumer will not own the property until the consumer has made the total payment necessary to acquire ownership;

(3) A statement advising the consumer whether the consumer is liable for loss or damage to the property, and, if so, the maximum amount for which the consumer is liable;

(4) A brief description of the leased property, sufficient to identify the property to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used. A statement that indicates new property is used is not a violation of ORS 646.245 to 646.259;

(5) A statement of the cash price of the property. Where one agreement involves a lease of two or more items as a set, a statement of the aggregate cash price of all items shall satisfy this requirement;

(6) The total of initial payments paid or required at or before consummation of the agreement or delivery of the property, whichever is later;

(7) A statement that the total amount of payments does not include other charges, such as late payment, default, pickup and reinstatement fees. Fees listed in this subsection shall be disclosed separately in the agreement;

(8) A statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early purchase option, and the price, formula or method for determining the price at which the property may be so purchased;

(9) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility, and a statement that if any part of a manufacturer's express warranty covers the lease property at the time the consumer acquires ownership of the property, it shall be transferred to the consumer, if allowed by the terms of the warranty;

(10) The date of the transaction and the identities of the lessor and consumer;

(11) A statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair, reasonable wear and tear excepted, upon expiration of any lease term along with any past due rental payments; and

(12) Notice of the right to reinstate an agreement as provided in ORS 646.245 to 646.259. [1993 c.283 §4]

**646.253 Provisions prohibited in lease-purchase agreements.** A lease-purchase agreement may not contain:

(1) A confession of judgment;

(2) A negotiable instrument;

(3) A security interest or any other claim of a property interest in any goods except those goods delivered by the lessor pursuant to the lease-purchase agreement;

(4) A wage assignment;

(5) A waiver by the consumer of claims or defenses;

(6) A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises without the permission of the consumer or to commit any breach of the peace in the repossession of goods;

(7) A provision requiring the purchase of insurance or liability damage waiver from the lessor for property that is the subject of the lease-purchase agreement;

(8) A provision that mere failure to return property constitutes probable cause for a criminal action;

(9) A provision requiring the lessee to make a payment in addition to regular lease payments in order to acquire ownership of the leased property, or a provision requiring the lessee to make lease payments totaling more than the dollar amount necessary to

acquire ownership, as disclosed pursuant to ORS 646.251;

(10) A provision requiring a late charge or reinstatement fee unless a periodic payment is late more than two days on a weekly agreement, or five days on a monthly agreement;

(11) A late charge or reinstatement fee in excess of \$5; or

(12) More than one late charge or reinstatement fee on any one periodic payment regardless of the period of time during which it remains in default. [1993 c.283 §5]

**646.255 Reinstatement of lease-purchase agreement by consumer; receipt for each payment.** (1) A consumer who fails to make a timely rental payment may reinstate the agreement, without losing any rights or options which exist under the agreement, by the payment of:

(a) All past due rental charges;

(b) If the property has been picked up, the reasonable costs of pickup and redelivery; and

(c) Any applicable late fee, within five days of the renewal date if the consumer pays monthly, or within two days of the renewal date if the consumer pays more frequently than monthly.

(2) In the case of a consumer who has paid less than two-thirds of the total of payments necessary to acquire ownership and where the consumer has returned or voluntarily surrendered the property, other than through judicial process, during the applicable reinstatement period set forth in subsection (1) of this section, the consumer may reinstate the agreement during a period of not less than 21 days after the date of the return of the property.

(3) In the case of a consumer who has paid two-thirds or more of the total of payments necessary to acquire ownership, and where the consumer has returned or voluntarily surrendered the property, other than through judicial process, during the applicable period set forth in subsection (1) of this section, the consumer may reinstate the agreement during a period of not less than 30 days after the date of the return of the property.

(4) Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but such a repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition.

(5) A lessor shall provide the consumer with a written receipt for each payment made by cash or money order. [1993 c.283 §§6,7]

**646.257 Renegotiation or extension of lease-purchase agreement.** (1) A renegotiation shall occur when an existing lease-purchase agreement is satisfied and replaced by a new agreement undertaken by the same lessor and consumer. A renegotiation shall be considered a new agreement requiring new disclosures. A renegotiation shall not include:

(a) The addition or return of property in a multiple item agreement or the substitution of the lease property, if in either case the average payment allocable to a payment period is not changed by more than 10 percent;

(b) A deferral or extension of one or more periodic payments, or portions of a periodic payment;

(c) A reduction in charges in the lease or agreement; and

(d) A lease or agreement involved in a court proceeding.

(2) No disclosures are required for any extension of a lease-purchase agreement. [1993 c.283 §8]

**646.259 Disclosures required in advertisement for lease-purchase agreements.** (1) If an advertisement for a lease-purchase agreement refers to or states the dollar amount of any payment and the right to acquire ownership for any one specific item, the advertisement shall also clearly and conspicuously state the following items, as applicable:

(a) That the transaction advertised is a lease-purchase agreement;

(b) The total of payments necessary to acquire ownership; and

(c) That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid.

(2) Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

(3) The provisions of subsection (1) of this section shall not apply to an advertisement which does not refer to or state the amount of any payment, or which is published in the yellow pages of a telephone directory or in any similar directory of business.

(4) Every item displayed or offered under a lease-purchase agreement shall have clearly and conspicuously indicated in Arabic numerals, so as to be readable and understandable by visual inspection, each of the

following stamped upon or affixed to the item:

- (a) The cash price of the item;
- (b) The amount of the periodic payment; and
- (c) The total number of periodic payments required for ownership. [1993 c.283 §9]

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

### SERVICE CONTRACTS

**646.263 Applicability of ORS 646.263 to 646.285.** (1) ORS 646.263 to 646.285:

- (a) Create a legal framework within which service contracts may be sold in this state;
- (b) Encourage innovation in the marketing and development of more economical and effective means of providing services under service contracts, while placing the risk of innovation on the obligors rather than on consumers; and
- (c) Permit and encourage fair and effective competition among different systems of providing and paying for service contracts.

(2) ORS 646.263 to 646.285 do not apply to:

- (a) Warranties; or
- (b) Maintenance agreements. [1995 c.801 §1]

**646.265 Definitions for ORS 646.263 to 646.285.** As used in ORS 646.263 to 646.285:

(1) "Maintenance agreement" means a contract of limited duration that provides for scheduled maintenance only.

(2) "Obligor" means the person who is contractually obligated to the service contract holder to provide service under a service contract and who:

- (a) Sold the merchandise covered by the service contract;
- (b) Sells merchandise similar to that covered by the service contract; or
- (c) Is acting through or with the written consent of the manufacturer, importer or seller of the merchandise covered by the service contract.

(3) "Person" means an individual, partnership, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate or any similar entity or combination of entities acting in concert.

(4) "Service contract" is a contract described in ORS 646.267.

(5) "Service contract holder" or "contract holder" means a person who is the purchaser or holder of a service contract.

(6) "Service contract seller" means a person who markets, sells or offers to sell a service contract.

(7) "Warranty" means a warranty made solely by the manufacturer, importer or seller of property or services, without charge, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, and that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor or other remedial measures, such as repair or replacement of the property or repetition of services. [1995 c.801 §2]

**646.267 Service contract defined; registration requirement; required proof of financial stability; filing requirements; rules; applicability of Insurance Code.** (1)

For the purposes of this section, a service contract is a contract or agreement to perform or indemnify for a specific duration the repair, replacement or maintenance of property for operational or structural failure due to a defect in materials, workmanship or normal wear and tear, with or without additional provision for incidental payment of indemnity under limited circumstances, including but not limited to rental and emergency road service. A service contract may also provide for the repair, replacement or maintenance of property for damage resulting from lightning, power surges or accidental damage from handling. Consideration for a service contract must be stated separately from the price of the consumer product. The term "service contract" does not include insurance policies issued by insurers under the Insurance Code, or maintenance agreements.

(2) An obligor shall not issue, sell or offer for sale a service contract in this state unless the obligor has complied with the provisions of this section and ORS 646.269 and 646.271.

(3) All obligors of service contracts issued, sold or covering property located in this state shall file a registration with the Director of the Department of Consumer and Business Services on a form, at a fee and at a frequency prescribed by the director pursuant to ORS 646.281.

(4) An obligor shall keep accurate accounts, books and records concerning transactions involving service contracts.

(5) In order to ensure the faithful performance of an obligor's obligations to its contract holders, each obligor shall provide the director with one of the following as proof of financial stability:

(a) A copy of the obligor's or, if the obligor's financial statements are consolidated with those of its parent company, the obligor's parent company's most recent Form 10-K filed with the Securities and Exchange Commission which shows a net worth of the

obligor or its parent company of at least \$100 million provided the Form 10-K was filed with the Securities and Exchange Commission within the last calendar year. If the obligor's parent company's Form 10-K is filed to meet the obligor's financial stability requirement, then the parent company shall agree to guarantee the obligations of the obligor relating to service contracts sold by the obligor in this state.

(b) Evidence of a reimbursement insurance policy described in ORS 742.390 that is obtained by the obligor and issued by an authorized insurer that insures all service contracts issued by the obligor.

(6) Filing requirements are as follows:

(a) The obligor shall file with the director proof of financial stability as required by subsection (5) of this section.

(b) The director may adopt rules concerning the procedure for filing the proof of financial stability.

(c) No person shall file or cause to be filed with the director any article, certificate, report, statement, application or any other information required or permitted to be filed under this subsection known to such person to be false or misleading in any material respect.

(7) Service contract sellers and their employees marketing, selling or offering to sell service contracts for obligors who comply with this section and ORS 646.269 and 646.271 are exempt from the requirements of the Insurance Code including, but not limited to, the requirement to belong to the Oregon Insurance Guaranty Association.

(8) Obligors complying with ORS 646.269 and 646.271 are not required to comply with the Insurance Code including, but not limited to, the requirement to belong to the Oregon Insurance Guaranty Association.

(9) If a service contract seller is not the same person as the obligor under the service contract, the service contract seller shall remit the agreed-upon consumer purchase price of the service contract to the obligor within 30 days of the sale of such service contract or upon such terms and conditions as may be agreed to in writing between the service contract seller and obligor. [1995 c.801 §3]

**646.269 Required contents of service contracts.** A service contract issued, sold or offered for sale in this state shall meet the following requirements:

(1) The service contract shall be written in clear, understandable language.

(2) The service contract shall identify the obligor and the service contract seller.

(3) If prior approval of repair work is required, the service contract shall state the

procedure for obtaining prior approval and for making a claim, including a toll-free telephone number for claim service and a procedure for obtaining reimbursement for emergency repairs performed outside of normal business hours.

(4) The service contract shall conspicuously state the existence of any deductible amount.

(5) The service contract shall specify the merchandise covered, services to be provided and any limitations, exceptions or exclusions.

(6) The service contract shall state any terms, restrictions or conditions governing the transferability of the service contract by the service contract holder.

(7) The service contract shall state the terms, restrictions or conditions governing termination of the service contract by the service contract holder. [1995 c.801 §4]

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

**646.271 Prohibited conduct.** (1) A service contract seller or obligor shall not in a misleading or deceptive manner use in its name, contracts or literature, the words insurance, casualty, guaranty, surety, mutual or any other words descriptive of the insurance, casualty, guaranty, surety or mutual business.

(2) In the offer or sale of any service contract, a person may not:

(a) Make, issue, circulate or cause to be made, issued or circulated, any estimate, illustration, circular or statement misrepresenting the terms of any service contract sold or to be sold or the benefits or advantages therein.

(b) Employ any device, scheme or artifice to defraud.

(c) Obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not misleading.

(d) Engage in any other transaction, practice or course of business which operates as a fraud or deceit upon the service contract holder.

(3) In providing required services under a service contract, a person may not:

(a) Fail to acknowledge and act within a reasonable time upon communications requesting services under a service contract. Unless the service contract provides otherwise, a person shall be deemed to have acted within a reasonable time if the person responds to a communication received from a service contract holder within 30 days of receipt of the communication.

(b) Fail to act in good faith in reviewing a request for services under a service contract and advising the service contract holder whether the request is covered under the terms and conditions of the service contract.

(c) Fail to act in good faith in providing covered services under a service contract. [1995 c.801 §5]

**646.273 Service contract obligor as agent of insurer; indemnification or subrogation rights of insurer.** (1) An obligor is considered to be the agent of the insurer that issued the reimbursement insurance policy. If a service contract seller acts as an obligor and enlists other service contract sellers, the service contract seller acting as the obligor shall notify the insurer of the existence and identities of the other service contract sellers.

(2) An insurer that issues a reimbursement insurance policy may seek indemnification or subrogation against a service contract seller if the issuer pays or is obligated to pay the service contract holder sums that the service contract seller was obligated to pay pursuant to the provisions of the service contract or under a contractual agreement. [1995 c.801 §9]

**646.275 Investigation of violations of ORS 646.267, 646.269 or 646.271; inspection of records; subpoenas; discontinue or desist order; civil penalties.** (1) The Director of the Department of Consumer and Business Services may, upon a reasonable belief that a violation of ORS 646.267, 646.269 or 646.271 has occurred, make necessary public and private investigations within or without this state to determine whether any person has violated those provisions.

(2) In connection with any investigation conducted pursuant to subsection (1) of this section, a service contract seller or obligor, upon written request of the director, shall make available to the director its service contract records for inspection and copying. The records that must be made available in accordance with this section shall be only those records necessary to enable the director to reasonably determine compliance with ORS 646.267, 646.269 and 646.271.

(3) For the purpose of an investigation or proceeding under subsection (1) of this section, the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records that are relevant or material to the inquiry. Each witness who appears before the director under a subpoena shall receive the fees and mileage provided for witnesses in ORS 44.415 (2).

(4) If a person fails to comply with a subpoena issued under subsection (3) of this section, or a party or witness refuses to testify on any matters, the judge of the circuit court for any county, on the application of the director, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

(5) The director may, upon a reasonable belief that a person is or is about to be in violation of ORS 646.267, 646.269 or 646.271, issue an order, directed to the person, to discontinue or desist from the violation or threatened violation. The copy of the order forwarded to the person involved shall set forth a statement of the specific charges and the fact that the person may request a hearing within 20 days of the date of mailing. Where a hearing is requested, the director shall set a date for the hearing to be held within 30 days after receipt of the request, and shall give the person involved written notice of the hearing date at least seven days prior thereto. The person requesting the hearing must establish to the satisfaction of the director that the order should not be complied with. The order shall become final 20 days after the date of mailing unless within the 20-day period the person to whom it is directed files with the director a written request for a hearing. To the extent applicable and not inconsistent with the foregoing, the provisions of ORS chapter 183 shall govern the hearing procedure and any judicial review thereof. Where the hearing has been requested, the director's order shall become final at such time as the right to further hearing or review has expired or been exhausted.

(6) A person who is found to have violated ORS 646.267, 646.269 or 646.271 may be ordered to pay to the General Fund a civil penalty in an amount determined by the director of not more than:

(a) \$2,000 for the first violation.

(b) \$5,000 for the second violation.

(c) \$10,000 for any subsequent violation.

(7) For purposes of this section, a violation consists of a single course of conduct which is determined by the director to be untrue or misleading. [1995 c.801 §10]

**646.277 Complaints and investigations confidential; exceptions.** (1) Except as provided in subsection (3) of this section, a complaint made to the director against any person regulated by ORS 646.263 to 646.285, 742.390 and 742.392, and the record thereof, shall be confidential, and shall not be disclosed or available for public inspection or review. No such complaint, or the record

thereof, shall be used in any action, suit or proceeding except to the extent it is essential to the prosecution of apparent violations of ORS 646.263 to 646.285, 742.390 and 742.392.

(2) Except as provided in subsection (3) of this section, data gathered pursuant to any investigation by the director shall be confidential, and shall not be disclosed or available for public inspection or review. The data shall not be used in any action, suit or proceeding except to the extent it is essential in the investigation or prosecution of apparent violations of ORS 646.263 to 646.285, 742.390 and 742.392.

(3) Notwithstanding subsections (1) and (2) of this section, the director may disclose any complaint and any data gathered pursuant to ORS 646.263 to 646.285, 742.390 and 742.392 to any state, federal or local enforcement agency. The recipient agency may use the complaint and data for any official purpose, including the civil enforcement of laws subject to the agency jurisdiction. [1995 c.801 §11]

**646.279 Refusal to continue or suspension or revocation of registration.** The Director of the Department of Consumer and Business Services may refuse to continue or may suspend or revoke an obligor's registration if the director finds after a hearing that:

(1) The obligor has intentionally engaged in a pattern or practice of failing to comply with any lawful order of the director relating to a prior violation of ORS 646.271 (3)(c).

(2) The obligor fails to meet or maintain the financial stability requirements set forth in ORS 646.267. [1995 c.801 §12]

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

**646.281 Assessment fee; rules; purpose; registration fee.** (1) Each obligor that issues a service contract to a resident of this state shall pay an assessment not to exceed \$1,000 to the Director of the Department of Consumer and Business Services for the purpose of supporting the legislatively authorized budget of the department for administering ORS 646.263 to 646.285, 742.390 and 742.392. The director shall determine by rule the basis of assessment, the amount or rate of assessment and when assessments shall be paid.

(2) The fee prescribed by the director for registration under ORS 646.267 shall not exceed \$200 per obligor per year. [1995 c.801 §13]

**646.283 Remedies not exclusive.** The application of any remedy under any provision of ORS 646.263 to 646.285, 742.390 and 742.392 shall not preclude the application of any other remedy under ORS 646.263 to 646.285, 742.390 and 742.392 or any other provision of law. The application of any remedy under any provision of law shall not

preclude the application of any remedy under ORS 646.263 to 646.285, 742.390 and 742.392. [1995 c.801 §14]

**646.285 Rules; exemption of certain obligors.** (1) The Director of the Department of Consumer and Business Services may adopt rules necessary to implement ORS 646.263 to 646.285.

(2) The director may by rule exempt certain obligors or service contract sellers or specific classes of service contracts that are not otherwise exempt under ORS 646.263 (2) from any provision of ORS 646.263 to 646.285, 742.390 and 742.392. The director may include in the rules substitute requirements on a finding that a particular provision of ORS 646.263 to 646.285, 742.390 and 742.392 is not necessary for the protection of the public or that the substitute requirement is reasonably certain to provide equivalent protection to the public. [1995 c.801 §15]

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

## SIMULATED INVOICES

**646.291 Definitions for ORS 646.291 to 646.302.** As used in ORS 646.291 to 646.302:

(1) "Invoice" means a document containing an itemized list of previously ordered goods or services and an amount or amounts of money owed by the recipient of the document.

(2) "Recipient" means the person to whom an invoice or simulated invoice is uttered.

(3) "Simulated invoice" means a document containing an itemized list of unordered goods or services and an amount or amounts of money to be paid by the recipient of the document.

(4) "Utter" has the meaning given in ORS 165.002. [1997 c.72 §1]

**646.293 Simulated invoices prohibited.** It is unlawful for any person to utter a simulated invoice if:

(1) A reasonable recipient could, under all the circumstances of its receipt, mistake the simulated invoice for an invoice; or

(2) The person knows or reasonably should know that a recipient could mistake the simulated invoice for an invoice. [1997 c.72 §2]

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

**646.296 Cause of action by Attorney General; judgment; attorney fees.** (1) The Attorney General shall have a cause of action against any person who violates ORS 646.293.

(2) If the Attorney General prevails, the court shall enter judgment against the defendant for:



(a) Each simulated invoice uttered in this state, for the greater of:

(A) Three times the amount stated in the simulated invoice; or

(B) \$500;

(b) Such orders or judgments as may be necessary to restore to any person any moneys of which the person was deprived by any conduct in violation of ORS 646.293; and

(c) Such orders or judgments as may be necessary to ensure cessation of conduct in violation of ORS 646.293.

(3) The court may award reasonable attorney fees to the prevailing party in an action under this section.

(4) All sums of money received by the Department of Justice under a judgment, settlement or compromise in an action or potential action brought under this section, shall, upon receipt, be deposited with the State Treasurer to the credit of the Consumer Protection and Education Revolving Account established pursuant to ORS 180.095. [1997 c.72 §3]

**646.298 Cause of action by private party; judgment; attorney fees.** (1) A recipient of a simulated invoice who has suffered any ascertainable loss as a result shall have a cause of action against any person who violates ORS 646.293.

(2) If the recipient prevails, the court shall enter judgment against the defendant for:

(a) The greater of:

(A) Three times the amount stated in the simulated invoice received; or

(B) \$500 for each simulated invoice received;

(b) Such orders or judgments as may be necessary to restore to the recipient any moneys of which the recipient was deprived by any conduct in violation of ORS 646.293; and

(c) Such orders or judgments as may be necessary to ensure cessation of conduct in violation of ORS 646.293.

(3) The court may award reasonable attorney fees to the prevailing party in an action under this section. [1997 c.72 §4]

**646.300 Presumptions in cause of action brought under ORS 646.296 or 646.298.** In any action brought under ORS 646.296 or 646.298, the following presumptions apply:

(1) A simulated invoice that has been paid by five or more persons could be mistaken for an invoice by a reasonable recipient.

(2) A person knows that a simulated invoice uttered simultaneously with a copy of a publication or portion of a publication previously ordered by the recipient from a person other than the person uttering the simulated invoice could be mistaken for an invoice by a reasonable recipient. [1997 c.72 §5]

**646.302 Construction; other remedies.**

(1) The provisions of ORS 646.291 to 646.302 shall be liberally construed to effectuate its remedial purposes.

(2) The remedy provided by ORS 646.291 to 646.302 is in addition to any other remedy, civil or criminal, that may be available under any other provision of law. Claims based on remedies available under other provisions of law may be joined in an action under ORS 646.291 to 646.302 or may be asserted in a separate action. [1997 c.72 §6]

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

**ENFORCEMENT OF EXPRESS WARRANTIES ON NEW MOTOR VEHICLES**

**646.315 Definitions for ORS 646.315 to 646.375.** As used in ORS 646.315 to 646.375:

(1) "Consumer" means:

(a) The purchaser or lessee, other than for purposes of resale, of a new motor vehicle normally used for personal, family or household purposes;

(b) Any person to whom a new motor vehicle used for personal, family or household purposes is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle; and

(c) Any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

(2) "Motor vehicle" means a passenger motor vehicle as defined in ORS 801.360 that is sold in this state. [1983 c.469 §1; 1985 c.16 §468; 1987 c.476 §1; 1989 c.171 §74; 1989 c.202 §1]

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

**646.325 Availability of remedy.** The remedy under the provisions of ORS 646.315 to 646.375 is available to a consumer if:

(1) A new motor vehicle does not conform to applicable manufacturer's express warranties;

(2) The consumer reports each nonconformity to the manufacturer, its agent or its authorized dealer, for the purpose of repair or correction, during the period of one year following the date of original delivery of the motor vehicle to the consumer or during the period ending on the date on which the

mileage on the motor vehicle reaches 12,000 miles, whichever period ends earlier; and

(3) The manufacturer has received direct written notification from or on behalf of the consumer and has had an opportunity to correct the alleged defect. "Notification" under this subsection includes, but is not limited to, a request by the consumer for an informal dispute settlement procedure under ORS 646.355. [1983 c.469 §2; 1987 c.476 §6]

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

**646.335 Consumer's remedies; manufacturer's affirmative defenses.** (1) If the manufacturer or its agents or authorized dealers are unable to conform the motor vehicle to any applicable manufacturer's express warranty by repairing or correcting any defect or condition that substantially impairs the use, market value or safety of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall:

(a) Replace the motor vehicle with a new motor vehicle; or

(b) Accept return of the vehicle from the consumer and refund to the consumer the full purchase or lease price paid, including taxes, license and registration fees and any similar collateral charges excluding interest, less a reasonable allowance for the consumer's use of the vehicle.

(2) Refunds shall be made to the consumer and lienholder, if any, as their interests may appear. A reasonable allowance for use is that amount directly attributable to use by the consumer prior to the first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the vehicle is not out of service by reason of repair.

(3) It shall be an affirmative defense to any claim under ORS 646.315 to 646.375:

(a) That an alleged nonconformity does not substantially impair such use, market value or safety; or

(b) That a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of the motor vehicle by the consumer. [1983 c.469 §3; 1987 c.476 §2]

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

**646.345 Presumption of reasonable attempt to conform; extension of time for repairs; notice to manufacturer.** (1) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable manufacturer's express warranties if, during the period of one year following the date of original delivery of the motor vehicle to a

consumer or during the period ending on the date on which the mileage on the motor vehicle reaches 12,000 miles, whichever period ends earlier:

(a) The same nonconformity has been subject to repair or correction four or more times by the manufacturer or its agent or authorized dealer, but such nonconformity continues to exist; or

(b) The vehicle is out of service by reason of repair or correction for a cumulative total of 30 or more business days.

(2) A repair or correction for purposes of subsection (1) of this section includes a repair that must take place after the expiration of the earlier of either period.

(3) The period ending on the date on which the mileage on the motor vehicle reaches 12,000 miles, the one-year period and the 30-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike, fire, flood or other natural disaster.

(4) In no event shall the presumption described in subsection (1) of this section apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and has had an opportunity to cure the defect alleged. [1983 c.469 §4]

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

**646.355 Use of informal dispute settlement procedure as condition for remedy; binding effect on manufacturer.** If the manufacturer has established or participates in an informal dispute settlement procedure that substantially complies with the provisions of 16 C.F.R. part 703, as from time to time amended, and causes the consumer to be notified of the procedure, ORS 646.335 concerning refunds or replacement shall not apply to any consumer who has not first resorted to the procedure. A decision resulting from arbitration pursuant to the informal dispute settlement procedure shall be binding on the manufacturer. [1983 c.469 §5]

**646.357 Informal dispute settlement procedure; recordkeeping; review by Department of Justice.** A manufacturer which has established or participates in an informal dispute settlement procedure shall keep records of all cases submitted to the procedure under ORS 646.355 and shall make the records available to the Department of Justice if the department requests them. The department may review all case records kept under this section to determine whether or not the arbitrators are complying with the provisions of ORS 646.315 to 646.375 in reaching their decisions. [1987 c.476 §4]

**646.359 Action in court; damages if manufacturer does not act in good faith; attorney fees.** (1) If a consumer brings an action in court under ORS 646.315 to 646.375 against a manufacturer and the consumer is granted one of the remedies specified in ORS 646.335 (1) by the court, the consumer shall also be awarded up to three times the amount of any damages, not to exceed \$50,000 over and above the amount due the consumer under ORS 646.335 (1), if the court finds that the manufacturer did not act in good faith.

(2) The court may award reasonable attorney fees to the prevailing party in an appeal or action under this section. [1987 c.476 §5; 1995 c.618 §96; 1999 c.346 §1]

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

**646.361 Limitations on actions against dealers.** (1) Nothing in ORS 646.315 to 646.375 creates a cause of action by a consumer against a vehicle dealer.

(2) A manufacturer may not join a dealer as a party in any proceeding brought under ORS 646.315 to 646.375, nor may the manufacturer try to collect from a dealer any damages assessed against the manufacturer in a proceeding brought under ORS 646.315 to 646.375. [1987 c.476 §7]

**646.365 Limitation on commencement of action.** Any action brought under ORS 646.315 to 646.375 shall be commenced within one year following whichever period ends earlier:

(1) The period ending on the date on which the mileage on the motor vehicle reaches 12,000 miles; or

(2) The period of one year following the date of the original delivery of the motor vehicle to the consumer. [1983 c.469 §6]

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

**646.375 Remedies supplementary to existing statutory or common law remedies; election of remedies.** Nothing in ORS 646.315 to 646.375 is intended in any way to limit the rights or remedies that are otherwise available to a consumer under any other law. However, if the consumer elects to pursue any other remedy in state or federal court, the remedy available under ORS 646.315 to 646.375 shall not be available insofar as it would result in recovery in excess of the recovery authorized by ORS 646.335 without proof of fault resulting in damages in excess of such recovery. [1983 c.469 §7]

## CREDIT SERVICES ORGANIZATIONS

**646.380 Legislative findings.** The Legislative Assembly finds and declares that:

(1) The ability to obtain and use credit has become of great importance to consumers who have a vital interest in establishing and maintaining their creditworthiness and credit standing. As a result, consumers who have experienced credit problems may seek assistance from credit services organizations which offer to obtain credit or improve the credit standing of consumers.

(2) Certain advertising and business practices of some credit services organizations have worked a financial hardship upon the people of this state, particularly on those who have limited economic means and are inexperienced in credit matters. Credit services organizations have significant impact upon the economy and well-being of this state and its people.

(3) The purposes of ORS 646.382 to 646.396 are to provide prospective customers of credit services organizations with the information necessary to make intelligent decisions regarding the purchase of those services and to protect the public from unfair or deceptive advertising and business practices. ORS 646.382 to 646.396 shall be interpreted liberally to achieve these purposes. [1993 c.582 §1]

**646.382 Definitions for ORS 646.382 to 646.396.** As used in ORS 646.382 to 646.396:

(1) "Consumer" means any individual who is solicited to purchase or who purchases the services of a credit services organization.

(2)(a) "Credit services organization" means any person who, with respect to the extension of credit by others, sells, provides, performs, or represents that the organization can or will sell, provide or perform, in return for the payment of money or other valuable consideration, any of the following services:

(A) Improving, saving or preserving a consumer's credit record, history or rating.

(B) Obtaining an extension of credit for a consumer.

(C) Providing advice, assistance, instruction or instructional materials to a consumer with regard to either subparagraph (A) or (B) of this paragraph.

(b) "Credit services organization" does not include:

(A) Any person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision by this state or the United States or a lender approved by the Secretary of Housing and Urban Development for participation in any mortgage in-

urance program under the National Housing Act.

(B) Any financial institution, financial holding company or bank holding company as those terms are defined in ORS 706.008 or any subsidiary or affiliate of a financial institution, financial holding company or bank holding company.

(C) A mortgage banker or mortgage broker as defined in ORS 59.840.

(D) Any nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code, provided that the organization does not require a fee for its services and does not receive any money or other valuable consideration prior to the rendering of any services by the organization for the consumer.

(E) Any person licensed as a real estate broker or principal real estate broker by this state if the person is acting within the course and scope of that license.

(F) Any person licensed to practice law in this state if the person renders services within the course and scope of practice as an attorney.

(G) Any broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission if the broker-dealer is acting within the course and scope of that regulation.

(H) Any consumer reporting agency as defined in the Federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.

(I) Any licensee licensed under ORS chapter 725.

(3) "Department" means the Department of Consumer and Business Services.

(4) "Director" means the director of the department or the director's designees.

(5) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family or household purposes. [1993 c.582 §§2,2a; 1997 c.631 §509; 2001 c.300 §77; 2001 c.377 §44]

**646.384 Prohibited conduct; cancellation of contract by consumer.** (1) A credit services organization, its salespersons, agents, representatives and independent contractors who sell or attempt to sell the services of a credit services organization shall not do any of the following:

(a) Misrepresent directly or indirectly in any advertising, promotional materials, sales presentation or in any other manner:

(A) The nature of the services to be performed.

(B) The time within which the services will be performed.

(C) The ability to improve the consumer's credit report or credit rating.

(D) The amount or the type of credit a consumer can expect to receive as a result of the performance of the services offered.

(E) The qualifications, training or experience of the organization's personnel.

(b) Make, counsel or advise any consumer to make any statement that is untrue or misleading or that should be known by the exercise of reasonable care to be untrue or misleading with respect to a consumer's creditworthiness, credit standing or credit capacity to a credit reporting agency or a person to whom a consumer is applying for an extension of credit.

(c) Charge or receive any money or other valuable consideration prior to full and complete performance of the services the credit services organization has agreed to perform for the consumer.

(d) Charge or receive any money or other valuable consideration solely for referral of the consumer to a credit provider who will or may extend credit that is or will be extended to the consumer on substantially the same terms as those available to customers of the credit provider.

(e) Transact any business as a credit services organization without first having registered with the Department of Consumer and Business Services as required by ORS 646.386.

(2) A consumer may cancel any contract between the consumer and a credit services organization at any time prior to midnight of the third business day after the date the contract is entered into. The consumer shall be entitled to a full refund of any fees paid. [1993 c.582 §3; 2001 c.289 §1]

**646.386 Registration of credit services organizations; rules.** (1) A credit services organization shall file a registration statement with the Department of Consumer and Business Services before conducting business in this state. The department by rule shall establish a registration system for credit services organizations. The system shall provide for annual renewals of registrations.

(2) Applications for registration or renewal shall be in writing, under oath, on a form prescribed by the department and shall be accompanied by a fee in an amount to be established by the director by rule.

(3) The registration statement shall contain information that the director requires and that is consistent with ORS 646.382 to 646.396, including, but not limited to:

(a) The name and address of the credit services organization.

(b) The name and address of a registered agent authorized to accept service on behalf of the credit services organization.

(c) The name and address of any person who directly or indirectly owns or controls 10 percent or more of the outstanding shares in the credit services organization.

(d) The name and address of the surety company or insured institution issuing a surety bond or irrevocable letter of credit required by ORS 646.388.

(4) The registration statement shall also contain either:

(a) A full and complete disclosure of any litigation or unresolved complaint filed with a governmental authority of this state, any other state or the United States relating to the operation of the credit services organization; or

(b) A notarized affidavit stating that there has been no litigation or unresolved complaint filed with a governmental authority of this state, any other state or the United States relating to the operation of the credit services organization.

(5) Except as provided in this subsection, the credit services organization shall update a registration statement not later than the 90th day after the date on which a change in the information required to be listed on the statement occurs. The credit services organization shall update a registration statement not later than 10 days before there is a change in any information required under subsection (3)(a) or (b) of this section.

(6) Each credit services organization registering under this section shall maintain a copy of the registration statement in the organization's files. The credit services organization shall allow a consumer to inspect the registration statement upon request.

(7) If the director receives a registration statement that complies with this section and any rules of the director, the director shall register the credit services organization. [1993 c.582 §4; 1997 c.631 §510]

**646.388 Surety bond or irrevocable letter of credit.** (1) Every applicant for registration as a credit services organization shall file with the director a corporate surety bond or irrevocable letter of credit running to the State of Oregon in the sum of \$25,000. The surety bond or irrevocable letter of credit shall be issued by a surety company or an insured institution as defined in ORS 706.008 authorized to do business in this state.

(2) The surety bond or irrevocable letter of credit shall be issued on the condition that the credit services organization comply with all provisions of ORS 646.382 to 646.396 and

fully perform on all contracts entered into with consumers.

(3) The surety bond or irrevocable letter of credit shall be continuous until canceled and shall remain in full force and unimpaired at all times to comply with this section. The surety or insured institution shall give the director at least 30 days' written notice before it cancels or terminates its liability under the bond or irrevocable letter of credit.

(4) Any person who suffers damage as a result of a violation of any provision of ORS 646.380 to 646.396 and 646.608 or any rule adopted by the director pursuant to ORS 646.382 to 646.396 shall have a right of action under the bond or against the irrevocable letter of credit. An action on the bond or against the irrevocable letter of credit may be brought by the state or by any consumer by filing a complaint in a court of competent jurisdiction not later than one year after the surety bond or irrevocable letter of credit is canceled or terminated.

(5) The aggregate liability of the surety or issuer of the irrevocable letter of credit shall not exceed the principal sum of the bond or irrevocable letter of credit.

(6) If a credit services organization is in compliance with the surety bond or irrevocable letter of credit provisions of this section, the individual salespersons or agents or subagents of the credit services organization who sell the services of that organization shall not be required to obtain a separate surety bond or irrevocable letter of credit. [1993 c.582 §5; 1997 c.631 §511]

**646.390 Required disclosures.** (1) Before any agreement is entered into, or before any money is paid by a consumer, whichever occurs first, the credit services organization shall provide the consumer with written disclosure of the information described in subsection (2) of this section. The credit services organization shall maintain on file for a period of two years an exact copy of the disclosure statement, personally signed by the consumer, acknowledging receipt of a copy of the disclosure statement.

(2) The disclosure statement referred to in subsection (1) of this section shall include:

(a) A complete and accurate statement of the consumer's rights to review any file on the consumer maintained by any consumer reporting agency, as provided under the Federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.

(b) A statement that the consumer may review the consumer's file under paragraph (a) of this subsection at no charge if the request is made to the credit reporting agency within 30 days after receiving notice that credit has been denied.

(c) The approximate price the consumer will be charged by the credit reporting agency to review the consumer's file maintained by the credit reporting agency.

(d) A complete and detailed description of the services to be performed by the credit services organization for the consumer and the total amount the consumer will have to pay, or become obligated to pay, for the services.

(e) A statement detailing the existence and purpose of the surety bond or irrevocable letter of credit as described in ORS 646.388, and describing the procedure for commencing an action on the bond or irrevocable letter of credit.

(f) The name and address of the surety company or insured institution that issued the bond or irrevocable letter of credit.

(g) A statement that a written, signed agreement is necessary between the parties. [1993 c.582 §6; 1997 c.631 §512]

**646.392 Contents of contract between consumer and credit services organization.** (1) Each contract between a consumer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, in at least 10-point type, signed and dated by the parties, and shall include all of the following:

(a) The terms and conditions of payment, including the total of all payments to be made by the consumer, whether to the credit services organization or to some other person;

(b) A full and detailed description of the services to be performed by the credit services organization for the consumer, including all guarantees and promises of full or partial refunds, and the date by which the services are to be completely performed or the estimated length of time for performing the services;

(c) The address of the principal place of business of the credit services organization and of the organization's registered agent within the state authorized to accept service of process; and

(d) A conspicuous statement in at least 10-point boldfaced type, in immediate proximity to the space reserved for the signature of the consumer, as follows: "You, the consumer, may cancel this contract at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

(2) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of Cancellation" and printed in at least 10-point boldfaced type. The form shall

be attached to the contract, be easily detachable and provide a detailed and complete description of the consumer's right to cancel the contract. The director, by rule, shall design the form.

(3) The credit services organization shall provide the consumer with a copy of the completed contract with all attachments the consumer is required to sign at the time the agreement is signed. [1993 c.582 §7]

**646.394 Unenforceable contract provisions; burden of proof; injunctions.** (1) Any contract that violates any provision of ORS 646.382 to 646.396 and any waiver of any provision of ORS 646.382 to 646.396 by a consumer shall be void and unenforceable as contrary to public policy. A credit services organization shall not attempt to induce a consumer to waive the application of any provision of ORS 646.382 to 646.396.

(2) In any proceeding under ORS 646.382 to 646.396, the burden of proving an exemption from a definition is upon the person claiming such an exemption.

(3) Any circuit court of this state has jurisdiction in equity to restrain and enjoin violations of ORS 646.380 to 646.396 and 646.608.

(4) This section shall not prohibit the enforcement by any person of any right provided by ORS 646.380 to 646.396 and 646.608 or any other applicable law. [1993 c.582 §8]

**646.396 Audit of credit services organization; grounds for registration denial, revocation, suspension or refusal to renew; civil penalty; rules.** In addition to the provisions of ORS 646.608:

(1) Upon the director's own motion or upon receipt of a complaint by a customer of the credit services organization, the director may audit the credit services organization's customer records. If the director finds any discrepancies in the customer records of the credit services organization, the director may also audit the operating accounts and any other accounts or records kept by the credit services organization for discrepancies. The credit services organization shall pay the reasonable cost of any audit under this section, as determined by the director.

(2) The director may refuse to issue or renew or may revoke or suspend any registration under ORS 646.386 if the Department of Consumer and Business Services determines that:

(a) Any information a credit services organization files with the department is false or untruthful;

(b) A credit services organization has violated any of the provisions of ORS 646.382 to 646.396;

(c) A credit services organization has violated any of the rules of the department adopted under ORS 646.380 to 646.396 and 646.608; or

(d) A credit services organization has failed to maintain in effect the bond or an irrevocable letter of credit required under ORS 646.388.

(3) The department may impose a civil penalty in an amount not to exceed \$1,000 per violation for each violation of ORS 646.382 to 646.396. The civil penalties shall be imposed as provided in ORS 183.745.

(4) Actions of the director under subsections (1) to (4) of this section are subject to the provisions of ORS chapter 183.

(5) The director may adopt rules necessary for the administration of ORS 646.380 to 646.396 and 646.608. [1993 c.582 §§9,10]

### MANUFACTURED DWELLINGS

**646.400 Definitions.** As used in this section and ORS 646.402:

(1) "Base price" means the total retail cost of the following unless separately disclosed as described in ORS 646.402 (2):

(a) The manufactured dwelling as provided by the manufacturer;

(b) Features added by the dealer, if any;

(c) Freight; and

(d) Delivery and installation as stated in the purchase agreement.

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

(3) "Improvements" means goods and services not included in the base price that are, in general, needed to prepare a site and complete the setup of a manufactured dwelling. "Improvements" includes, but is not limited to, permits, site preparation, sidewalks, concrete, utility connections, skirting, steps, railings, decks, awnings, carports, garages, sheds, gutters, downspouts, rain drains, heat pumps, air conditioning, basements, plants and landscaping, installation fees and system development charges.

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

(5) "Manufactured dwelling dealer" or "dealer" means a person selling a manufactured dwelling while acting as a dealer regulated under ORS chapter 822.

(6) "Purchase agreement" means the written contract between the manufactured dwelling dealer and the buyer for the purchase of a manufactured dwelling. "Purchase agreement" does not include documents of a retail installment contract or loan agreement entered into as part of the purchase transaction. [2001 c.969 §1]

**Note:** The amendments to 646.400 by section 80, chapter 655, Oregon Laws 2003, become operative May 1, 2005. See section 147, chapter 655, Oregon Laws 2003. The text that is operative on and after May 1, 2005, is set forth for the user's convenience.

**646.400.** As used in this section and ORS 646.402:

(1) "Base price" means the total retail cost of the following unless separately disclosed as described in ORS 646.402 (2):

(a) The manufactured dwelling as provided by the manufacturer;

(b) Features added by the dealer, if any;

(c) Freight; and

(d) Delivery and installation as stated in the purchase agreement.

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

(3) "Improvements" means goods and services not included in the base price that are, in general, needed to prepare a site and complete the setup of a manufactured dwelling. "Improvements" includes, but is not limited to, permits, site preparation, sidewalks, concrete, utility connections, skirting, steps, railings, decks, awnings, carports, garages, sheds, gutters, downspouts, rain drains, heat pumps, air conditioning, basements, plants and landscaping, installation fees and system development charges.

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

(5) "Manufactured dwelling dealer" or "dealer" means a person who sells a manufactured dwelling in a manner that makes the person subject to the license requirement of ORS 446.671.

(6) "Purchase agreement" means the written contract between the manufactured dwelling dealer and the buyer for the purchase of a manufactured dwelling. "Purchase agreement" does not include documents of a retail installment contract or loan agreement entered into as part of the purchase transaction.

### 646.402 Form of purchase agreement.

(1) A manufactured dwelling dealer who sells a manufactured dwelling shall use a purchase agreement form that complies with this section and rules adopted in accordance with ORS 646.404.

(2) The purchase agreement shall include the base price and a written itemization that clearly and conspicuously discloses the retail prices of the following, if not included in the base price:

(a) Manufactured dwelling options that are ordered by the buyer.

(b) The amount of any refundable or nonrefundable administrative or processing fees paid to or collected by the dealer and the circumstances under which the fees may be returned to the buyer.

(c) The amount of any earnest money paid and the circumstances under which the earnest money may be returned to the buyer.

(d) Improvements provided by the dealer, or by a third party at the request of the dealer, to the extent known to the dealer at the time of sale. The written itemization of improvements under this paragraph excuses

the provider making the improvements from compliance with ORS 90.518 (1).

(e) All loan fees and credit report fees paid to or collected by the dealer to obtain financing for the buyer's purchase of the manufactured dwelling and the circumstances under which the fees may be returned to the buyer.

(f) Alterations and upgrades to the manufactured dwelling made by the dealer or by a third party at the request of the dealer.

(g) Goods and services provided by the dealer, or by a third party at the request of the dealer, that are not otherwise disclosed pursuant to this section.

(h) Registration and other charges for transferring title to the manufactured dwelling.

(i) The extended warranty contract, if any.

(j) Delivery, installation or site access costs that are not otherwise disclosed pursuant to this section, if any.

(3) The purchase agreement form must be accompanied by a list, provided by the Department of Justice, of governmental consumer protection agencies having jurisdiction over manufactured dwelling issues.

(4) Failure of a manufactured dwelling dealer to use a purchase agreement form that complies with this section and rules adopted in accordance with ORS 646.404 is an unlawful practice under ORS 646.608.

(5) Except as provided in ORS 41.740, a purchase agreement is considered to contain all of the terms of the contract between the buyer and the manufactured dwelling dealer. No evidence of the terms of the contract may be presented other than the contents of the purchase agreement. As used in this subsection, "contract" does not include a retail installment contract or loan agreement entered into as part of a purchase transaction. [2001 c.969 §2]

**Note:** The amendments to 646.402 by section 81, chapter 655, Oregon Laws 2003, become operative May 1, 2005. See section 147, chapter 655, Oregon Laws 2003. The text that is operative on and after May 1, 2005, is set forth for the user's convenience.

**646.402.** (1) A manufactured dwelling dealer who sells a manufactured dwelling shall use a purchase agreement form that complies with this section and rules adopted in accordance with ORS 646.404.

(2) The purchase agreement shall include the base price and a written itemization that clearly and conspicuously discloses the retail prices of the following, if not included in the base price:

(a) Manufactured dwelling options that are ordered by the buyer.

(b) The amount of any refundable or nonrefundable administrative or processing fees paid to or collected

by the dealer and the circumstances under which the fees may be returned to the buyer.

(c) The amount of any earnest money paid and the circumstances under which the earnest money may be returned to the buyer.

(d) Improvements provided by the dealer, or by a third party at the request of the dealer, to the extent known to the dealer at the time of sale. The written itemization of improvements under this paragraph excuses the provider making the improvements from compliance with ORS 90.518 (1).

(e) All loan fees and credit report fees paid to or collected by the dealer to obtain financing for the buyer's purchase of the manufactured dwelling and the circumstances under which the fees may be returned to the buyer.

(f) Alterations and upgrades to the manufactured dwelling made by the dealer or by a third party at the request of the dealer.

(g) Goods and services provided by the dealer, or by a third party at the request of the dealer, that are not otherwise disclosed pursuant to this section.

(h) Fees for the issuance or updating of an ownership document.

(i) The extended warranty contract, if any.

(j) Delivery, installation or site access costs that are not otherwise disclosed pursuant to this section, if any.

(3) The purchase agreement form must be accompanied by a list, provided by the Department of Justice, of governmental consumer protection agencies having jurisdiction over manufactured dwelling issues.

(4) Failure of a manufactured dwelling dealer to use a purchase agreement form that complies with this section and rules adopted in accordance with ORS 646.404 is an unlawful practice under ORS 646.608.

(5) Except as provided in ORS 41.740, a purchase agreement is considered to contain all of the terms of the contract between the buyer and the manufactured dwelling dealer. No evidence of the terms of the contract may be presented other than the contents of the purchase agreement. As used in this subsection, "contract" does not include a retail installment contract or loan agreement entered into as part of a purchase transaction.

#### **646.404 Department of Justice; rules.**

The Department of Justice may adopt rules necessary and proper for the administration and enforcement of ORS 646.402. [2001 c.969 §3]

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

### **REPURCHASE OF FARM IMPLEMENTS BY SUPPLIER FROM RETAILER**

**646.415 Definitions for ORS 646.415 to 646.459.** As used in ORS 646.415 to 646.459:

(1) "Catalog" includes catalogs published in any medium, including electronic catalogs.

(2) "Change in competitive circumstances" means a material detrimental effect on a retailer's ability to compete with another retailer who sells the same brand of farm implements.

(3) "Current model" means a model listed in the supplier's current sales manual or any supplements to the manual.

(4) "Current net price" means:



(a) The price of parts or farm implements listed in the supplier's price list or catalog in effect at the time the contract is canceled or discontinued, less any applicable trade, volume or cash discounts, or when the retailer made a warranty claim.

(b) For superseded parts, the price listed in the supplier's price list or catalog when the retailer purchased the parts.

(5) "Current signs" means the principal outdoor signs that:

(a) The supplier requires a retailer to obtain;

(b) Identify the supplier; and

(c) Identify the retailer as representing the supplier or the supplier's farm implements or machinery.

(6) "Dealership" means the location from which a retailer buys, sells, leases, trades, stores, takes on consignment or in any other manner deals in farm implements.

(7) "Distributor" means a person who sells or distributes new farm implements to a retailer.

(8) "Farm implements" means:

(a) Any vehicle designed or adapted and used exclusively for agricultural operations and only incidentally operated or used upon the highways;

(b) Auxiliary items, such as trailers, used with vehicles designed or adapted for agricultural operations;

(c) Other consumer products for agricultural purposes, including lawn and garden equipment powered by an engine, supplied by the supplier to the retailer pursuant to a retailer agreement;

(d) Attachments and accessories used in the planting, cultivating, irrigating, harvesting and marketing of agricultural, horticultural or livestock products; and

(e) Outdoor power equipment, including, but not limited to, self-propelled equipment used to maintain lawns and gardens or used in landscape, turf or golf course maintenance.

(9) "F.O.B." has the meaning given that term in ORS 72.3190.

(10) "Inventory" means farm implements, machinery and repair parts.

(11) "Manufacturer" means a person who manufactures or assembles new or unused farm implements.

(12) "Net cost" means the price the retailer actually paid for the merchandise to the supplier.

(13) "Retailer" means any person engaged in the business of retailing farm implements, machinery or repair parts in this state.

(14) "Retailer agreement" means an agreement between a supplier and a retailer that provides for the rights and obligations of the parties with respect to purchase or sale of farm implements.

(15) "Specialized tool" means a tool that:

(a) The supplier requires a retailer to obtain; and

(b) Is unique to the diagnosis or repair of the supplier's farm implements or machinery.

(16) "Supplier" means:

(a) A wholesaler, manufacturer, manufacturer's representative or distributor.

(b) A successor in interest of a manufacturer, manufacturer's representative or distributor, including, but not limited to:

(A) A purchaser of assets or shares of stock;

(B) A corporation or entity resulting from merger, liquidation or reorganization; or

(C) A receiver or trustee.

(c) The assignee of a supplier.

(17) "Warranty claim" means a claim for payment submitted by a retailer to a supplier for service or parts provided to a customer under a warranty issued by the supplier. [1983 c.551 §1; 1993 c.406 §1; 2003 c.466 §1]

**646.419 Application of ORS 646.415 to 646.459 to successor in interest or assignee of supplier.** The obligations of a supplier under ORS 646.415 to 646.459 apply to the supplier's successor in interest or assignee. A successor in interest includes a purchaser of assets or shares, a surviving corporation or other entity resulting from a merger or liquidation, a receiver and a trustee of the original supplier. [1989 c.404 §2]

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

**646.425 Payment for farm implements, parts, software, tools and signs upon termination of retailer agreement.** (1) If a retailer agreement is terminated, canceled or discontinued, unless the retailer elects to keep the farm implements, machinery and repair parts under a contractual right to do so, the supplier shall pay the retailer for the farm implements, machinery and repair parts or, if the retailer owes any sums to the supplier, credit the cost of the farm implements, machinery and repair parts to the retailer's account. The payment or credit shall be as follows:

(a) The payment or the credit for the unused complete farm implements and machinery in new condition shall be in a sum equal to 100 percent of the net cost of all complete farm implements and machinery that are current models and that have been purchased

by the retailer from the supplier within the 24 months immediately preceding notice of intent to cancel or discontinue the retailer agreement. The payment or credit shall include the transportation charges to the retailer and from the retailer to the supplier, if the charges have been paid by the retailer or invoiced to the retailer's account by the supplier, and a reasonable reimbursement for services performed in connection with assembly or predelivery inspection of the implements or machinery. The supplier assumes ownership of the farm implements and machinery F.O.B. the dealership.

(b) The payment or credit for equipment used for demonstration or rental and that is in new condition shall equal the depreciated value of the equipment to which the supplier and retailer have agreed.

(c)(A) The payment or credit for repair parts shall be a sum equal to 95 percent of the current net prices of the repair parts, including superseded parts, plus the charges for transportation from the retailer to the destination designated by the supplier that the retailer paid or the supplier invoiced to the retailer's account. The supplier assumes ownership of the repair parts F.O.B. the dealership.

(B) This paragraph applies to parts purchased by the retailer from the supplier and held by the retailer on or after the date of the cancellation or discontinuance of the retailer agreement.

(C) This paragraph does not apply to repair parts that:

(i) The supplier identified as not returnable when the retailer ordered the parts.

(ii) The retailer purchased in a set of multiple parts, unless the set is complete and in resalable condition.

(iii) The retailer failed to return after being offered a reasonable opportunity to return the repair part at a price not less than 100 percent of the net price of the repair part as listed in the then current price list or catalog.

(iv) Have a limited storage life or are otherwise subject to deterioration, including but not limited to rubber items, gaskets and batteries and repair parts in broken or damaged packages.

(v) Are single repair parts priced as a set of two or more items.

(vi) Are not resalable as new parts without new packaging or reconditioning because of their condition.

(D) The supplier shall also pay the retailer or credit to the retailer's account a sum equal to five percent of the current net

price of all parts returned for the handling, packing and loading of the parts, unless the supplier elects to list the inventory and perform packing and loading of the parts itself.

(d) Upon the payment or allowance of credit to the retailer's account of the sum under this subsection, the title to the farm implements, farm machinery or repair parts shall pass to the supplier making the payment or allowing the credit and the supplier shall be entitled to the possession of the farm implements, machinery or repair parts.

(2)(a) If a retailer agreement is terminated, canceled or discontinued, the supplier shall, upon request of the retailer, pay the retailer for:

(A) Computer and communications hardware that:

(i) The supplier required the retailer to purchase within the preceding five years; and

(ii) The retailer possesses on the date of the agreement's termination, cancellation or discontinuation.

(B) Computer software that:

(i) The supplier required the retailer to purchase from the supplier; and

(ii) The retailer used exclusively to support the retailer's dealings with the supplier.

(b) If the retailer owes any sums to the supplier, the supplier may credit the cost of the hardware and software to the retailer's account.

(c) The payment or credit shall be the net cost of the hardware and software, less 20 percent per year that the retailer possessed the hardware and software.

(d) This subsection does not apply if the retailer exercises a contractual right to keep the hardware or software.

(3)(a) If a retailer agreement is terminated, canceled or discontinued, the supplier shall pay the retailer for the retailer's specialized tools.

(b) If the retailer owes any sums to the supplier, the supplier may credit the cost of the specialized tools to the retailer's account.

(c)(A) If a tool is new and unused and used for the supplier's current models, the payment or credit shall be the net cost of the tool.

(B) If a tool is not new and unused and used for the supplier's current models, the payment or credit shall be the net cost of the tool, less 20 percent per year that the retailer possessed the tool.

(4)(a) If a retailer agreement is terminated, canceled or discontinued, the supplier shall pay the retailer for the retailer's current signs.

(b) If the retailer owes any sums to the supplier, the supplier may credit the cost of the signs to the retailer's account.

(c) The payment or credit shall be the net cost of the sign, less 20 percent per year that the retailer possessed the sign.

(5) A supplier shall provide all payments or allowances due under this section within 90 calendar days of the retailer's return of the farm implements, machinery, repair parts, computer and communications hardware, computer software, specialized tools or current signs. A supplier who does not provide a payment or allowance within 90 calendar days of the retailer's return of the farm implements, machinery, repair parts, computer and communications hardware, computer software, specialized tools or current signs shall pay the retailer interest of 18 percent per annum on the past due amount until paid.

(6) This section supplements any retailer agreement between the retailer and the supplier covering the return of farm implements, machinery, repair parts, computer and communications hardware, computer software, specialized tools or current signs. The retailer may elect to pursue either the retailer's remedy under the retailer agreement or the remedy provided under this section. An election by the retailer to pursue the remedy under the retailer agreement does not bar the retailer's right to the remedy provided under this section as to those farm implements, machinery, repair parts, computer and communications hardware, computer software, specialized tools or current signs not affected by the retailer agreement. This section does not affect the right of a supplier to charge back to the retailer's account amounts previously paid or credited as a discount incident to the retailer's purchase of goods.

(7) This section does not apply to farm implements, machinery, repair parts, computer and communications hardware, computer software, specialized tools or current signs that a retailer acquired from a source other than the supplier. [1983 c.551 §2; 1991 c.83 §5; 1993 c.406 §6; 2003 c.466 §2]

**Note:** Section 13 (1), chapter 466, Oregon Laws 2003, provides:

**Sec. 13.** (1) The amendments to ORS 646.425 by section 2 of this 2003 Act apply to retail agreements that:

(a) Are entered into on or after the effective date of this 2003 Act [January 1, 2004].

(b) Are entered into before the effective date of this 2003 Act and:

(A) Do not state a date for termination, cancellation or discontinuation; and

(B) Are terminated, canceled or discontinued after the effective date of this 2003 Act. [2003 c.466 §13(1)]

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

**646.435 Repurchase of inventory by supplier; effect of new retailer agreement.** (1) A supplier shall repurchase the inventory of a retailer, as if the supplier had terminated the retailer agreement, as follows:

(a) Upon the death of a retailer whose business is owned as a tenancy by the entirety, at the option of the spouse or the heir or heirs of the retailer.

(b) Upon the death of a stockholder of a corporation operating as a retailer, at the option of the heir or heirs of the stockholder and upon the consent of the board of directors.

(2) The surviving spouse or the heir or heirs may exercise the option under this section not later than one year from the date of the death of the retailer or the stockholder.

(3) Nothing in ORS 646.415 to 646.459 requires the repurchase of inventory by the supplier:

(a) If the supplier and the corporation acting as a retailer enter into a new retailer agreement to operate the retail dealership.

(b) If the supplier and the surviving spouse or the heir or heirs of the retailer enter into a new retailer agreement to operate the retail dealership. [1983 c.551 §3; 1993 c.406 §7]

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

**646.445 Civil action for supplier's failure to pay; venue.** (1) If, upon the cancellation of a retailer agreement by the retailer or the supplier, the supplier fails to make payment as required by ORS 646.425 or 646.435, the supplier shall be liable in a civil action to be brought by the retailer or by the retailer's spouse, heir or heirs for the payments required under ORS 646.425 or 646.435.

(2) A person who brings an action under this section must commence the action in the county in which the principal place of business of the retailer is located. [1983 c.551 §4; 1993 c.406 §8; 2003 c.466 §3]

**646.447 Prohibited conduct by supplier.** (1) A supplier may not:

(a) Coerce or compel any retailer to:

(A) Order any farm implements or parts.

(B) Accept delivery of farm implements with special features or accessories not included in the base list price of the farm implements as publicly advertised by the supplier.

(C) Enter into any agreement, whether written or oral, supplementary to an existing retailer agreement with the supplier, unless the supplementary agreement or amendment

to the agreement is applicable to all other similarly situated retailers in the state.

(b) Refuse to deliver in reasonable quantities and within a reasonable time after receipt of the retailer's order, to any retailer having a retailer agreement for the retail sale of new equipment sold or distributed by the supplier, equipment covered by the retailer agreement represented by the supplier to be available for immediate delivery.

(c) Require:

(A) As a condition of renewal or extension of a retailer agreement that the retailer complete substantial renovation of the retailer's place of business, or acquire new or additional space to serve as the retailer's place of business, unless the supplier provides at least one year's written notice of the condition which states all grounds supporting the condition.

(B) A retailer to complete a renovation or acquisition in less than a reasonable time.

(C) A retailer to waive a right to bring an action to enforce the provisions of ORS 646.415 to 646.459.

(d) Discriminate among similarly situated retailers in this state with respect to the prices charged for equipment of like grade and quality sold to them by the supplier.

(e) Unreasonably withhold consent for a retailer to change the capital structure of the retailer's business or the means by which the retailer finances the business.

(f) Prevent or attempt to prevent any retailer or any officer, member, partner or stockholder of any retailer from selling or transferring any interest to any other party or parties.

(g) Require a retailer to assent to a release, assignment, novation, waiver or estoppel which would relieve any person from liability imposed by ORS 646.415 to 646.459.

(h) Withhold consent to a transfer of an interest in a dealership unless the retailer's area of responsibility or trade area does not afford sufficient sales potential to reasonably support a retailer.

(i) Unreasonably withhold consent to the sale, transfer or assignment of the retailer's interest or power of management or control in the retailer's business.

(j) In the event of the death or incapacity of the retailer or the principal owner of the retailer's business, unreasonably withhold consent to the transfer of the retailer's interest in the business to a person who meets the reasonable financial, business experience and character standards of the supplier.

(2)(a) Subsection (1)(a)(A) of this section does not apply if a law requires a retailer to order farm implements or parts.

(b) Subsection (1)(a)(B) of this section does not apply if:

(A) A law requires a supplier to supply farm implements with special features;

(B) The special features or accessories are safety features; or

(C) The retailer ordered the farm implements without coercion or compulsion.

(c)(A) As used in this paragraph, "act of nature" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(B) Notwithstanding subsection (1)(b) of this section, a supplier may refuse to deliver equipment if the refusal is due to:

(i) Prudent and reasonable restrictions on extension of credit by the supplier to the retailer;

(ii) An act of nature;

(iii) A work stoppage or delay due to a strike or labor difficulty;

(iv) A bona fide shortage of materials;

(v) A freight embargo; or

(vi) Any other cause over which the supplier has no control.

(C) Subparagraph (B) of this paragraph applies only if the supplier bases delivery on ordering histories with priority given to the sequence in which the orders are received.

(d) Subsection (1)(d) of this section does not prohibit:

(A) A supplier from using differentials resulting from the differing quantities in which equipment is sold or delivered.

(B) A retailer from offering a lower price in order to meet an equally low price of a competitor or the services or facilities furnished by a competitor.

(e) Subsection (1)(e) of this section applies only if:

(A) The retailer meets the reasonable capital requirements imposed by the supplier;

(B) The retailer agreed to the capital requirements; or

(C) The change by the retailer does not result in a change of the controlling interest in the executive management or board of directors, or of any guarantors of the retailer.

(f) If a supplier does not accept a sale, transfer or assignment, the supplier shall provide written notice of the supplier's ob-

jection and specific reasons for withholding consent.

(g) Notwithstanding subsection (1)(f) of this section, a retailer may not sell, transfer or assign the retailer's interest or power of management or control without the written consent of the supplier.

(h) Subsection (1)(j) of this section does not apply if the retailer and supplier agreed to rights of succession.

(i) Notwithstanding subsection (1)(f), (h), (i) and (j) of this section, a supplier may withhold consent to a transfer of interest in a retailer if, with due regard to regional market conditions and distribution economies, the retailer's area of responsibility or trade does not afford sufficient sales potential to reasonably support a retailer. [1993 c.406 §3; 2003 c.466 §4]

**646.449 Termination, cancellation or failure to renew retailer agreement; notice; good cause.** (1) As used in this section:

(a) "Good cause" means a retailer's:

(A) Failing to comply with a term of a retail agreement that is the same as a term in the supplier's agreements with similarly situated retailers, including failure to meet marketing criteria;

(B) Transferring a controlling ownership interest in the retailer's business without the supplier's consent;

(C) Making a material misrepresentation or falsification of a record, contract, report or other document that the retailer has submitted to the supplier;

(D) Filing a voluntary petition in bankruptcy;

(E) Being placed involuntarily in bankruptcy and not discharging the bankruptcy within 60 days after the filing;

(F) Becoming insolvent;

(G) Being placed in a receivership;

(H) Pleading guilty to, being convicted of or being imprisoned for a felony;

(I) Failing to operate in the normal course of business for seven consecutive business days or terminating business;

(J) Relocating or establishing a new or additional place or places of business without the supplier's consent;

(K) Failing to satisfy a payment obligation as it comes due and payable to the supplier;

(L) Failing to promptly account to the supplier for any proceeds of the sale of farm implements or otherwise failing to hold the proceeds in trust for the benefit of the supplier;

(M) Consistently engaging in business practices that are detrimental to the consumer or supplier, including, but not limited to, excessive pricing, misleading advertising or failure to provide service and replacement parts or to perform warranty obligations;

(N) Inadequately representing the supplier, causing lack of performance in sales, service or warranty areas, and failing to achieve satisfactory market penetration at levels consistent with similarly situated retailers based on available documented information;

(O) Consistently failing to meet building and housekeeping requirements; or

(P) Consistently failing to comply with the licensing laws that apply to the supplier's products and services.

(b) "Similarly situated retailer" means a retailer:

(A) In a similar geographic area;

(B) With similar sales volumes; and

(C) In a similar market for farm implements, machinery and repair parts.

(2) With good cause, a supplier, directly or through an officer, agent or employee, may terminate, cancel, fail to renew or substantially change the competitive circumstances of a retailer agreement. The termination, cancellation, nonrenewal or change becomes effective upon notice to the retailer. The notice shall state the reasons constituting good cause for the termination, cancellation, nonrenewal or change.

(3)(a) Except as provided in subsection (2) of this section, a supplier shall give a retailer 90 calendar days' written notice of the supplier's intent to terminate, cancel or fail to renew a retailer agreement or change the competitive circumstances of a retailer agreement.

(b) The notice shall:

(A) State the reasons for termination, cancellation, nonrenewal or change; and

(B) Provide that the retailer has 60 calendar days in which to cure a claimed deficiency.

(c) If the retailer cures the deficiency within 60 calendar days, the notice is void.

(d) If the retailer fails to cure the deficiency within 60 calendar days, the termination, cancellation, failure to renew or change in competitive circumstances becomes effective on the date specified in the notice.

(4)(a) Notwithstanding subsection (3) of this section, a supplier shall give a retailer one year's written notice of the retailer's failure to meet reasonable marketing criteria.

(b) The notice shall:

(A) State the reasonable marketing criteria that the retailer has failed to meet; and

(B) Provide the retailer one year in which to meet the criteria.

(c)(A) If the retailer fails to meet the criteria within the year, the supplier may give notice of the termination, cancellation, failure to renew the retail agreement or change to the retail agreement.

(B) A termination, cancellation, failure to renew or change under this paragraph is effective 180 calendar days after the supplier gives notice. [1993 c.406 §4; 2003 c.466 §5]

**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 New or relocated dealership; notice; area of responsibility.** (1) If a supplier enters into an agreement to establish a new retailer or dealership or to relocate a retailer or dealership, and the agreement assigns an area of responsibility, the supplier must give written notice of the agreement by certified mail to any retailer or dealership within an assigned area of responsibility that is within or contiguous to the area of the new or relocated retailer or dealership.

(2) If a supplier enters into an agreement to establish a new retailer or dealership or to relocate a retailer or dealership, and the agreement does not assign an area of responsibility, the supplier must give written notice of the agreement by certified mail to any retailer or dealership within a 75-mile radius of the new or relocated retailer or dealership.

(3) A notice required by this section shall contain:

(a) The new location of the retailer or dealership;

(b) The date that the retailer or dealership will commence business at the new location; and

(c)(A) If the agreement assigns an area of responsibility, the name and address of retailers and dealerships with assigned areas of responsibility that are within or contiguous to the area of the new or relocated retailer or dealership; or

(B) If the agreement does not assign an area of responsibility, the name and address of retailers and dealerships within a 75-mile radius of the new or relocated retailer or dealership. [2003 c.466 §8]

**646.453 Warranty claims; payment; time for completion.** Unless otherwise agreed:

(1) On a warranty claim, a supplier shall provide reasonable compensation for the retailer's costs, including but not limited to:

(a) Diagnostic services;

(b) Repair services;

(c) Repair parts; and

(d) Labor.

(2) For labor on warranty service, a supplier may not pay a retailer an hourly rate that is less than rate that the retailer charges for nonwarranty service.

(3) For repair parts on warranty service, a supplier may not pay a retailer less than the amount that the retailer paid for the parts plus a reasonable allowance for the shipping and handling of the parts.

(4) A supplier must allow a reasonable time for a retailer to complete warranty service. [2003 c.466 §10]

**646.454 Warranty claims; processing.**

(1) A supplier shall approve or disapprove a warranty claim in writing within 30 calendar days of the supplier's receipt of the claim.

(2) If a supplier does not approve or disapprove a warranty claim in writing within 30 calendar days of the supplier's receipt of the claim, the supplier shall pay the claim within 60 calendar days of receipt of the claim.

(3) A supplier that approves a warranty claim shall pay the claim within 30 calendar days of the claim's approval.

(4) A supplier that disapproves a warranty claim shall, in the writing required by subsection (1) of this section, notify the retailer of the reasons for the disapproval.

(5) If a supplier disapproves a warranty claim because the retailer failed to comply with procedures for submitting the claim prescribed by the retailer agreement, the retailer may resubmit the claim within 30 calendar days of the retailer's receipt of the supplier's disapproval.

(6) A supplier may not disapprove a warranty claim as untimely if the claim covers service or parts provided while a retailer agreement was in effect.

(7)(a) For one year after payment of a warranty claim, the supplier may audit records that support the claim.

(b) A supplier may not audit a record that supports a claim more than one year after paying the claim unless an audit has disclosed that the retailer submitted a false claim.

(c) A supplier may:

(A) Adjust a claim paid in error;

(B) Require a retailer to return payment made on a false claim; and

(C) If the retailer owes an amount to the supplier, credit the amount of a claim to the retailer's account. [2003 c.466 §9]

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

**646.456 Retailer's improvements to products.** Unless otherwise agreed:

(1) If a supplier requires a retailer to improve the safety of farm implements or machinery, the supplier shall reimburse the retailer for the costs of parts, labor and transportation that the retailer incurred to make the improvement.

(2) If a supplier requires a retailer to improve farm implements or machinery for reasons other than safety, the supplier shall reimburse the retailer for the costs of parts and labor that the retailer incurred to make the improvement.

(3) For labor to improve farm implements or machinery, a supplier may not pay a retailer an hourly rate that is less than rate that the retailer charges for like services.

(4) For parts to improve farm implements or machinery, a supplier may not pay a retailer less than the amount that the retailer paid for the parts plus a reasonable allowance for the shipping and handling of the parts. [2003 c.466 §11]

**646.459 Remedies; arbitration; cause of action; attorney fees; injunctive relief.**

(1)(a) Any party to a retailer agreement aggrieved by the conduct of the other party to the agreement under ORS 646.447, 646.449, 646.452, 646.453, 646.454 or 646.456 may seek arbitration of the issues under ORS 36.600 to 36.740. Unless the parties agree to different arbitration rules, the arbitration shall be conducted pursuant to the commercial arbitration rules of the American Arbitration Association. If the parties agree, the arbitration shall be the parties' only remedy and the findings and conclusions of the arbitrator or panel of arbitrators shall be binding upon both parties.

(b) The arbitrator or arbitrators may award the prevailing party:

(A) The costs of witness fees and other fees in the case;

(B) Reasonable attorney fees; and

(C) Injunctive relief against unlawful termination, cancellation, nonrenewal or change in competitive circumstances.

(2) Notwithstanding subsection (1) of this section, any retailer has a civil cause of action in circuit court against a supplier for damages sustained by the retailer as a consequence of the supplier's violation of ORS 646.447, 646.449, 646.452, 646.453, 646.454 or 646.456, together with:

(a) The actual costs of the action;

(b) Reasonable attorney fees; and

(c) Injunctive relief against unlawful termination, cancellation, nonrenewal or change in competitive circumstances.

(3) A supplier bears the burden of proving that a retailer's area of responsibility or trade area does not afford sufficient sales potential to reasonably support the retailer. The supplier's proof must be in writing.

(4) The remedies set forth in this section are not exclusive and are in addition to any other remedies permitted by law, unless the parties have chosen binding arbitration under subsection (1) of this section. [Formerly 646.451]

**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 supersedes 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 or



der 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]

#### **WARRANTIES ON WHEELCHAIRS, SCOOTERS AND HEARING AIDS**

**646.482 Definitions for ORS 646.482 to 646.498.** As used in ORS 646.482 to 646.498:

(1) “Assistive device” or “device” means:

(a) Wheelchairs and scooters of any kind, including other aids that enhance the mobility or positioning of an individual using a wheelchair or scooter of any kind, such as motorization, motorized positioning features and the switches and controls for any motorized features; and

(b) Hearing aids as defined in ORS 694.015.

(2) “Assistive device system” means a system of assistive devices. An “assistive device system” may be a single assistive device, or each component part of the assistive device system may be considered a separate assistive device.

(3) “Authorized dealer” means a dealer authorized by a manufacturer to sell or lease assistive devices manufactured or assembled by the manufacturer.

(4) “Collateral costs” means expenses incurred by a consumer in connection with the repair of a nonconformity, including the cost of delivering the assistive device to the manufacturer or dealer for repair and obtaining an alternative device if no loaner was offered.

(5) “Consumer” means any of the following:

(a) The purchaser of an assistive device, if the device was purchased from a dealer or manufacturer for purposes other than resale;

(b) A person to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the device;

(c) A person who may enforce the warranty; or

(d) A person who leases an assistive device from a dealer under a written lease.

(6) “Current value of the written lease” means the total amount for which the lease obligates the consumer during the period of the lease remaining after its early termination, plus the dealer’s early termination costs and the market value of the assistive device at the lease expiration date if the lease sets forth that market value, less the dealer’s early termination savings.

(7) “Dealer” means a person who is in the business of selling or leasing assistive devices.

(8) “Demonstrator” means an assistive device that would be new but for its use, since its manufacture, only for the purpose of demonstrating the device to the public or prospective buyers or lessees.

(9) “Early termination cost” means any expense or obligation that a dealer incurs as a result of both the termination of a written lease before the termination date set forth in the lease and the return of an assistive device to a manufacturer under ORS 646.486 (4). “Early termination cost” includes a penalty for prepayment under a finance arrangement.

(4). “Early termination cost” includes a penalty for prepayment under a finance arrangement.

(10) “Early termination savings” means any expense or obligation that a dealer avoids as a result of both the termination of a written lease before the termination date set forth in the lease and the return of an assistive device to a manufacturer under ORS 646.486 (4). “Early termination savings” includes the interest charge that the dealer would have paid to finance the device or, if the dealer does not finance the device, the difference between the total amount for which a lease obligates the consumer during the period of the lease term remaining after the early termination and the present market value of that amount at the date of the early termination.

(11) “Individual with a disability” means any individual who is considered to have a mental or physical disability, impairment or handicap for the purposes of any law of this state or of the United States, including any rules or regulations adopted under those laws.

(12) “Loaner” means an assistive device, provided to the consumer for use by the user free of charge, that need not be new or be

identical to or have functional capabilities equal to or greater than those of the original assistive device, but that meets the following conditions:

(a) It is in good working order;

(b) It performs at a minimum the most essential functions of the original assistive device, in light of the disabilities of the user; and

(c) Any differences between it and the original assistive device do not create a threat to safety.

(13) "Manufacturer" means a person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, factory branch, distributor branch and any warrantor of the manufacturer's device, but does not include a dealer.

(14)(a) "Nonconformity" means a condition or defect that substantially impairs the use, market value or safety of an assistive device and that is covered by an express warranty applicable to the device or to a component of the device.

(b) "Nonconformity" does not include a condition or defect that:

(A) Is the result of abuse or neglect of the device by a consumer;

(B) Is the result of an unauthorized modification or alteration of the device by a consumer if the modification or alteration substantially affects the performance of the device; or

(C) For hearing aids, is the result of normal use of the hearing aid and when the condition or defect could be resolved through fitting adjustments, cleaning or proper care.

(15)(a) "Reasonable allowance for use" means:

(A) When an assistive device has been sold to a consumer, no more than the amount obtained by multiplying the full purchase price of the device by a fraction, the denominator of which is the number of days in the useful life of the device and the numerator of which is the number days that the device was used before the consumer first reported the nonconformity to the manufacturer or any authorized dealer.

(B) When an assistive device has been leased to a consumer, no more than the amount obtained by multiplying the total amount for which the written lease obligates the consumer by a fraction, the denominator of which is the useful life of the device and the numerator of which is the number of days that the device was used before the consumer first reported the nonconformity to the manufacturer or any authorized dealer.

(b) As used in this subsection, the useful life of the assistive device is the greater of:

(A) Five years; or

(B) Such other time that the consumer may prove to be the expected useful life of assistive devices of the same kind.

(16) "Reasonable attempt to repair" means, within the terms of an express warranty applicable to an assistive device:

(a) The same nonconformity is subject to repair at least two times by the manufacturer or any authorized dealer and the nonconformity continues; or

(b) The assistive device is out of service, by reason of repair or correction, for an aggregate of at least 30 days after notification to the manufacturer or any authorized dealer because of the nonconformity.

(17) "User" means an individual with a disability who, by reason thereof, needs and actually uses the assistive device. [1997 c.562 §1; 1999 c.81 §1]

**646.484 Express warranty; duration.**

(1) A manufacturer who sells or leases an assistive device, including a demonstrator, to a consumer, either directly or through a dealer, shall furnish, at a minimum, an express warranty that the device shall be free from any nonconformity. The manufacturer shall set forth the warranty fully in readily understood language and shall clearly identify the party making the warranty, the rights that the warranty gives the consumer and how the consumer can exercise the rights.

(2) If the manufacturer does not furnish the express warranty described in subsection (1) of this section, the manufacturer shall be considered to have provided an express warranty that the device shall be free from any nonconformity.

(3) The duration of the warranty shall be not less than one year from the date of first delivery of the assistive device to the consumer. [1997 c.562 §2]

**646.486 Repair of assistive device.** (1)(a)

If a new assistive device or demonstrator does not conform to an applicable express warranty and the consumer reports the nonconformity to the manufacturer, the dealer who sold or leased the device or any authorized dealer and makes the assistive device available for repair before one year after first delivery of the device to the consumer, the nonconformity shall be repaired at no charge to the consumer. If the consumer notifies the manufacturer, the manufacturer is jointly obligated together with any of its authorized dealers.

(b) A repair for purposes of this subsection includes a repair that must take place

after the expiration of one year after first delivery of the assistive device to the consumer, provided that the defect occurred prior to the expiration of the warranty period and the consumer notified the manufacturer within 30 days after expiration of the period.

(2)(a) Except as provided in paragraphs (b) and (c) of this subsection, each manufacturer of an assistive device sold or leased in this state shall:

(A) Maintain or cause to be maintained in this state sufficient service and repair facilities to carry out the terms of the warranty described in ORS 646.484; and

(B) At the time of the sale or lease, provide the consumer with the names, addresses and telephone numbers of all such service and repair facilities and of all authorized dealers.

(b) If the manufacturer does not provide service and repair facilities in this state, the consumer may return the nonconforming assistive device to the dealer who sold or leased the device or to any authorized dealer for replacement, service or repair in accordance with the terms and conditions of the express warranty. The replacement, service or repair shall be at the option of the dealer to whom the device is returned. If that dealer does not replace the nonconforming device or does not effect the service or repair of the device in accordance with the warranty, the dealer shall reimburse the consumer in an amount equal to the purchase or lease price paid, less a reasonable allowance for use by the consumer.

(c) Each manufacturer who, with respect to a new assistive device sold within this state, does not provide a service or repair facility within this state is liable for the following amounts to any dealer who incurs obligations in giving effect to the express warranty described in ORS 646.484:

(A) In the event of replacement, in an amount equal to the cost to the dealer of the replaced assistive device and any cost of transporting the device, plus a reasonable handling charge;

(B) In the event of service or repair, in an amount equal to that which would ordinarily be received by the dealer for rendering such service or repair, including actual and reasonable costs of the service or repair and the costs of transporting the assistive device, if such costs are incurred, plus a reasonable profit; or

(C) In the event of reimbursement under paragraph (b) of this subsection, in an amount equal to that reimbursed to the consumer plus a reasonable handling or service charge.

(3) For purposes of this section, a consumer reports a nonconformity when the consumer:

(a) Makes any communication, written or oral, that describes the problem with the assistive device, or that may be reasonably understood as an expression of dissatisfaction with any aspect of the operation of the device. The communication need only indicate in some way the nature of the problem, such as an indication of the functions that the device is not performing or performing unsatisfactorily for the consumer, and need not be in technical language nor attempt to state the cause of the problem; and

(b) Does not refuse to make the assistive device available to the manufacturer, the dealer who sold or leased the device or any authorized dealer for repair.

(4)(a) It shall be presumed that the consumer has made the assistive device available to the manufacturer, the dealer who sold or leased the device or an authorized dealer for repair if the consumer allows the manufacturer or dealer to take the device from the consumer's residence or other location where the user customarily uses the device.

(b) The consumer shall be required to deliver the device to another location only upon a showing that it would be a substantially greater hardship for the manufacturer, the dealer who sold or leased the device or any authorized dealer to take the device from the consumer's residence or other location where the user customarily uses the device than for the consumer to deliver the device.

(c) If the consumer must deliver the device to another location in order to enable the manufacturer to repair the device, the manufacturer shall reimburse the consumer for the costs of the delivery.

(5)(a) A person required to repair an assistive device under this section shall provide the consumer a loaner if the absence of a loaner would be a threat to the safety of the user or if the assistive device is out of service for more than seven calendar days.

(b) Paragraph (a) of this subsection applies whether or not the rights of the consumer provided by ORS 646.488 (1) or (2) have arisen and in addition to the remedies relating to collateral costs provided by ORS 646.482 to 646.498. [1997 c.562 §3]

**646.488 Replacement or refund after attempt to repair.** If a nonconformity develops in a new assistive device or demonstrator, the manufacturer shall, after a reasonable attempt to repair the device or demonstrator, at the option of the consumer:

(1) In the case of a sale, refund to the consumer and to any holder of a perfected

security interest as their interest may appear, the full purchase price plus any finance charge or sales tax paid by the consumer at the point of sale and collateral costs, less a reasonable allowance for use;

(2) In the case of a lease, refund to the dealer and to any other holder of a perfected security interest, as their interest may appear, the current value of the lease and refund to the consumer the amount that the consumer paid under the lease plus any collateral costs, less a reasonable allowance for use; or

(3) Provide a conforming replacement. [1997 c.562 §4]

**646.490 Procedures for replacement or refund.** (1) To receive the refund or replacement described in ORS 646.488, the consumer shall offer to the manufacturer of the assistive device, the dealer who sold or leased the device or any authorized dealer to transfer possession of the device having the nonconformity. The manufacturer shall:

(a) Make the refund within 14 calendar days after the consumer offers to transfer possession;

(b) Make the replacement within 30 calendar days after the consumer offers to transfer possession; or

(c) Provide the consumer a loaner for use if the replacement is not made within 14 calendar days after the consumer offers to transfer possession. The loaner may be used until replacement is made.

(2) The manufacturer may require as a condition of making a timely refund or replacement described in ORS 646.488 that the consumer deliver possession of the original assistive device to the manufacturer, the dealer who sold or leased the device or any authorized dealer and sign any documents necessary to transfer title and possession of the device, or necessary to provide evidence of the transfer, to any person designated by the manufacturer.

(3) Subsection (2) of this section applies only if:

(a) The time and place of the mutual activities described in subsection (2) of this section are readily accessible to the consumer; and

(b) The manufacturer provides the consumer written notice in 12-point bold type stating in clear and understandable language the time and place of the mutual activities and directing the consumer to meet at that time and place. The notice must be received by the consumer no later than four business days before the time of the mutual activities.

(4) A person shall not enforce a lease against the consumer for use of an assistive

device during any period of nonconformity or after the consumer returns the device to the manufacturer as described by this section. [1997 c.562 §5]

**646.492 Sale or lease of returned assistive device.** (1) An assistive device returned by a consumer or dealer in this state, or by a consumer or dealer in another state under a similar law of that state, may not be sold or leased again in this state unless full disclosure of the reasons for return is made to the prospective buyer or lessee.

(2) If a sale or lease is made in violation of subsection (1) of this section, a consumer who bought or took the lease of the assistive device shall have the rights of a consumer of a new device provided by ORS 646.488, without regard to whether there is a nonconformity or to whether there has been a reasonable attempt to repair the device. The following paragraphs apply to a sale or lease under this section:

(a) If the consumer chooses the refund option described in ORS 646.488, there shall be no deduction from the full purchase price in calculating the refund under ORS 646.488;

(b) The rights described in this subsection run against the person who last sold or transferred the assistive device to any other person, whether or not the other person is a consumer, so long as the last person to sell or transfer the device had knowledge of the previous return of the device and did not provide the disclosure required by subsection (1) of this section; and

(c) The rights described under this subsection must be declared and exercised by a consumer within two years after the consumer knows of the previous return and can identify the person against whom the rights run. [1997 c.562 §6]

**646.494 Dispute resolution.** (1) A consumer shall have the option of submitting any dispute arising under ORS 646.482 to 646.498 to a dispute resolution procedure. A manufacturer shall submit to the dispute resolution procedure.

(2) The procedure shall provide at a minimum the right of each party to present its case, to be in attendance during any presentation made by the other party and to rebut or refute such presentation. The individuals conducting the dispute resolution procedure must be objective.

(3) A decision resulting from the dispute resolution procedure shall be binding on the manufacturer.

(4) The records of the results of disputes settled under this section shall be submitted to the Department of Justice if the department requests them and shall be available to any person who makes a request for the re-

cords free of cost within 10 business days of the person's request. The department may review all records created under this section to determine whether or not the procedure and decisions comply with the provisions of ORS 646.482 to 646.498.

(5) The Department of Justice shall establish a roster of dispute resolution providers for consumers seeking to resolve disputes with manufacturers or to assert their rights under this section. [1997 c.562 §7]

**646.496 Applicability of other laws; waiver.** ORS 646.482 to 646.498 shall not be construed as limiting rights or remedies available to a consumer under any other law. Any waiver by a consumer of rights provided by ORS 646.482 to 646.498 is void. [1997 c.562 §8]

**646.498 Civil action for damages; attorney fees; limitation on actions.** (1) In addition to pursuing any other remedy, a consumer may bring a private cause of action to recover damages caused by a violation of any provision of ORS 646.482 to 646.498. The court shall award a consumer who prevails in such an action pecuniary loss and noneconomic damages, together with costs, disbursements, reasonable attorney fees and any equitable relief that the court determines is appropriate. Pecuniary loss caused by a violation of ORS 646.482 to 646.498 shall include collateral costs, beginning at the time of the violation, whether or not the consumer acquired the rights provided by ORS 646.488. If a consumer has submitted a dispute arising under ORS 646.482 to 646.498 to a dispute resolution procedure as described in ORS 646.494, the consumer may not bring a private cause of action under this section relating to that dispute until a decision resulting from the dispute resolution procedure has been issued or until the consumer has withdrawn the dispute from the dispute resolution procedure.

(2) If a consumer appeals to a court from a decision resulting from the dispute resolution procedure described in ORS 646.494 because the consumer was not granted one of the remedies by ORS 646.482 to 646.498, and the consumer is granted one of the remedies by the court, the consumer shall be awarded:

(a) Up to three times the amount of any damages awarded if the court finds that the party opposing the consumer did not act in good faith in the dispute resolution procedure;

(b) Reasonable attorney fees; and

(c) Any fees incurred in the dispute resolution procedure and any judicial action.

(3) If the party opposing the consumer is the prevailing party in an action brought

under subsection (1) or (2) of this section, the party opposing the consumer shall be entitled to reasonable attorney fees if the court finds the action to have been frivolous.

(4) Any action brought under this section shall be commenced during the period beginning one year after the date the assistive device was originally delivered to the consumer and ending two years later. [1997 c.562 §9; 2001 c.542 §8; 2003 c.14 §392]

## INFANT CRIB SAFETY

**646.500 Legislative findings; declaration of purpose.** (1) The Legislative Assembly finds that:

(a) The disability and death of infants resulting from injuries sustained in crib accidents are a serious threat to the public health, welfare and safety of the people of this state;

(b) Infants are an especially vulnerable class of people;

(c) The design and construction of a crib must ensure that the crib is a safe place to leave an infant unattended for an extended period of time;

(d) A parent or caregiver has a right to believe that a crib is a safe place to leave an infant;

(e) The United States Consumer Product Safety Commission estimates that 40 children suffocate or strangle in their cribs every year;

(f) Existing state and federal legislation is inadequate to deal with the hazard of injuries and death to infants from unsafe cribs; and

(g) Prohibiting the remanufacture, retrofitting, sale, contracting to sell or resell, leasing or subletting of unsafe cribs, particularly unsafe secondhand, hand-me-down or heirloom cribs, will prevent injuries and deaths caused by unsafe cribs.

(2) The purpose of ORS 646.500 to 646.507 is to prevent the occurrence of injuries to and deaths of infants resulting from unsafe cribs by making it illegal to remanufacture, retrofit, sell, contract to sell or resell, lease, sublet or otherwise place in the stream of commerce any crib that is unsafe for an infant using the crib. [2001 c.767 §1]

**646.501 Short title.** ORS 646.500 to 646.507 may be referred to as the Infant Crib Safety Act. [2001 c.767 §2]

**646.502 Definitions.** As used in ORS 646.500 to 646.507:

(1) "Commercial user" means any person, firm, corporation, association or nonprofit corporation, or any agent or employee thereof, including child care facilities or

family child care homes certified or registered by the Child Care Division under ORS 657A.250 to 657A.450, who:

(a) Deals in cribs of the kind governed by ORS 646.500 to 646.507;

(b) By virtue of the person's occupation, purports to have knowledge or skill peculiar to the cribs governed by ORS 646.500 to 646.507; or

(c) Is in the business of remanufacturing, retrofitting, selling, leasing, subletting or otherwise placing cribs in the stream of commerce.

(2) "Crib" means:

(a) Any full-size crib as that term is defined in 16 C.F.R. 1508.3; or

(b) Any nonfull-size crib as that term is defined in 16 C.F.R. 1509.2(b).

(3) "Individual" means a natural person who is not a commercial user of cribs.

(4) "Infant" means an individual who is less than three years of age. [2001 c.767 §3]

**646.503 Prohibited conduct.** (1) A commercial user may not remanufacture, retrofit, sell, contract to sell or resell, lease, sublet or otherwise place in the stream of commerce a crib that is unsafe for an infant using the crib.

(2) A crib is presumed to be unsafe pursuant to ORS 646.500 to 646.507 if it does not conform to the following standards:

(a) 16 C.F.R. part 1508;

(b) 16 C.F.R. part 1509;

(c) 16 C.F.R. part 1303; and

(d) American Society for Testing Materials Voluntary Standards F966-90, F1169.88, F1822 and F406.

(3) Cribs that are presumed to be unsafe under subsection (2) of this section include but are not limited to cribs with any of the following features or characteristics:

(a) Corner posts that extend more than one-sixteenth of an inch;

(b) Spaces between side slats more than two and three-eighths inches;

(c) Mattress supports that can be easily dislodged from any point of the crib. A mattress support can be easily dislodged if it cannot withstand a 25-pound upward force from underneath the crib;

(d) Cutout designs on the end panels;

(e) Rail height dimensions that do not conform to the following:

(A) The height of the rail and end panel as measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position is at least nine inches; or

(B) The height of the rail and end panel as measured from the top of the rail or panel in its highest position to the top of the mattress support in its lowest position is at least 26 inches;

(f) Any screws, bolts or hardware that is loose or not secured;

(g) Sharp edges, points, rough surfaces or any wood surfaces that are not smooth and free from splinters, splits or cracks; or

(h) Cribs with tears in mesh or fabric sides.

(4) An individual may not remanufacture, retrofit, sell, contract to sell or resell, lease, sublet or otherwise place in the stream of commerce a crib that is unsafe for an infant using the crib. [2001 c.767 §§4,8]

**646.504 Penalties.** (1) A commercial user who willfully and knowingly sells, leases or otherwise places in the stream of commerce an unsafe baby crib as described in ORS 646.503 (1) to (3) commits a violation punishable by a fine not exceeding \$1,000.

(2) An individual who willfully and knowingly sells, leases or otherwise places in the stream of commerce an unsafe baby crib as described in ORS 646.503 (1) to (3) commits a violation punishable by a fine not exceeding \$200. [2001 c.767 §§5,9]

**646.505 Exemptions.** (1) An antique or vintage crib that is clearly not intended for use by an infant is exempt from the provisions of ORS 646.500 to 646.507 if the antique or vintage crib is accompanied at the time of remanufacturing, retrofitting, selling, leasing, subletting or otherwise placing in the stream of commerce by a notice furnished by the commercial user that states that the antique or vintage crib is not intended for use by an infant and that the antique or vintage crib is dangerous for use by an infant.

(2) A commercial user is exempt from liability resulting from use of an antique or vintage crib in a manner that is contrary to the notice required by this section.

(3) As used in this section, "antique or vintage crib" means a crib that is:

(a) 50 years or older measured from the current year;

(b) Maintained as a collector's item; and

(c) Not intended for use by an infant. [2001 c.767 §6]

**646.506 Private right of action; attorney fees.** Any person may maintain an action against a commercial user who violates ORS 646.503 (1) to (3), to enjoin the remanufacture, retrofitting, sale, contract to sell or resell, lease or subletting of a crib that is

unsafe for an infant, and for reasonable attorney fees and costs. [2001 c.767 §7]

**646.507 Scope of remedies.** Remedies available under ORS 646.504 and 646.506 are in addition to any other remedies available under law to an aggrieved party. [2001 c.767 §10]

**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 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]

**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 701.055 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 650.085.

(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 reg-

ulation 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 59.670 and 59.680 or 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]

**Note:** For transition provisions regarding secured transactions, see notes under 79.0628.

**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 residential telephone customer of a telecommunications company.

(3) "Telephone solicitation" means the solicitation by telephone by any person of a party at the residence of the party for the purpose of encouraging the party to purchase property, 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;

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

(c) Business to business contacts. [1989 c.622 §8]

**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 residence address of the party and the method by which the party paid the fee required by ORS 646.574.

(3) “Party” means a residential 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 at the residence of the party for the purpose of encouraging the party to purchase property, 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 goods, services or real estate;

(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]

**646.569 Prohibition on telephone solicitation of party whose name is included on list described in ORS 646.574.** (1) A person may not engage in the telephone solicitation of a party at a telephone number included on the then current list published by the administrator of the telephone solicitation program established under ORS 646.572 and 646.574.

(2) For purposes of this section:

(a) “Predecessor of a 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]

**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 Administrator of telephone solicitation program.** The Attorney General shall 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. The contract may include any provision that the Attorney General determines is in the public interest. [1999 c.564 §3]

**646.574 List of persons who do not wish to receive telephone solicitations; fee; disclosure of list; complaints.** (1) The administrator referred to in ORS 646.572 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 shall 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 shall not charge any 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 shall not charge any 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 shall not charge any 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]

**646.576 Attorney General's 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]

#### ELECTRONIC MAIL

**Note:** Sections 1 to 8, 11 and 13, chapter 759, Oregon Laws 2003, provide:

**Sec. 1. Legislative findings.** (1) The Legislative Assembly finds:

(a) The economic harm and invasion of privacy resulting from the transmission and receipt of unsolicited commercial electronic mail messages constitute a threat to the welfare of the people of this state.

(b) Unsolicited commercial electronic mail messages cost Oregonians hundreds of thousands of dollars each year because of:

(A) The need to acquire additional capacity for computer systems;

(B) The need to acquire software programs to filter and control unsolicited commercial electronic mail messages;

(C) The transmission of computer viruses by unsolicited commercial electronic mail messages; and

(D) Time and productivity lost when businesses and public bodies must devote personnel resources:

(i) To creating and maintaining local electronic mail message filters;

(ii) To removing infestations of unsolicited commercial electronic mail messages from networks and individual mailboxes;

(iii) To unclogging transmission paths; and

(iv) To repairing and restarting computer systems that have experienced resulting system failures.

(c) Unsolicited commercial electronic mail messages can be used to transmit pornographic material in a manner that is not readily apparent to recipients, which can result in the exposure of minors to pornographic material.

(d) Existing state and federal laws are inadequate to prevent the harm to the public welfare that results from the transmission and receipt of unsolicited commercial electronic mail messages.

(e) Requiring persons that transmit unsolicited commercial electronic mail messages to label the messages in a manner readily recognizable by a recipient will enable recipients to recognize unsolicited commercial electronic mail messages and choose whether to avoid receiving or reading the messages.

(2) The purpose of sections 3 (2) and 4 of this 2003 Act is to prevent the harmful effects set forth in subsection (1)(b) and (c) of this section, which result from the receipt of unsolicited electronic mail messages that are not labeled in a manner readily recognizable by a recipient as unsolicited electronic mail messages. Requiring persons that transmit unsolicited electronic mail messages to label the messages as set forth in section 4 of this 2003 Act enables recipients of unsolicited electronic mail messages to recognize and choose whether to avoid receiving and reading the messages. [2003 c.759 §1]

**Sec. 2. Definitions.** As used in sections 1 to 8 of this 2003 Act:

(1) "Business relationship" means a voluntary exchange of communication initiated by an electronic mail message recipient's inquiry about, application for or purchase or use of real estate, goods or services.

(2) "Commercial electronic mail message" means an electronic mail message transmitted for the purpose of encouraging the purchase, rental or investment in real estate, goods or services.

(3) "Control" has the meaning given that term in ORS 60.825.

(4) "Domain name" means an alphanumeric designation that is registered with or assigned by a domain name registrar as part of an electronic address on the Internet.

(5) "Electronic mail message" means an electronic message or computer file that contains an image of a message transmitted between computers or electronic terminals. "Electronic mail message" does not include a document transmitted by a facsimile machine as defined in ORS 646.872.

(6) "Electronic mail service provider" means a person that provides:

(a) An end user with electronic mail message services, including the ability to send or receive electronic mail messages; and

(b) A system that connects the user to a computer server and the Internet.

(7) "Person" has the meaning given that term in ORS 646.605.

(8) "Subsidiary" means a person that directly, or indirectly through one or more intermediaries, is controlled by, or is under common control with, another person.

(9) "Unsolicited commercial electronic mail message" means a commercial electronic mail message transmitted without the consent of the recipient. [2003 c.759 §2]

**Sec. 3. Prohibited practices.** In the course of offering real estate, goods or services for sale, rent or other disposition, a person may not:

(1) Transmit, ask another person to transmit or assist in the transmission of an electronic mail message that:

(a) Uses an Internet domain name without permission of the person that holds the license to use the name;

(b) Contains false or misleading information in the subject line; or

(c) Misrepresents or hinders a person from determining the point of origin or transmission path of the electronic mail message.

(2) Transmit, ask a person to transmit or assist in the transmission of an unsolicited commercial electronic mail message to a person in this state. [2003 c.759 §3]

**Sec. 4. Exceptions to prohibited practices.** (1) Section 3 (2) of this 2003 Act does not apply if:

(a) The person that transmits the electronic mail message:

(A) Has established a business relationship with the person that receives the electronic mail message;

(B)(i) Controls the person that established the business relationship; and

(ii) Offers to the person that receives the electronic mail message real estate, goods or services offered by the person that established the business relationship;

(C)(i) Is a subsidiary of the person that established the business relationship;

(ii) Shares the principal name of the person that established the business relationship;

(iii) Is located on the same premises as the person that established the business relationship; and

(iv) Offers to the person that receives the electronic mail message real estate, goods or services offered by the person that established the business relationship;

(D) Is an organization and the electronic mail message is solely to communicate with a member, employee or contractor of the organization; or

(E) Labels the message by including in the subject line the term "ADV:" in a type size readily visible to the recipient. The label shall immediately follow the colon after the word "subject" or some abbreviation of the word "subject"; or

(b) The predecessor of the person that transmits the electronic mail message had a business relationship with the person that receives the electronic mail message.

(2) Section 3 of this 2003 Act does not apply to an electronic mail service provider acting only as an intermediary between the persons that transmit and receive the electronic mail message. [2003 c.759 §4]

**Sec. 5. Person's remedies.** (1) A person whose Internet domain name is used without permission in violation of section 3 (1)(a) of this 2003 Act may bring an action against the person that violated section 3 (1)(a) of this 2003 Act to recover actual damages or liquidated damages of \$500, whichever is greater.

(2) A person that receives an electronic mail message transmitted in violation of section 3 (1)(b) or (c) of this 2003 Act may bring an action against the person that violated section 3 (1)(b) or (c) of this 2003 Act to recover actual damages or liquidated damages of \$500, whichever is greater.

(3) A person that receives an electronic mail message transmitted in violation of section 3 (2) of this 2003 Act may bring an action against the person that violated section 3 (2) of this 2003 Act to recover actual damages or liquidated damages of \$200, whichever is greater.

(4) The remedies provided by subsections (1) to (3) of this section apply to each electronic mail message transmitted in violation of section 3 of this 2003 Act. If the person elects to recover liquidated damages in lieu of actual damages, the court may not award the person more than \$25,000 per day.

(5) An award of liquidated damages on a claim under this section is not subject to ORS 18.535 [renumbered 31.725], 18.537 [renumbered 31.730] or 18.540 [renumbered 31.735].

(6)(a) A person who is an individual may bring the action in the circuit court of the county in which the individual resides.

(b) A person that is not an individual may bring the action in the circuit court of a county in which the person maintains an office.

(7) The court may award reasonable attorney fees to a plaintiff that prevails in an action on a claim under this section.

(8) The remedies provided in this section are in addition to and not exclusive of any other remedy provided by law of this state. [2003 c.759 §5]

**Sec. 6. Electronic mail service provider's remedies.** (1) An electronic mail service provider whose service is used by a person to transmit an electronic mail message in violation of section 3 (1) of this 2003 Act may bring an action against the person that violated section 3 (1) of this 2003 Act to recover actual damages or liquidated damages of \$1,000, whichever is greater.

(2) An electronic mail service provider whose service is used by a person to transmit an electronic mail message in violation of section 3 (2) of this 2003 Act may bring an action against the person that violated section 3 (2) of this 2003 Act to recover actual damages or liquidated damages of \$1,000, whichever is greater.

(3) The remedies provided by subsections (1) and (2) of this section apply to each electronic mail message transmitted in violation of section 3 of this 2003 Act. If the person elects to recover liquidated damages in lieu of actual damages, the court may not award the person more than \$25,000 per day.

(4) An award of liquidated damages on a claim under this section is not subject to ORS 18.535 [renumbered 31.725], 18.537 [renumbered 31.730] or 18.540 [renumbered 31.735].

(5) The electronic mail service provider may bring the action in the circuit court of a county in which:

(a) The provider maintains an office; or

(b) The person that violated section 3 of this 2003 Act has sufficient contacts for the court to exercise personal jurisdiction over the person.

(6) The court may award reasonable attorney fees to an electronic mail service provider that prevails in an action on a claim under this section.

(7) The remedies provided in this section are in addition to and not exclusive of any other remedy provided by law of this state. [2003 c.759 §6]

**Sec. 7. Electronic mail service provider's good faith efforts.** If an electronic mail service provider acts in good faith to block the receipt, or transmission through the provider's service, of electronic mail messages that the provider anticipates persons will transmit in violation of section 3 of this 2003 Act, a court may not, for blocking receipt or transmission of the electronic mail messages, find the provider to be in violation of section 3 of this 2003 Act. [2003 c.759 §7]

**Sec. 8. Limitation on class actions.** Notwithstanding ORCP 32, a court may not order an action to be maintained as a class action if the action includes a claim under section 5 of this 2003 Act and the person against which the claim is asserted had, at the time of the transmission of the electronic mail message that forms the basis of the claim, established a business relationship with the person that received the message. [2003 c.759 §8]

**Sec. 11. Applicability.** (1) Section 3 of this 2003 Act applies to transmissions of electronic mail messages occurring on or after March 1, 2004.

(2) Sections 5 and 6 of this 2003 Act and the amendments to ORS 646.607 by section 9 of this 2003 Act apply to violations occurring on or after March 1, 2004. [2003 c.759 §11]

**Sec. 13. Sunset.** Sections 1 to 8 and 11 of this 2003 Act are repealed on January 2, 2006. [2003 c.759 §13]

**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 which are or may be obtained primarily for personal, family or household purposes, or which 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 person who is licensed or 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 chapter 576 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; or

(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 includes 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]

**Note:** The amendments to 646.605 by section 12, chapter 658, Oregon Laws 2003, become operative January 1, 2008. See section 13, chapter 658, Oregon Laws 2003. The text that is operative on and after January 1, 2008, 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 which are or may be obtained primarily for personal, family or household purposes, or which 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 person who is licensed or 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 chapter 576 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; or

(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 includes 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 Unconscionable tactic; unlawful electronic mail; failure to deliver, or to refund payment for undelivered, real estate, goods or services.** 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 sale, rental or other disposition of real estate, goods or services, or collection or enforcement of an obligation;

(2) Violates section 3, chapter 759, Oregon Laws 2003; or

(3) 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. [1977 c.195 §4; 1979 c.505 §1; 2003 c.759 §9]

**Note:** The amendments to 646.607 by section 10, chapter 759, Oregon Laws 2003, become operative January 2, 2006. See section 12, chapter 759, Oregon Laws 2003. The text that is operative on and after January 2, 2006, is set forth for the user's convenience.

**646.607.** 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 sale, rental or other disposition of real estate, goods or services, or collection or enforcement of an obligation; or

(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.

**646.608 Unlawful business, trade practices; proof; Attorney General's 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) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

(aa) Violates ORS 646.850 (1).

(bb) Violates any requirement of ORS 646.661 to 646.686.

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

(dd) Violates ORS 646.883 or 646.885.

(ee) Violates any provision of ORS 646.195.

(ff) Violates ORS 646.569.

(gg) Violates the provisions of ORS 646.859.

(hh) Violates ORS 759.290.

(ii) Violates ORS 646.872.

(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 646.892 or 646.894.

(oo) Violates any provision of ORS 646.249 to 646.259.

(pp) Violates ORS 646.384.

(qq) Violates ORS 646.871.

(rr) Violates ORS 822.046.

(ss) Violates ORS 128.001.

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

(uu) Violates ORS 646.877 (2) to (4).

(vv) Violates ORS 87.686.

(ww) Violates ORS 646.651.

(xx) Violates ORS 646.879.

(yy) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.

(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).

(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) No action or suit shall 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 shall be 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; 2001 c.969 §5; 2003 c.133 §1; 2003 c.486 §2; 2003 c.778 §4; 2003 c.801 §18]

**Note:** The amendments to 646.608 by section 13, chapter 924, Oregon Laws 2001, become operative January 1, 2006. See section 14, chapter 924, Oregon Laws 2001. The text that is operative on and after January 1, 2006, including amendments by section 2, chapter 133, Oregon Laws 2003, section 3, chapter 486, Oregon Laws 2003, section 5, chapter 778, Oregon Laws 2003, and section 19, chapter 801, Oregon Laws 2003, 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 646.850 (1).

(cc) Violates any requirement of ORS 646.661 to 646.686.

(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 646.195.
- (gg) Violates ORS 646.569.
- (hh) Violates the provisions of ORS 646.859.
- (ii) Violates ORS 759.290.
- (jj) Violates ORS 646.872.
- (kk) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- (LL) Violates ORS 646.563.
- (mm) Violates ORS 759.690 or any rule adopted pursuant thereto.
- (nn) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.
- (oo) Violates ORS 646.892 or 646.894.
- (pp) Violates any provision of ORS 646.249 to 646.259.
- (qq) Violates ORS 646.384.
- (rr) Violates ORS 646.871.
- (ss) Violates ORS 822.046.
- (tt) Violates ORS 128.001.
- (uu) Violates ORS 646.649 (2) to (4).
- (vv) Violates ORS 646.877 (2) to (4).
- (ww) Violates ORS 87.686.
- (xx) Violates ORS 646.651.
- (yy) Violates ORS 646.879.
- (zz) Violates ORS 646.402 or any rule adopted under ORS 646.402 or 646.404.

(aaa) Violates ORS 180.440 (1).

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

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

(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) No action or suit shall 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)(aaa) of this section by a person other than a prosecuting attorney, relief shall be limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

**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 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]

**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;

(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]

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

**646.632 Enjoining unlawful trade practices; notice to defendant; voluntary compliance; voluntary compliance agreement as judgment; rejection of unsatisfactory assurance; temporary order; 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 pro-

vides 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 declared to be unlawful in ORS 646.607 or 646.608, or as may be necessary to insure cessation of unlawful trade practices. [1971 c.744 §12; 1977 c.195 §8]

**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 or 646.648, 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 or 646.648, 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 or 646.648, 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)(z). 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]

**Note:** The amendments to 646.638 by section 18, chapter 924, Oregon Laws 2001, become operative January 1, 2006. See section 19, chapter 924, Oregon Laws 2001. The text that is operative on and after January 1, 2006, is set forth for the user's convenience.

**646.638.** (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 or 646.648, 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 or 646.648, 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 or 646.648, 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.

**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 con-

tact 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 communications 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 vehicle dealer issued a certificate under ORS 822.020 who sells a manufactured dwelling.

(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]

**Note:** The amendments to 646.648 by section 82, chapter 655, Oregon Laws 2003, become operative May 1, 2005. See section 147, chapter 655, Oregon Laws 2003. The text that is operative on and after May 1, 2005, is set forth for the user's convenience.

**646.648.** (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.

**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 of this 2003 Act is repealed January 1, 2008. [2003 c.658 §14]

**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 competition 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]

### HEALTH SPAS

**646.661 Definitions for ORS 646.661 to 646.691.** As used in this ORS 646.608 and 646.661 to 646.691, unless the context requires otherwise:

(1) "Business day" means any day except a Sunday or a legal holiday.

(2) "Buyer" means a person who purchases health spa services.

(3) "Conspicuous" has the meaning given that term in ORS 71.2010 (10).

(4) "Health spa" means any person engaged, as a primary purpose, in the sale of instruction, training, assistance or use of facilities which are purported to assist patrons in physical exercise, weight control or figure development. The term also includes any person engaged primarily in the sale of the right or privilege to use tanning booths, exercise equipment or facilities, such as a sauna, whirlpool bath, weight-lifting room, massage, steam room, or other exercising machine or device. "Health spa" does not include any facility owned and operated by the State of Oregon or any of its political subdivisions.

(5) "Health spa services" means services, privileges or rights offered for sale by a health spa.

(6) "Person" has the meaning given that term in ORS 646.605 (4). [1985 c.694 §1]

**646.666 Price list for health spa services.** (1) Each health spa shall prepare and provide to each prospective buyer a written list of prices of all forms or plans of health spa services offered for sale by the health spa.

(2) A health spa may not sell any form or plan of health spa services not included in the list. [1985 c.694 §2]

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

**646.671 Contracts; contents.** A contract for the sale of health spa services must be in writing and a copy must be given to the buyer at the time the buyer signs the contract. The contract must contain all of the following:

(1) Identification of the person providing the health spa services.

(2) A description of the health spa services to be provided, or acknowledgment in a conspicuous form that the buyer has received a written description of the health spa services to be provided. If any of the health

spa services are to be delivered at a planned facility, at a facility under construction or through substantial improvement to an existing facility, the description must include a date for the completion of the facility, construction or improvement.

(3) A complete statement of the rules of the health spa or an acknowledgment in a conspicuous form that the buyer has received a copy of the rules.

(4) A statement of the duration of the obligation of the health spa to provide health spa services to the buyer. The duration shall not exceed three years from the date of the contract.

(5) A provision for cancellation of the contract:

(a) If the buyer dies or becomes physically unable to use a substantial portion of those health spa services used by the buyer from the date of the contract until the time of disability. The contract may require that disability be confirmed by an examination of a physician agreeable to the buyer and the health spa.

(b) If the health spa goes out of business.

(c) If the health spa moves its facility closest to the residence of the buyer on the date of the contract to a location more than five additional miles from that residence.

(d) If a facility, construction or improvement is not completed by the date represented in the contract.

(e) If the health spa materially changes the health spa services promised as a part of the initial contract.

(6) A provision for a refund upon cancellation in an amount computed by dividing the contract price by the number of weeks in the contract term and multiplying the result by the number of weeks remaining in the contract term.

(7) A provision under a conspicuous caption in capital letters and boldfaced type stating:

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#### BUYER'S RIGHT TO CANCEL

If you wish to cancel this contract, without penalty, you may cancel it by delivering or mailing a written notice to the health spa. The notice must say that you do not wish to be bound by the contract and must be delivered or mailed before midnight of the third business day after you sign this contract. The notice must be mailed to: \_\_\_\_\_ (insert name and mailing address of health spa). If you cancel within the three days, the health spa will return to you within 15 days all amounts you have paid.

[1985 c.694 §3]

**646.676 Contracts and rules; delivery to buyer.** Upon request, a health spa must deliver to a prospective buyer copies of the contract required by ORS 646.671, and the rules of the health spa if not stated in the contract, and must allow the prospective buyer to retain the copies so provided. [1985 c.694 §5]

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

**646.681 Moneys paid prior to facility opening; disposition; priority of claim; refund.** (1) All moneys paid to a health spa by a buyer prior to the opening of the facility shall promptly be deposited by the health spa in a trust account, maintained by the health spa for the purpose of holding such moneys for the buyer, in a bank, savings and loan association, mutual savings bank or licensed escrow agent located in Oregon.

(2) The health spa shall within seven days of the first deposit notify the office of the Attorney General, in writing, of the name, address and location of the depository and any subsequent change thereof.

(3) The health spa shall provide the buyer with a written receipt for the moneys and shall provide written notice of the name, address and location of the depository and any subsequent change thereof.

(4) If prior to the opening of the facility the status of the health spa is transferred to another, any sums in the trust account affected by such transfer shall simultaneously be transferred to an equivalent trust account of the successor, and the successor shall promptly notify the buyer and the office of the Attorney General of the transfer and of the name, address and location of the new depository.

(5) The buyer's claim to any moneys under this section is prior to that of any creditor of the health spa, including a trustee in bankruptcy or receiver, even if such moneys are commingled.

(6) After the health spa receives a notice of cancellation of the agreement or if the health spa fails to open a facility at the stated date of completion the health spa shall within 10 days give a full refund to the buyer, including the buyer's pro rata share of any interest earned thereon.

(7) All sums received by a health spa in excess of the health spa's normal monthly dues shall be placed in escrow subject to the terms and provisions stated in this section in the event that the health spa is not fully operational or in the event that the health spa is promising future construction or improvements. [1985 c.694 §4]

**646.686 Waiver of provisions of ORS 646.661 to 646.691; request prohibited; unenforceable.** A health spa shall not request a buyer to waive any provision of ORS 646.608 and 646.661 to 646.691. Any waiver by a buyer of any provision of ORS 646.608 and 646.661 to 646.691 is contrary to public policy and is void and unenforceable. [1985 c.694 §6]

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

**646.691 Remedies and obligations supplementary to existing remedies.** The remedies and obligations provided in ORS 646.608 and 646.661 to 646.691 are in addition to any other remedies and obligations, civil or criminal, existing at common law or under the laws of this state. [1985 c.694 §7]

**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 activities 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 Col-

iseum 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 Parens patriae action 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]

## MISCELLANEOUS

**646.845 Sale of novelty item containing mercury; penalty.** (1) A person may not sell or offer for sale a novelty item that contains encapsulated liquid mercury.

(2) Upon notification to the Department of Environmental Quality by any person that a novelty item for sale in the state contains encapsulated liquid mercury, the department shall notify persons identified as selling the novelty item of the prohibition on the sale of such items.

(3) The department may impose a penalty as provided in ORS 459.995 if a person continues to sell a novelty item that contains encapsulated liquid mercury after notifica-

tion of the prohibition on the sale of such items. [2001 c.924 §5]

**646.848 Used goods; merchant's obligation.** (1) A person doing business as a consignment store, a buy-sell store, a secondhand store or a similar store or enterprise that in the regular course of business buys used goods from individuals for the purpose of resale shall:

(a) Require that the individual from whom the person buys the used goods present proof of identification; and

(b) Maintain a record of the name and address of the individual, the type of identification provided by the individual, the date and a description of the goods bought from the individual.

(2) The person shall make all records required to be maintained by subsection (1) of this section available to law enforcement personnel conducting an investigation.

(3) This section does not apply to pawnbrokers licensed under ORS 726.080.

(4) This section does not preempt, invalidate or in any way affect the operation of any provision of a county, city or district ordinance regulating the activities of consignment stores, buy-sell stores, secondhand stores or similar stores or enterprises that in the regular course of business buy used goods from individuals for the purpose of resale. [2003 c.803 §1]

**646.849 Penalty for violation of ORS 646.848.** A person that violates ORS 646.848 commits a Class B violation. [2003 c.803 §2]

**646.850 Sale of telephonic equipment; disclosure requirements; enforcement; penalty.** (1) Any person offering for sale or selling new or reconditioned telephone handsets or keysets, private branch exchanges or private automatic branch exchanges of not more than a 20-station capacity shall disclose clearly, in writing, when reasonable, before sale all of the following information:

(a) Whether the equipment uses pulse, tone, pulse-or-tone or other signaling methods.

(b) Whether the equipment can access tone generated services.

(c) Whether the equipment is registered with the Federal Communications Commission under applicable federal regulations.

(d) The person responsible for repair of the equipment.

(e) Minimum charges, if any, for repairs, handling and shipping.

(f) The terms of any written warranty offered with the equipment.

(2) A person who violates subsection (1) of this section commits an unlawful practice

under ORS 646.608. The requirement under subsection (1) of this section is subject to enforcement and penalty as provided under ORS 646.605 to 646.652. [1985 c.538 §1(1), (3); 2001 c.924 §20]

**646.855 Exceptions to disclosure requirements.** (1) The requirement of disclosure under ORS 646.850 does not apply:

(a) To any medium of advertising that accepts advertising in good faith without knowledge that the advertising violates any requirement under ORS 646.850.

(b) To the sale or the offering for sale of radio equipment used for land, marine or air mobile service or any like service, regardless of whether such equipment is capable of interconnection by manual or automatic means to a telephone line.

(c) To equipment not intended for connection to the telephone network or to used equipment located on the customer's premises.

(2) The requirement of disclosure under ORS 646.850 (1)(d), (e) and (f) does not apply if the seller satisfies applicable requirements under the federal Magnuson-Moss Warranty Act (15 U.S.C. 2301 to 2312), except that the seller must provide the purchaser a copy of the warranty at the time of sale. [1985 c.538 §§1(2),2]

**646.857 Definitions for ORS 646.857 and 646.859.** As used in this section and ORS 646.859:

(1) "Authorized driver" means:

(a) The person renting the vehicle;

(b) The spouse of the person renting the vehicle, if the spouse is a licensed driver and meets any minimum age requirements contained in the rental agreement;

(c) The employer or coworker of the person renting the vehicle if the employer or coworker is engaged in a business activity with the person renting the vehicle and the employer or coworker meets any minimum age requirements contained in the rental agreement;

(d) Any person driving the vehicle during an emergency; and

(e) Any person expressly listed by the rental company on the rental agreement as an authorized driver.

(2) "Collision damage waiver" means an agreement between the renter and the rental company in which the company waives its right to impose a financial obligation on the renter or authorized driver if the vehicle is returned with physical damage.

(3) "Damage" means any damage or loss to the rented vehicle, including loss of use

and any costs and expenses incident to the damage or loss.

(4) "Private passenger automobile" or "vehicle" means a motor vehicle designed primarily for transportation of persons.

(5) "Rental agreement" means any written agreement setting forth the terms and conditions governing the use of a private passenger automobile provided by a rental company.

(6) "Rental company" means any person engaged in the business of renting private passenger automobiles to the public.

(7) "Renter" means any person or organization obtaining the use of a private passenger automobile from a rental company under the terms of a rental agreement. [1989 c.458 §1]

**646.859 Rental vehicle collision damage waiver notice.** (1) Every auto rental company doing business in the State of Oregon that offers collision damage waivers shall post a sign approved by the Department of Consumer and Business Services which states "OUR CONTRACTS OFFER OPTIONAL COLLISION DAMAGE WAIVERS AT AN ADDITIONAL COST."

(2)(a) No rental company shall sell or offer to sell to a renter a collision damage waiver as part of a rental agreement unless the renter is provided the following written notice in at least 10-point type:

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NOTICE: Our contracts offer, for an additional charge, a collision damage waiver to cover your responsibility for damage to the vehicle. Before deciding whether or not to purchase the collision damage waiver, you may wish to determine whether your own vehicle insurance affords you coverage for damage to the rental vehicle and the amount of the deductible under your own insurance coverage. The purchase of this collision damage waiver is not mandatory and may be waived.

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(b) The notice required by this subsection shall either appear at the top of the rental agreement or shall be on a separate piece of paper attached to the top of the agreement. [1989 c.458 §2]

**646.860** [1969 c.395 §1; 1985 c.251 §2; renumbered 815.410]

**646.861 Treatment of child support obligations by creditor in applications for extensions of credit.** In evaluating applications for extensions of credit, a creditor shall treat the obligation of an applicant to pay child support no more adversely than the creditor treats or would treat any other ob-

ligation for the same amount, terms and duration as the child support obligation. [1989 c.1013 §1]

**646.863 "Creditor" defined.** As used in ORS 646.861 to 646.865, "creditor" means a person who, in the ordinary course of the person's business, regularly permits debtors to defer payment of their debts, or to incur debt and defer the payment thereof, and in either case, to pay the same with a finance charge or in more than four installments. [1989 c.1013 §2]

**646.865 Cause of action for violation of ORS 646.861; injunction; attorney fees; defenses.** (1) Except as provided in subsection (2) of this section, a person who is adversely affected by a creditor's violation of ORS 646.861 shall have a cause of action to recover compensatory damages against the creditor and may also apply to a court for an injunction to prevent the creditor's further violation of ORS 646.861. If the damages are awarded, or an injunction granted, the person shall be entitled to reasonable attorney fees at trial and on appeal, as determined by the court in addition to costs and necessary disbursements.

(2) A creditor shall have no liability for compensatory damages, attorney fees or otherwise and no injunction shall issue:

(a) Where the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid any such error; or

(b) Where in violating ORS 646.861, the creditor shows by a preponderance of evidence that it acted in good faith, in conformity with any statute, law, ordinance, rule, regulation, administrative interpretation or judicial determination then applicable to the transaction in question. [1989 c.1013 §3]

**646.868 Sale of rights by distributor to exhibit motion picture without first giving exhibitor opportunity to view motion picture prohibited; attorney fees.** (1) As used in this section:

(a) "Distributor" means any person engaged in the business of distributing or supplying motion pictures to exhibitors by rental, sales, license or any other agreement to sell rights to exhibit a motion picture.

(b) "Exhibitor" means any person engaged in the business of operating one or more theaters in which motion pictures are exhibited to the public for a charge.

(c) "Market" means any geographical area in this state for which a distributor solicits exhibitors to compete, by bidding or other negotiations, for the rights to exhibit a motion picture.

(2) No distributor shall sell rights to exhibit a motion picture in this state unless each exhibitor solicited by the distributor for an offer to exhibit the motion picture is first allowed a reasonable opportunity to view the motion picture within the state. Any waiver of this subsection is void and unenforceable.

(3) Nothing in this section applies to any form of solicitation of offers for, negotiation concerning or sale of rights to exhibit a motion picture:

(a) That has been exhibited in this state before October 3, 1979.

(b) In a market where the motion picture has been exhibited for one week or more.

(c) That is 60 minutes or less in length.

(4) An exhibitor may enforce this section by bringing an action in the appropriate court of this state. In enforcing this section a court may:

(a) Issue an injunction to prohibit violation of this section; and

(b) Award an exhibitor any actual damages arising from violation of this section.

(5) In any suit under subsection (4) of this section, the court shall award reasonable attorney fees at trial and on appeal to the prevailing party. [Formerly 646.890]

**646.870 Delivery of unrequested hazardous substances prohibited.** No person shall deliver, or cause to be delivered, any hazardous substance, as defined in ORS 453.005 (7), to any residential premises without the prior consent of any occupant of such premises. [1973 c.456 §2]

**646.871 Disclosure required where purchaser of product offered technical support through information delivery system.** (1) Whenever the purchaser of a product sold at retail is offered ongoing technical support or service relating to the operation or use of the product, and the support or service is offered exclusively or in part through an information delivery system, the product or package of the product shall contain, in clear view to the purchaser before the product is opened, a statement disclosing that the technical support or service is provided through an information delivery system and listing the cost per minute of the support or service. The manufacturer of the product is responsible for providing the statement required under this subsection.

(2) As used in this section:

(a) "Information delivery system" means any telephone-recorded messages, interactive program or other information services that are provided on a pay-per-call basis through an exclusive telephone number prefix or service access code; and

(b) "Manufacturer" means a person who manufactures a product described in subsection (1) of this section. When the product is distributed or sold under a name other than that of the actual manufacturer of the product, the term "manufacturer" includes any person under whose name the product is distributed or sold. [1993 c.700 §1]

**646.872 Unsolicited facsimile machine transmissions.** (1) If a person receives on a facsimile machine any unsolicited and unwanted advertising material for the sale of any realty, goods or services, the person may give the sender of such material written notice to discontinue further such transmissions. No person who has received such a discontinuance notice shall use a facsimile machine to transmit unsolicited advertising material for the sale of realty, goods or services to the person who gave the discontinuance notice for a period of one calendar year from the date the notice was given.

(2) As used in this section, "facsimile machine" means a machine that electronically transmits or receives facsimiles of documents through connection with a telephone network. [1989 c.621 §3]

**646.874 Repurchase of motor vehicle by manufacturer; notice to dealer; contents of notice; notice to prospective buyer.** (1) The manufacturer of a motor vehicle who repurchases the vehicle for any reason shall inform any vehicle dealer to whom the manufacturer subsequently delivers the vehicle for resale that the vehicle has been repurchased by the manufacturer. If the reason for the repurchase was failure or inability to conform the vehicle to express warranties under the provisions of ORS 646.315 to 646.375 or any similar law of another jurisdiction, the manufacturer shall also inform the dealer of that fact.

(2) A dealer who has been given information required by subsection (1) of this section shall give the information, in writing, to any prospective buyer of the vehicle.

(3) An owner of a motor vehicle who has been given information as required by subsection (1) or (2) of this section shall give the information, in writing, to any prospective buyer of the vehicle.

(4) As used in this section and ORS 646.876, "motor vehicle" has the meaning given in ORS 646.315. [1991 c.593 §1; 1993 c.87 §1]

**646.875** [1981 c.807 §1; 1985 c.751 §1 (1), (2) and (3); renumbered 646.930]

**646.876 Attorney fees for action under ORS 646.874.** The court may award reasonable attorney fees to the prevailing party in an action against a person who has a duty to disclose information under ORS 646.874. [1991 c.593 §2; 1993 c.87 §2; 1995 c.618 §105]

**646.877 Offer to sell or lease motor vehicle subject to future acceptance by lender; disposition of trade-in vehicle and items of value; liability.** (1) As used in this section:

(a) "Buyer" means the purchaser or lessee of a motor vehicle.

(b) "Motor vehicle" means a motor vehicle, as defined in ORS 801.360, that is sold or leased in this state for personal, family or household purposes.

(c) "Seller" means a holder of a current, valid vehicle dealer certificate issued under ORS 822.020 or renewed under ORS 822.040. "Seller" does not include a dealer engaged primarily in the sale of manufactured homes.

(2) A seller may make an offer to sell or lease a motor vehicle to a buyer or prospective buyer that is subject to future acceptance by a lender that may finance the transaction at the request of the seller.

(3) In any transaction described in subsection (2) of this section:

(a) If a lender does not agree to finance the transaction on the exact terms negotiated between the seller and the buyer, the seller shall return to the buyer all items of value received from the buyer as part of the transaction; or

(b) If the seller has accepted a trade-in motor vehicle from the buyer or prospective buyer, the seller shall not sell or lease the buyer's or prospective buyer's trade-in motor vehicle before the seller has received final approval of funding from the lender.

(4) In any transaction described in subsection (2) of this section, if the buyer has accepted a motor vehicle from the seller, and a lender does not agree to finance the transaction on the exact terms negotiated between the seller and the buyer, the buyer shall return to the seller all items of value received from the seller as part of the transaction. The offer or contract to sell or lease the motor vehicle may provide in writing that the buyer is liable to the seller for:

(a) The fair market value of damage to, excessive wear and tear on or loss of the motor vehicle occurring between the date the buyer takes possession of the motor vehicle and the date the buyer returns the motor vehicle to the seller's custody; and

(b) If, within 20 days of the date the buyer takes possession of the motor vehicle, the seller sends notice to the buyer by first class mail that financing is unavailable, a reasonable charge per mile for the use of the motor vehicle. If the buyer returns the motor vehicle within five days of the mailing of the notice, the seller may charge the buyer for miles driven during the first 20 days that the

buyer had possession of the motor vehicle. If the buyer does not return the vehicle within five days of the mailing of the notice, the seller may charge the buyer for all miles driven while the buyer has possession of the motor vehicle. The charge may not exceed the rate per mile allowed under federal law as a deduction for federal income tax purposes for an ordinary and necessary business expense.

(5) It is an affirmative defense to a claim or charge of violating subsection (3)(a) of this section that the buyer failed to return the motor vehicle after the seller sent notice to the buyer by first class mail that financing was unavailable. [1999 c.669 §§1,2; 2003 c.486 §1]

**Note:** The amendments to 646.877 by section 83, chapter 655, Oregon Laws 2003, become operative May 1, 2005. See section 147, chapter 655, Oregon Laws 2003. The text that is operative on and after May 1, 2005, is set forth for the user's convenience.

**646.877.** (1) As used in this section:

(a) "Buyer" means the purchaser or lessee of a motor vehicle.

(b) "Motor vehicle" means a motor vehicle, as defined in ORS 801.360, that is sold or leased in this state for personal, family or household purposes.

(c) "Seller" means a holder of a current, valid vehicle dealer certificate issued under ORS 822.020 or renewed under ORS 822.040.

(2) A seller may make an offer to sell or lease a motor vehicle to a buyer or prospective buyer that is subject to future acceptance by a lender that may finance the transaction at the request of the seller.

(3) In any transaction described in subsection (2) of this section:

(a) If a lender does not agree to finance the transaction on the exact terms negotiated between the seller and the buyer, the seller shall return to the buyer all items of value received from the buyer as part of the transaction; or

(b) If the seller has accepted a trade-in motor vehicle from the buyer or prospective buyer, the seller shall not sell or lease the buyer's or prospective buyer's trade-in motor vehicle before the seller has received final approval of funding from the lender.

(4) In any transaction described in subsection (2) of this section, if the buyer has accepted a motor vehicle from the seller, and a lender does not agree to finance the transaction on the exact terms negotiated between the seller and the buyer, the buyer shall return to the seller all items of value received from the seller as part of the transaction. The offer or contract to sell or lease the motor vehicle may provide in writing that the buyer is liable to the seller for:

(a) The fair market value of damage to, excessive wear and tear on or loss of the motor vehicle occurring between the date the buyer takes possession of the motor vehicle and the date the buyer returns the motor vehicle to the seller's custody; and

(b) If, within 20 days of the date the buyer takes possession of the motor vehicle, the seller sends notice to the buyer by first class mail that financing is unavailable, a reasonable charge per mile for the use of the motor vehicle. If the buyer returns the motor vehicle within five days of the mailing of the notice, the seller may charge the buyer for miles driven during the first 20 days that the buyer had possession of the motor vehicle. If the buyer does not return the vehicle within five days of the mailing of the notice, the seller may

charge the buyer for all miles driven while the buyer has possession of the motor vehicle. The charge may not exceed the rate per mile allowed under federal law as a deduction for federal income tax purposes for an ordinary and necessary business expense.

(5) It is an affirmative defense to a claim or charge of violating subsection (3)(a) of this section that the buyer failed to return the motor vehicle after the seller sent notice to the buyer by first class mail that financing was unavailable.

**646.878 Payment of sales commissions following termination of contract between sales representative and principal; definitions; civil action.** (1) As used in this section:

(a) "Commission" means compensation accruing to a sales representative for payment by a principal, the rate of which is expressed as a percentage of the amount of orders or sales or as a specified amount per order or per sale.

(b) "Principal" means a person who does not have a permanent or fixed place of business in this state and who:

(A) Manufactures, produces, imports or distributes a tangible product for wholesale;

(B) Contracts with a sales representative to solicit orders for the product; and

(C) Compensates the sales representative, in whole or in part, by commission.

(c) "Sales representative" means a person who:

(A) Contracts with a principal to solicit wholesale orders;

(B) Is compensated, in whole or in part, by commission;

(C) Does not place orders or purchase for the sales representative's own account or for resale; and

(D) Does not sell or take orders for the sale of products to the ultimate consumer.

(2) When a contract between a sales representative and a principal is terminated for any reason, the principal shall pay the sales representative all commissions accrued under the contract to the sales representative within 14 days after the effective date of the termination.

(3) A principal who fails to comply with the provisions of subsection (2) of this section is liable to the sales representative in a civil action for:

(a) All amounts due the sales representative plus interest on the amount due at the rate of nine percent per annum until paid; and

(b) Treble damages, if the failure to comply with the provisions of subsection (2) of this section is willful.

(4) The court shall award court costs and attorney fees actually and reasonably in-

curred by the prevailing party in an action to recover amounts, interest or damages due under subsection (3) of this section.

(5) A nonresident principal who contracts with a sales representative to solicit orders in this state is subject to the jurisdiction of the courts of this state to the extent specified in ORS 14.030.

(6) Any action commenced pursuant to this section must be commenced in the county in which the plaintiff resides at the time the action is commenced or in the county where the cause of action arose.

(7) Nothing in this section shall invalidate or restrict any other or any additional right or remedy available to a sales representative, or preclude a sales representative from seeking to recover in one action all claims against a principal.

(8) A provision in any contract between a sales representative and a principal purporting to waive any provision of this section, whether by expressed waiver or by a contract subject to the laws of another state, shall be void. [1993 c.225 §§1 to 8]

**646.879 Exclusion of name from sweepstakes promotion mailing list; written request; rules.** (1) As used in this section:

(a) "Exclusion request" means a written request to be excluded from a sweepstakes promotion mailing list or to be placed on a list of persons to whom sweepstakes promotions may not be mailed.

(b) "Sweepstakes promotion" has the meaning given that term in ORS 124.005.

(2) Any person who receives a sweepstakes promotion, or a combination of sweepstakes promotions from the same service, in the United States mail, regardless of the identities of the originators of the sweepstakes promotion, may send a written exclusion request to the originator of any sweepstakes promotion.

(3) The exclusion request shall be mailed to the address to which the recipient would have sent a payment for any goods or services promoted in the sweepstakes promotion had the recipient ordered the goods or services instead of mailing an exclusion request.

(4) An originator of a sweepstakes promotion who receives an exclusion request shall exclude the requestor's name from the originator's sweepstakes promotion mailing list or shall place the requestor's name on a list of persons to whom sweepstakes promotions may not be mailed.

(5) The Attorney General shall adopt rules necessary to implement this section.

(6) It is an affirmative defense to a claim or charge of violating subsection (4) of this



section that the originator of the sweepstakes promotion had, at the time of the violation, implemented reasonable practices or procedures for preventing a violation. [1999 c.875 §5; 2001 c.404 §1]

**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]

### CREDIT, DEBIT AND CHARGE CARDS

#### (Credit and Debit Card Receipts)

**646.886 Definitions for ORS 646.887 and 646.888.** As used in ORS 646.887 and 646.888:

(1) “Credit card” has the meaning given that term in ORS 646.893.

(2) “Debit card” has the meaning given “debit instrument” in 15 U.S.C. 1693n. [2003 c.290 §1]

#### 646.887 Payment processing systems.

A person may not sell, lease or rent a payment processing system that provides a customer receipt that shows more information about a customer than the customer’s name and five digits of the customer’s credit or debit card number. [2003 c.290 §2; 2003 c.803 §28]

**646.888 Customer information.** (1) In a credit or debit card transaction with a customer, a person may not create a customer receipt that shows more information about a customer than the customer’s name and five digits of the customer’s credit or debit card number.

(2) A person that creates or retains a copy of a receipt containing more information about a customer than the customer’s name and five digits of the customer’s credit or debit card number shall shred, incinerate or otherwise destroy the copy on or before the sooner of:

(a) The date the image of the copy is transferred onto microfilm or microfiche; or

(b) Thirty-six months after the date of the transaction that created the copy. [2003 c.290 §3; 2003 c.803 §29]

**Note:** Section 6, chapter 290, Oregon Laws 2003, provides:

**Sec. 6.** (1) Section 2, chapter 290, Oregon Laws 2003 [646.887], applies to:

(a) Sales of payment processing systems occurring on or after January 1, 2004;

(b) Lease or rental agreements for payment processing systems entered into on or after January 1, 2004; and

(c) Lease or rental agreements for payment processing systems in effect on or after July 1, 2005.

(2) Section 3, chapter 290, Oregon Laws 2003 [646.888], applies to credit or debit card transactions

occurring on or after July 1, 2005. [2003 c.290 §6; 2003 c.803 §30]

**646.889 Rules.** The Attorney General may adopt rules under ORS chapter 183 to carry out the provisions of ORS 646.886, 646.887 and 646.888. [2003 c.290 §5]

**646.890** [1979 c.254 §1; 1981 c.897 §84; renumbered 646.868 in 2003]

**(Numbers, Expiration Dates or Personal Information in Credit or Debit Card Transactions)**

**646.892 Requiring credit card number as condition for accepting check or share draft prohibited; exceptions.** (1) A person shall not require as a condition of acceptance of a check or share draft, or as a means of identification, that the person presenting the check or share draft provide a credit card number or expiration date, or both, unless the credit is issued by the person requiring the information.

(2) Subsection (1) of this section shall not prohibit a person from:

(a) Requesting a person presenting a check or share draft to display a credit card as indicia of creditworthiness and financial responsibility or as a source of additional identification;

(b) Recording the type of credit card and the issuer of the credit card displayed by the person under paragraph (a) of this subsection;

(c) Requesting or receiving a credit card number or expiration date, or both, and recording the number or date, or both, in lieu of a security deposit to assure payment in event of default, loss, damage or other occurrence;

(d) Recording a credit card number or expiration date, or both, as a condition for acceptance of a check or share draft where the card issuer guarantees checks or share drafts presented by the cardholder upon the condition that the person to whom the check is presented records the card number or expiration date, or both, on the check or share draft;

(e) Requesting and recording the name, address, motor vehicle operator license number or state identification card number and telephone number of a person offering payment by check; or

(f) Verifying the signature, name and expiration date on a credit card.

(3) This section does not require acceptance of a check or share draft whether or not a credit card is presented.

(4) For purposes of this section, "person" means any individual, corporation, partnership or association. [1993 c.58 §1; 1995 c.631 §2]

**646.893 "Credit card" defined.** As used in ORS 646.892 and 646.894, "credit card" has the meaning given that term under the federal Consumer Credit Protection Act (P.L. 90-321, 82 Stat. 146, 15 U.S.C. 1602). [1995 c.631 §1]

**646.894 Verification of identity in credit or debit card transactions.** (1) A merchant that accepts a credit card or debit card for a transaction may require that the credit card or debit card holder provide personal information, other than the personal information that appears on the face of the credit card or debit card, for the purposes of verification of the card holder's identity. The merchant may not write the information on the credit card or debit card transaction form.

(2) This section may not be construed to prevent a merchant from requesting and keeping in written form information necessary for shipping, delivery or installation of purchased goods or services, or for warranty when the information is provided voluntarily by a credit card or debit card holder.

(3) Any provision in a contract between a merchant and a credit card or debit card issuer, financial institution or other person that prohibits the merchant from verifying the identity of a person who presents a credit card or debit card in payment for goods or services by requiring or requesting identification is contrary to public policy and void.

(4) Nothing in this section may be construed to:

(a) Compel a merchant to verify the identity of a person who presents a credit card or debit card in payment for goods or services; or

(b) Interfere with the ability of a merchant to make and enforce policies regarding verification of the identity of a person who presents a credit card or debit card in payment for goods or services.

(5) As used in this section, "merchant" means a person who, in the ordinary course of that person's business, permits persons to present credit cards or debit cards in payment for goods or services. [1993 c.58 §2; 2003 c.312 §1]

**(Credit and Charge Card Solicitation Disclosure Requirements)**

**646.895 Credit card solicitation; required disclosure; definitions.** (1) Every solicitation for the issuance of a credit card shall disclose the following information concerning the credit card account:

(a) The annual percentage rate or rates applicable to the credit card account. If the rate or rates are variable, the solicitation shall disclose that fact and shall further dis-

close either the rate or rates on a specified date or the index from which the rate or rates are determined.

(b) Any minimum, fixed, transaction, activity or similar charge that could be imposed in connection with any use of the credit card.

(c) Any annual or periodic membership or participation fee that may be imposed for the availability, issuance or renewal of the credit card.

(d) Whether or not any time period is provided within which any credit extended through the use of the credit card may be repaid without incurring a finance charge, and a description of any such time period.

(2) As used in this section:

(a) "Card issuer," "credit card," "credit," "annual percentage rate" and "finance charge" have the meanings given those terms under the federal Consumer Credit Protection Act (P.L. 90-321, 82 Stat. 146, 15 U.S.C. 1601).

(b) "Reasonable time" means the period beginning at the time of publication of a magazine, newspaper or other publication and ending at the time of the next publication of the magazine, newspaper or other publication, but in no case shall the period exceed 90 days following the date of publication.

(c) "Solicitation" means printed material primarily offering to issue a credit card including printed material mailed directly to a person by name that contains an application for or an offer to issue a credit card in the person's name, application materials available at the credit card issuer's place of business or other locations or application materials, printed advertisements or other printed information or materials contained in a magazine, newspaper or other publication which shall be considered current at the time of publication and for a reasonable time thereafter. "Solicitation" does not include material which only refers to credit cards as one of the services provided by the issuer nor does it include offers made by radio or television or through a catalog. "Solicitation" does not include an incidental reference to a credit card in the printed material. [1987 c.888 §1]

**646.897 Charge card solicitation; required disclosure; definitions.** (1) A charge card solicitation shall disclose clearly and conspicuously the annual fees and other charges, if any, applicable to the issuance or use of the charge card.

(2) As used in this section:

(a) "Charge card" means any card, plate or other credit device under which the issuer

of the charge card extends credit to the card holder that is not subject to a finance charge and the card holder does not have automatic access to credit repayable in installments.

(b) "Reasonable time" means the period beginning at the time of publication of a magazine, newspaper or other publication and ending at the time of the next publication of the magazine, newspaper or other publication, but in no case shall the period exceed 90 days following the date of publication.

(c) "Solicitation" means printed material primarily offering to issue a charge card including printed material mailed directly to a person by name that contains an application for or an offer to issue a charge card in the person's name, application materials available at the charge card issuer's place of business or other locations or application materials, printed advertisements or other printed information or materials contained in a magazine, newspaper or other publication which shall be considered current at the time of publication and for a reasonable time thereafter. "Solicitation" does not include material which only refers to charge cards as one of the services provided by the issuer nor does it include offers made by radio or television or through a catalog. "Solicitation" does not include an incidental reference to a charge card in the printed material. [1987 c.888 §2]

### (Enforcement)

**646.899 Action by Attorney General or district attorney; civil penalties.** (1)(a) The Attorney General or a district attorney may bring an action in the name of the state against a person to restrain and prevent a violation of ORS 646.887, 646.888, 646.895 or 646.897.

(b) The Attorney General or a district attorney may in the name of the state seek and obtain a civil penalty from a person who violates an order or injunction issued pursuant to this subsection.

(2)(a) A person who violates an order or injunction issued pursuant to subsection (1) of this section shall forfeit and pay a civil penalty of not more than \$1,000 per violation. The circuit court issuing the order or injunction retains jurisdiction of the action to consider a request for a civil penalty.

(b) In an action brought by a prosecuting attorney under this section, the court may award the prevailing party, in addition to any other relief provided by law, reasonable attorney fees at trial and on appeal. [1987 c.888 §§3,4; 2003 c.290 §4]

**646.901 Effect of compliance with federal law.** A person who is in compliance with the requirements of the Fair Credit and Charge Card Disclosure Act, (Public Law 100-583), shall also be considered in compliance with the requirements of ORS 646.895 and 646.897. [1989 c.206 §1]

**VEHICLE FUELS  
(Blended Gasoline)**

**646.905 Definitions for ORS 646.910 to 646.920.** As used in ORS 646.910 to 646.920:

(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) "Co-solvent" means an alcohol other than methanol which is blended with either methanol or ethanol or both to minimize phase separation in gasoline.

(3) "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.

(4) "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded.

(5) "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.

(6) "Motor vehicles" means all vehicles, vessels, watercraft, engines, machines or mechanical contrivances that are propelled by internal combustion engines or motors.

(7) "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.

(8) "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.

(9) "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]

**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)]

**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 percent 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]

**646.925 Enforcement.** The State Department of Agriculture shall enforce the provisions of ORS 646.910 to 646.920 and is authorized to make any rules necessary to carry out the provisions of ORS 646.910 to 646.920 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]

**Note:** 646.945 to 646.963 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.

**646.947 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]

**Note:** See note under 646.945.

**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]

**Note:** See note under 646.945.

**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]

**Note:** See note under 646.945.

**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 or-

der 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]

**Note:** See note under 646.945.

**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]

**Note:** See note under 646.945.

**646.957 Rules.** 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. 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 interfere 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. [1997 c.310 §8]

**Note:** See note under 646.945.

**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]

**Note:** See note under 646.945.

**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]

**Note:** See note under 646.945.

**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]

**Note:** See note under 646.945.

### 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 646.895 to 646.899 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 646.899 (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 Penalty for unlawful delivery of hazardous substances.** Violation of ORS 646.870 is a Class A misdemeanor. [1973 c.456 §3]