Chapter 646A

2011 EDITION

Trade Regulation

SALES

646A.010 [Formerly 646.185; repealed by 2009 c.170 §4]

646A.012 [Formerly 646.187; repealed by 2009 c.170 §4]

646A.014 [Formerly 646.189; repealed by 2009 c.170 §4]

646A.016 [Formerly 646.191; repealed by 2009 c.170 §4]

646A.018 [Formerly 646.193; repealed by 2009 c.170 §4]

646A.020 [Formerly 646.195; repealed by 2009 c.170 §4]

(Health Spas)

646A.030 Definitions for ORS 646A.030 to 646A.042. As used in ORS 646A.030 to 646A.042, 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 (2)(j).

(4) "Health spa" means any person engaged, as a primary purpose, in the sale of instruction, training, assistance or use of facilities that 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). [Formerly 646.661; 2009 c.181 §106]

646A.032 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. [Formerly 646.666]

646A.034 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:

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 deliv-

ered 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.

_____

[Formerly 646.671]

646A.036 Contracts and rules; delivery to buyer. Upon request, a health spa must deliver to a prospective buyer copies of the contract required by ORS 646A.034, 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. [Formerly 646.676]

646A.038 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. [Formerly 646.681]

646A.040 Waiver of provisions of ORS 646A.030 to 646A.042. A health spa shall not request a buyer to waive any provision of ORS 646A.030 to 646A.042. Any waiver by a buyer of any provision of ORS 646A.030 to 646A.042 is contrary to public policy and is void and unenforceable. [Formerly 646.686]

646A.042 Remedies and obligations supplementary to existing remedies. The remedies and obligations provided in ORS 646A.030 to 646A.042 are in addition to any other remedies and obligations, civil or criminal, existing at common law or under the laws of this state. [Formerly 646.691]

(Manufactured Dwellings)

646A.050 Definitions. As used in this section and ORS 646A.052:

(1) "Base price" means the total retail cost of the following unless separately disclosed as described in ORS 646A.052 (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. [Formerly 646.400]

646A.052 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 646A.054.

(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 dealer from providing the buyer with a separate statement of estimated costs under ORS 90.518 for those itemized improvements.

(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 646A.054 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. [Formerly 646.402]

646A.054 Rules. The Department of Justice may adopt rules necessary and proper for the administration and enforcement of ORS 646A.052. [Formerly 646.404]

(Purchase of Used Goods)

646A.060 Purchase of used goods; records; application to pawnbrokers. (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) If the goods described in subsection (1) of this section are private metal property or are constructed of or contain parts made of nonferrous metal property as those terms are defined in ORS 165.116, in addition to the requirements of subsection (1) of this section, the person shall comply with and is subject to the penalty provided for violating a provision of ORS 165.107, 165.118 or 165.122 that is applicable to a scrap metal business as defined in ORS 165.116.

(3) The person shall make all records required to be maintained by subsection (1) of this section available to any peace officer on demand.

(4) This section does not apply to pawnbrokers licensed under ORS 726.080.

(5) 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. [Formerly 646.848; 2009 c.811 §13]

646A.062 Penalty for violation of ORS 646A.060. A person that violates ORS 646A.060 (1) commits a Class B violation. [Formerly 646.849; 2009 c.811 §14]

(Telephonic Equipment)

646A.070 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. [Formerly 646.850]

646A.072 Exceptions to disclosure requirements. (1) The requirement of disclosure under ORS 646A.070 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 646A.070.

(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 646A.070 (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. [Formerly 646.855]

(Retail Pet Stores)

646A.075 Required information prior to purchase of dog. (1) As used in this section:

(a) "Dog" means a member of the subspecies Canis lupus familiaris or a hybrid of that subspecies.

(b) "Litter" means one or more dogs, sold individually or together, that are all or part of a group of dogs born to the same mother at the same time.

(c) "Retail pet store" means a retail establishment open to the public that sells or offers to sell dogs.

(d) "Retail pet store" does not mean a person that sells or offers to sell only dogs:

(A) That were bred or raised by the person; or

(B) That are kept primarily for the purpose of reproduction.

(2) A retail pet store that offers a dog for sale shall, prior to accepting an offer to purchase the dog, provide the person making the offer with the following information, in writing, regarding the dog:

(a) If known, the breed, age and date of birth for the dog.

(b) The sex and color of the dog.

(c) A list, and accompanying proof, of all inoculations that have been given to the dog by any person, and the date of those inoculations.

(d) A list of all medical treatment provided to the dog by any person, the date or treatment and the reasons for the treatment.

(e) The name and business address of the breeder and of the facility where the dog was born.

(f) If the breeder holds a license issued by the United States Department of Agriculture, the breeder's federal identification number.

(g) The retail price of the dog.

(h) Any congenital disorder or hereditary diseases in the parents of the dog known to the pet dealer.

(i) If the dog is being sold with the representation that the dog qualifies for registration with a pedigree organization:

(A) The name and registration numbers of the parents of the dog; and

(B) The name and address of the pedigree organization with which the parents of the dog are registered.

(j) If the dog has previously been sold by the retail pet store and returned by the purchaser, the reason for the return.

(k) A statement in substantially the following form, with the applicable provision number circled:

The facility in which this dog was born has produced:

1. 0 to 2 litters during the one-year period preceding the day this dog was born.

2. 3 to 10 litters during the one-year period preceding the day this dog was born.

3. 11 to 39 litters during the one-year period preceding the day this dog was born.

4. 40 or more litters during the one-year period preceding the day this dog was born.

[2009 c.297 §5]

646A.077 Qualification for full refund; replacement dog; reimbursement for cost of veterinary care; exceptions. (1) As used in this section:

(a) "Litter" means one or more dogs, sold individually or together, that are all or part of a group of dogs born to the same mother at the same time.

(b) "Pet dealer" means, except as provided in paragraph (c) of this subsection, a person that sells five or more litters of dogs during a one-year period.

(c) "Pet dealer" does not mean an animal control agency, humane society or animal shelter.

(2) Except as otherwise provided in this section, a pet dealer shall provide the purchaser of a dog that complies with subsection (3) of this section with a full refund of the purchase price for the dog if:

(a) No later than 15 days after purchasing the dog from the pet dealer the purchaser has the dog examined by a veterinarian and the examination reveals that the dog is diseased; or

(b) No later than one year after purchasing the dog from the pet dealer the purchaser has the dog examined by a veterinarian and the examination reveals that the dog has a congenital disorder that significantly limits the dog's quality of life.

(3) To qualify for a refund under this section, the purchaser, no later than four business days after the veterinary examination that revealed the disease or disorder, must:

(a) Return the dog to the pet dealer;

(b) Provide the pet dealer with a dated written statement by the examining veterinarian that the dog has a disease or has a congenital defect; and

(c) Provide the pet dealer with proof of the sale, including but not limited to, the date of sale.

(4) Upon mutual agreement of the purchaser and pet dealer, the purchaser may accept a replacement dog instead of a refund.

(5) A purchaser that complies with subsection (2) of this section may, instead of obtaining a refund, require that the pet dealer reimburse the purchaser for the cost of veterinary care provided in connection with the disease or congenital disorder described in subsection (2) of this section. The duty of the pet dealer to reimburse the purchaser for the cost of veterinary care shall be limited to the purchase price of the dog. A purchaser that agrees to accept reimbursement under this subsection waives any other claim against the pet dealer for reimbursement of the cost of veterinary care for the dog.

(6) Notwithstanding subsections (1) to (5) of this section, a pet dealer is not required to refund the purchase price for a dog, provide a replacement dog or reimburse the purchaser for veterinary care if the pet dealer:

(a) At the time of sale made a clear and conspicuous disclosure in writing, initialed or signed by the purchaser, that disclosed the disease or disorder; or

(b) Had the dog examined by a veterinarian not more than 14 days prior to the date of sale and the examination did not disclose the disease or congenital disorder. [2009 c.297 §4]

(Miscellaneous Transactions)

646A.080 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 notification of the prohibition on the sale of such items. [Formerly 646.845]

646A.081 Prohibition on sale or installation of mercury vapor outdoor lighting fixtures. (1) As used in this section:

(a) "Mercury vapor lighting fixture" means an artificial illumination device that produces a high-intensity discharge of light

by passing electricity through mercury vapor.

(b) "Outdoor lighting fixture" has the meaning given that term in ORS 757.765.

(2) A person may not sell an outdoor lighting fixture that is a mercury vapor lighting fixture.

(3) A person may not install a mercury vapor lighting fixture outdoors. This subsection does not apply to the reinstallation of an existing fixture after servicing or repair.

(4) State moneys may not be expended for the installation or reinstallation of outdoor lighting fixtures that are mercury vapor lighting fixtures. [2009 c.588 §3]

646A.082 Floral retail sales; disclosure of principal place of business; enforcement; penalty. (1) Any person engaging in floral retail sales shall disclose the person's principal place of business in any written communications sent to customers, listings, advertising or websites that provide information about the person's floral retail sales activities.

(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. [2009 c.150 §2]

646A.085 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 646.868]

646A.090 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) "Final approval of funding" means a lender's irrevocable agreement to finance a sale or lease of a motor vehicle according to the exact terms that the seller and buyer have negotiated.

(c) "Lender" means any person that finances a sale or lease of a motor vehicle.

(d) "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.

(e) "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 within 14 days after the date on which the buyer takes possession of the motor vehicle and the seller has not received final approval of funding from the lender, the seller shall return to the buyer all items of value received from the buyer as part of the transaction; and

(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 14 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 14 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. [Formerly 646.877]

646A.092 Advertisements for sale or lease of motor vehicle; exceptions. (1) As used in this section:

(a) "Advertisement" means any public notice or announcement of a motor vehicle for sale or lease.

(b) "Motor vehicle" has the meaning given that term in ORS 801.360, except that "motor vehicle" does not include commercial vehicles, as defined in ORS 801.210, or commercial motor vehicles, as defined in ORS 801.208.

(c) "Seller" means a person that is engaged in the business of selling or leasing motor vehicles.

(d) "Trade publication" means a motor vehicle price guide that is nationally recognized and distributed.

(2) An advertisement for the sale or lease of a motor vehicle may not claim that a seller will value property being offered in exchange for payment toward the motor vehicle:

(a) At a specific amount;

(b) Within a range of specified amounts;

(c) At a guaranteed minimum amount; or

(d) As a multiple of or an increase in trade-in allowance.

(3) This section does not apply to an advertisement for a used motor vehicle that:

(a) References a value cited in a trade publication that is not published by the seller and that is readily accessible by the public;

(b) Clearly and conspicuously discloses the name of the trade publication being referenced;

(c) Clearly and conspicuously includes the following disclaimer in at least 10-point bold type: "THE VALUE OF USED MOTOR VEHICLES VARIES WITH MILEAGE, USAGE, INCLUDED ACCESSORIES AND CONDITION. BOOK VALUES SHOULD BE CONSIDERED ESTIMATES ONLY."; and

(d) If the publisher of the trade publication publishes and distributes separate issues for specific geographic regions, references the value cited for the geographic region in which the motor vehicle is being offered for sale. [2011 c.57 §1]

646A.095 Disclosure required when 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. [Formerly 646.871]

646A.097 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 incurred 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. [Formerly 646.878]

(Going Out of Business Sales)

646A.100 Definitions for ORS 646A.100 to 646A.110. As used in ORS 646A.100 to 646A.110:

(1) "Affiliated business" means a business or business location that is directly or indirectly controlled by, or under common control with, the business location listed in the notice of a going out of business sale or that has a common ownership interest in the merchandise to be sold at the business location listed in the notice of the sale.

(2)(a) "Going out of business sale" means a sale or auction advertised or held out to the public as the disposal of merchandise in anticipation of cessation of business, including but not limited to a sale or auction advertised or held out to the public as a "going out of business sale," a "closing out sale," a "quitting business sale," a "loss of lease sale," a "must vacate sale," a "liquidation sale," a "bankruptcy sale," a "sale to prevent bankruptcy" or another description suggesting price reduction due to the imminent closure of the business.

(b) "Going out of business sale" does not include a sale conducted by a bankruptcy trustee or a court-appointed receiver.

(3) "Merchandise" means goods, wares or other property or services capable of being the object of a sale regulated under ORS 646A.100 to 646A.110.

(4) "Notice of intent" means a notice filed with the Secretary of State that a person intends to conduct a going out of business sale.

(5) "Person" has the meaning given that term in ORS 646.605. [2007 c.820 §1]

646A.102 Notice of intent to conduct going out of business sale; display and filing; exceptions; prohibited activities. (1) Except as provided in subsection (3) of this section, a person may not sell, offer for sale or advertise for sale merchandise at a going out of business sale unless the person has filed a notice of intent with the Secretary of State.

(2) A person must display a copy of the notice of intent filed with the Secretary of State in a prominent place on the premises where the going out of business sale is being conducted.

(3) If a going out of business sale is conducted as part of a bankruptcy, receivership or other court-ordered action, a person:

(a) Need not file a notice of intent with the Secretary of State.

(b) Shall display the court order or judgment ordering the sale in a prominent place on the premises where the going out of business sale is being conducted.

(4) A person may not:

(a) Conduct a going out of business sale for more than 90 days from the beginning date of the sale listed on the notice of intent.

(b) Continue to conduct a going out of business sale beyond the ending date listed on the notice of intent.

(5) A person who has conducted a going out of business sale may not conduct another going out of business sale for a period of one year after the ending date of the sale listed on the notice of intent. [2007 c.820 §2]

646A.104 Information required in notice of intent. A person filing a notice of intent with the Secretary of State shall provide all of the following information in the notice of intent:

(1) The name, address and telephone number of the owner of the merchandise to be sold. If the owner is a corporation, trust, unincorporated association, partnership or other legal entity, the person signing the notice must be an officer of the entity and must identify the person's title.

(2) The name, address and telephone number of the person who will be in charge of and responsible for the conduct of the sale.

(3) The descriptive name, location and beginning and ending dates of the sale. [2007 c.820 §3]

646A.106 Circumstances in which going out of business sale prohibited. A person may not conduct a going out of business sale if a person who has an ownership interest in the business or in the merchandise to be sold is subject to a court order resulting from a civil enforcement action under ORS 646.608 or 646A.100 to 646A.110. [2007 c.820 §4]

646A.108 Prohibited conduct. (1) A person intending to conduct a going out of business sale may not transfer merchandise from an affiliated business or business location to the location of the sale.

(2) A person, after filing a notice of intent, may not buy or order merchandise, take merchandise on consignment or receive a transfer of merchandise from an affiliated business or business location for the purpose of selling the merchandise at the sale or sell such merchandise in a going out of business sale. [2007 c.820 §5]

646A.110 Applicability of ORS 646A.100 to 646A.110 and 646A.112. (1) ORS 646.608 (1)(ddd), 646A.100 to 646A.110 and 646A.112 apply only to persons who engage in the retail sale of merchandise in the regular course of their business.

(2) ORS 646.608 (1)(ddd), 646A.100 to 646A.110 and 646A.112 do not apply to public officials acting within the scope of their duties as public officials. [2007 c.820 §6; 2009 c.170 §2; 2009 c.604 §26]

646A.112 Injunction of sham sale; evidence; attorney fees; defense; definitions. (1) As used in this section:

(a) "Appropriate court" has the meaning given that term in ORS 646.605.

(b) "Relevant market" means:

(A) A product market that consists of products or services that a consumer would regard as interchangeable or substitutable by reason of the products' or services' characteristics, prices and intended use; or

(B) A geographic market that consists of the area in which the persons concerned are involved in the supply of a product or service and in which the conditions of competition are sufficiently homogenous.

(c) "Sham sale" means a going out of business sale, as defined in ORS 646A.100, conducted with the intent to continue the same or a similar business in the same location or at a location within the same relevant market but that is a sale that is represented as being conducted due to a cessation of business.

(2) A person may bring an action in an appropriate court to enjoin another person in the same relevant market from conducting a sham sale if the person reasonably believes the other person is conducting a sham sale. The court may provide such equitable relief as it deems necessary or proper.

(3) In an action brought by a person under this section, the court may award reasonable attorney fees to the person.

(4) It is prima facie evidence that a person alleged to be conducting a sham sale has the intent to continue the same or a similar business if:

(a) The person regularly receives additional inventory during the sham sale or, immediately prior to the sham sale, receives additional inventory that is not regularly delivered;

(b) The sham sale exceeds 90 days; or

(c) The same or a similar business that consists of inventory remaining from the sham sale and that has the same principal ownership resumes business in the same relevant market within 12 months from the cessation of the business.

(5) It is an affirmative defense to an action brought under this section that, during an alleged sham sale, the person no longer needed to go out of business and immediately canceled the alleged sham sale. [2007 c.820 §7]

646A.115 Software prohibited that interferes with sale of admission tickets to entertainment events; unlawful practice. (1) As used in this section:

(a) "Admission ticket" means evidence of a purchaser's right of entry to a venue or an entertainment event.

(b) "Entertainment event" means a performance, recreation, amusement, diversion, spectacle, show or similar event including, but not limited to, a theatrical or musical performance, concert, film, game, ride or sporting event.

(c) "Operator" means a person that owns, operates or controls a venue or that produces or promotes an entertainment event, or the person's agent or employee.

(d) "Resale" means a sale other than an operator's initial sale of an admission ticket for a venue that is located in or an entertainment event that occurs in this state, irrespective of the location in which the sale occurs or the means by which a reseller solicits or advertises the sale or delivers or receives payment for the admission ticket.

(e) "Reseller" means a person other than an operator that conducts a resale.

(2) A person may not intentionally sell or use software, the purpose of which is to circumvent, thwart, interfere with or evade a control or measure, including a security measure or an access control system, that an operator or reseller establishes or uses to ensure an equitable distribution, sale or resale of admission tickets for an entertainment event.

(3) Violation of subsection (2) of this section is an unlawful practice under ORS 646.608 that is subject to an action under ORS 646.632 and 646.638. [2009 c.310 §1]

RENTAL AND LEASE AGREEMENTS
(Lease-Purchase Agreements)

646A.120 Definitions for ORS 646A.120 to 646A.134. As used in ORS 646A.120 to 646A.134:

(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. [Formerly 646.245]

646A.122 Applicability of ORS 646A.120 to 646A.134. (1) Lease-purchase agreements that comply with ORS 646A.120 to 646A.134 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 646A.120 to 646A.134 do 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. [Formerly 646.247]

646A.124 General disclosure requirements. (1) The lessor shall disclose to the consumer the information required by ORS 646A.126. 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 provided to the consumer. The disclosures required under ORS 646A.126 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 646A.120 to 646A.134.

(5) If any portion of the transaction is conducted in any language other than English, the disclosures required under ORS 646A.120 to 646A.134 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. [Formerly 646.249]

646A.126 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 646A.120 to 646A.134;

(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 646A.120 to 646A.134. [Formerly 646.251]

646A.128 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 646A.126;

(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. [Formerly 646.253]

646A.130 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. [Formerly 646.255]

646A.132 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. [Formerly 646.257]

646A.134 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. [Formerly 646.259]

(Collision Damage Waivers in Vehicle Rentals)

646A.140 Definitions for ORS 646A.140 and 646A.142. As used in this section and ORS 646A.142:

(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. [Formerly 646.857]

646A.142 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:

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.

(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. [Formerly 646.859]

SERVICE CONTRACTS

646A.150 Applicability of ORS 646A.150 to 646A.172. (1) ORS 646A.150 to 646A.172:

(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 646A.150 to 646A.172 do not apply to:

(a) Warranties; or

(b) Maintenance agreements. [Formerly 646.263]

646A.152 Definitions for ORS 646A.150 to 646A.172. As used in ORS 646A.150 to 646A.172:

(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 646A.154.

(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. [Formerly 646.265]

646A.154 Service contract defined; registration; proof of financial stability; bond; action; 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 may 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 646A.156 and 646A.158.

(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 646A.168.

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

(5) Except as provided in subsection (6) of this section, 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)(a) An obligor of a home service agreement as defined in ORS 731.164 shall file with the director a surety bond executed to the State of Oregon in the sum of $25,000. The surety bond shall be issued by a surety company authorized to do business in this state. An obligor of a home service agreement is not required to file proof of financial stability under subsection (5) of this section.

(b) The surety bond shall be issued on the condition that the obligor comply with all provisions of ORS 646A.150 to 646A.172 and fully perform on all contracts or agreements entered into.

(c) The surety bond shall be continuous until canceled and shall remain in full force and unimpaired at all times to comply with this section. The surety shall give the director at least 30 days' written notice by registered or certified mail before the surety cancels or terminates its liability under the bond.

(d) Any person who suffers damage as a result of a violation of any provision of ORS 646A.150 to 646A.172 or any rule adopted by the director pursuant to ORS 646A.150 to 646A.172 shall have a right of action under the bond. An action under the bond may be brought by the state or by any person with a right of action by filing a complaint in a court of competent jurisdiction not later than one year after the surety bond is canceled or terminated. The court may award the prevailing plaintiff reasonable attorney fees and costs in an action under the bond.

(e) The aggregate liability of the surety shall not exceed the principal sum of the bond.

(7) Filing requirements are as follows:

(a) The obligor shall file with the director proof of financial stability or a surety bond as required by subsection (5) or (6) of this section.

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

(c) A person may not 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 that the person knows to be false or misleading in any material respect.

(8) Service contract sellers and their employees marketing, selling or offering to sell service contracts for obligors who comply with this section and ORS 646A.156 and 646A.158 are exempt from the requirements of the Insurance Code including, but not limited to, the requirement to belong to the Oregon Insurance Guaranty Association.

(9) Obligors complying with ORS 646A.156 and 646A.158 are not required to comply with the Insurance Code including, but not limited to, the requirement to belong to the Oregon Insurance Guaranty Association.

(10) 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. [Formerly 646.267]

646A.156 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. [Formerly 646.269]

646A.158 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. [Formerly 646.271]

646A.160 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. [Formerly 646.273]

646A.162 Investigation of violations; 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 646A.154, 646A.156 or 646A.158 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 646A.154, 646A.156 and 646A.158.

(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 646A.154, 646A.156 or 646A.158, 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 646A.154, 646A.156 or 646A.158 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. [Formerly 646.275]

646A.164 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 646A.150 to 646A.172, 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 646A.150 to 646A.172, 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 646A.150 to 646A.172, 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 646A.150 to 646A.172, 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. [Formerly 646.277]

646A.166 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 646A.158 (3)(c).

(2) The obligor fails to meet or maintain the financial stability requirements set forth in ORS 646A.154. [Formerly 646.279]

646A.168 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 646A.150 to 646A.172, 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 646A.154 shall not exceed $200 per obligor per year. [Formerly 646.281]

646A.170 Remedies not exclusive. The application of any remedy under any provision of ORS 646A.150 to 646A.172, 742.390 and 742.392 shall not preclude the application of any other remedy under ORS 646A.150 to 646A.172, 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 646A.150 to 646A.172, 742.390 and 742.392. [Formerly 646.283]

646A.172 Rules; exemption of certain obligors. (1) The Director of the Department of Consumer and Business Services may adopt rules necessary to implement ORS 646A.150 to 646A.172.

(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 646A.150 (2) from any provision of ORS 646A.150 to 646A.172, 742.390 and 742.392. The director may include in the rules substitute requirements on a finding that a particular provision of ORS 646A.150 to 646A.172, 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. [Formerly 646.285]

CREDIT AND PURCHASING

(Credit and Debit Card Receipts)

646A.200 Definitions for ORS 646A.202 and 646A.204. As used in ORS 646A.202 and 646A.204:

(1) "Credit card" has the meaning given that term in ORS 646A.212.

(2) "Debit card" has the meaning given "debit instrument" in 15 U.S.C. 1693n. [Formerly 646.886]

646A.202 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. [Formerly 646.887]

646A.204 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. [Formerly 646.888]

646A.206 Rules. The Attorney General may adopt rules under ORS chapter 183 to carry out the provisions of ORS 646A.200, 646A.202 and 646A.204. [Formerly 646.889]

(Numbers, Expiration Dates or Personal Information in Credit or Debit Card Transactions)

646A.210 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. [Formerly 646.892]

646A.212 "Credit card" defined. As used in ORS 646A.210 and 646A.214, "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). [Formerly 646.893]

646A.214 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. [Formerly 646.894]

(Credit and Charge Card Solicitation Disclosure Requirements)

646A.220 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 disclose 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. [Formerly 646.895]

646A.222 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. [Formerly 646.897]

(Enforcement)

646A.230 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 646A.202, 646A.204, 646A.220 or 646A.222.

(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. [Formerly 646.899]

646A.232 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 646A.220 and 646A.222. [Formerly 646.901]

(Extension of Credit)

646A.240 Treatment of child support obligations by creditor in applications for extensions of credit. In evaluating applications for extensions of credit, a creditor may not:

(1) Treat an applicant's obligation to pay child support more adversely than the creditor treats or would treat another obligation for the same amount, terms and duration as the child support obligation; or

(2) Deny an application solely because the applicant used the applicant's business address instead of the applicant's residential address if a law of this state or a local government ordinance permits the applicant to use a business address in lieu of a residential address. [Formerly 646.861; 2009 c.183 §1]

646A.242 "Creditor" defined. As used in ORS 646A.240 to 646A.244, "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. [Formerly 646.863]

646A.244 Cause of action for violation of ORS 646A.240; 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 646A.240 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 646A.240. 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 646A.240, 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. [Formerly 646.865]

646A.250 [Formerly 646.380; repealed by 2009 c.604 §27]

646A.252 [Formerly 646.382; repealed by 2009 c.604 §27]

646A.254 [Formerly 646.384; repealed by 2009 c.604 §27]

646A.256 [Formerly 646.386; repealed by 2009 c.604 §27]

646A.258 [Formerly 646.388; repealed by 2009 c.604 §27]

646A.260 [Formerly 646.390; repealed by 2009 c.604 §27]

646A.262 [Formerly 646.392; repealed by 2009 c.604 §27]

646A.264 [Formerly 646.394; repealed by 2009 c.604 §27]

646A.266 [Formerly 646.396; repealed by 2009 c.604 §27]

646A.268 [Formerly 646.397; repealed by 2009 c.604 §27]

646A.270 [Formerly 646.398; repealed by 2009 c.604 §27]

(Gift Cards)

646A.274 Definitions for ORS 646A.276 and 646A.278. As used in ORS 646A.276 and 646A.278, "gift card" means a prefunded record evidencing a promise that the issuer will provide goods or services to the owner of the record in the amount shown in the record. "Gift card" does not include prepaid telephone calling cards, prepaid commercial mobile radio services as defined in 47 C.F.R. 20.3 or any gift card usable with more than one seller of goods or services. [2007 c.772 §1]

646A.276 Sale of gift card that expires, declines in value, includes fee or does not give option to redeem. (1) Except as provided in subsection (2) of this section and ORS 646A.278, a person may not sell a gift card:

(a) That has an expiration date;

(b) That has a face value that declines as a result of the passage of time or the lack of use of the card;

(c) That has a fee related to the card, including, but not limited to, an inactivity fee, a maintenance fee or a service fee; or

(d) That does not give the cardholder the option to redeem the card for cash when the face value of the card has declined to an amount less than $5 and the card has been used for at least one purchase. For purposes of this paragraph, "cash" means money or a check.

(2) Subsection (1)(d) of this section does not apply to:

(a) Gift cards that have been given for free or less than full consideration to a person or entity as a donation or as part of a promotional offer;

(b) Gift cards issued by an entity that provides services that are subject to the federal Communications Act of 1934 (47 U.S.C. 151 et seq.); and

(c) Gift cards redeemed to an online account for the purchase of goods or services.

(3) Redemption under subsection (1)(d) of this section may be obtained only from the provider of goods or services indicated on the gift card regardless of whether the provider is the issuer of the gift card. [2007 c.772 §2; 2011 c.336 §1]

646A.278 Requirements for sale of gift card that expires. A person may sell a gift card that has an expiration date if:

(1) The gift card bears, in at least 10-point type, the words "EXPIRES ON" or "EXPIRATION DATE" followed by the date on which the card expires;

(2) The person sells the gift card at a cost below the face value of the card; and

(3) The gift card does not expire until at least 30 days after the date of sale. [2007 c.772 §3]

(Simulated Invoices)

646A.280 Definitions for ORS 646A.280 to 646A.290. As used in ORS 646A.280 to 646A.290:

(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. [Formerly 646.291]

646A.282 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. [Formerly 646.293]

646A.284 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 646A.282.

(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 646A.282; and

(c) Such orders or judgments as may be necessary to ensure cessation of conduct in violation of ORS 646A.282.

(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 Department of Justice Protection and Education Revolving Account established pursuant to ORS 180.095. [Formerly 646.296; 2009 c.820 §3]

646A.286 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 646A.282.

(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 646A.282; and

(c) Such orders or judgments as may be necessary to ensure cessation of conduct in violation of ORS 646A.282.

(3) The court may award reasonable attorney fees to the prevailing party in an action under this section. [Formerly 646.298]

646A.288 Presumptions in cause of action brought under ORS 646A.284 or 646A.286. In any action brought under ORS 646A.284 or 646A.286, 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. [Formerly 646.300]

646A.290 Construction; other remedies. (1) The provisions of ORS 646A.280 to 646A.290 shall be liberally construed to effectuate its remedial purposes.

(2) The remedy provided by ORS 646A.280 to 646A.290 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 646A.280 to 646A.290 or may be asserted in a separate action. [Formerly 646.302]

(Automatic Renewal and Continuous Service Offers)

646A.292 Legislative intent. It is the intent of the Legislative Assembly to end the practice of ongoing charging of consumer credit or debit cards or third party payment accounts without the consumers' explicit consent for ongoing shipments of a product or ongoing deliveries of service. [2011 c.509 §1]

646A.293 Definitions for ORS 646A.293 and 646A.295. As used in this section and ORS 646A.295:

(1) "Automatic renewal" means a plan or arrangement in which a paid subscription or purchasing agreement is automatically renewed at the end of a definite term for a subsequent term.

(2) "Clear and conspicuous" means in larger type than the surrounding text, or in contrasting type, font or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that clearly calls attention to the language. In the case of an audio disclosure, "clear and conspicuous" means in a volume and cadence sufficient to be readily audible and understandable.

(3) "Consumer" means any individual who seeks or acquires, by purchase or lease, any goods, services, money or credit for personal, family or household purposes.

(4) "Continuous service" means a plan or arrangement in which a paid subscription or purchasing agreement continues until the consumer cancels the service.

(5) "Offer terms" means the following clear and conspicuous disclosures:

(a) That the subscription or purchasing agreement will continue until the consumer cancels.

(b) The description of the cancellation policy that applies to the offer.

(c) The recurring charges that will be charged to the consumer's credit or debit card or payment account with a third party as part of the automatic renewal or continuous service plan or arrangement, and, if the amount of the charge will change, the amount to which the charge will change, if known.

(d) The length of the automatic renewal term or that the service is continuous, unless the length of the term is chosen by the consumer.

(e) The minimum purchase obligation, if any.

(6) "Person" has the meaning given that term in ORS 646.605. [2011 c.509 §2]

646A.295 Prohibited actions; requirements; timing; failure to obtain consent; exceptions. (1) It is unlawful for a person that makes an automatic renewal or continuous service offer to a consumer in this state to do any of the following:

(a) Fail to present the automatic renewal offer terms or continuous service offer terms in a clear and conspicuous manner before a subscription or purchasing agreement is fulfilled and in visual proximity, or in the case of an offer conveyed by voice, in temporal proximity, to the request for consent to the offer.

(b) Charge the consumer's credit or debit card or payment account with a third party for an automatic renewal or continuous service without first obtaining the consumer's affirmative consent to the agreement containing the automatic renewal offer terms or continuous service offer terms.

(c) Fail to provide an acknowledgment that includes the automatic renewal offer terms or continuous service offer terms and information regarding how to cancel in a manner that is capable of being retained by

the consumer. If the offer includes a free trial, the person shall also disclose in the acknowledgment how to cancel and allow the consumer to cancel before the consumer pays for the goods or services.

(2) A person making automatic renewal or continuous service offers shall provide a toll-free telephone number, electronic mail address, a post-office address only when the person directly bills the consumer, or another cost-effective, timely and easy-to-use mechanism for cancellation that must be described in the acknowledgment required by subsection (1)(c) of this section.

(3) In the case of a material change in the terms of the automatic renewal or continuous service offer that has been accepted by a consumer, the person shall provide the consumer with a clear and conspicuous notice of the material change and provide information regarding how to cancel in a manner that is capable of being retained by the consumer.

(4) The requirements of this section must be met prior to the completion of the initial order for the automatic renewal or continuous service, except as follows:

(a) The requirement in subsection (1)(c) of this section may be fulfilled after completion of the initial order.

(b) The requirement in subsection (3) of this section must be fulfilled prior to implementation of the material change.

(c) The requirements in subsection (1)(a) and (c) of this section may be fulfilled in the initial billing statement or invoice provided to the consumer when the person directly bills the consumer.

(5) In the event a person sends goods, wares, merchandise or products to a consumer under a continuous service agreement or pursuant to an automatic renewal of a purchase without first obtaining the consumer's affirmative consent as required in subsection (1) of this section, the goods, wares, merchandise or products shall for all purposes be deemed an unconditional gift to the consumer who may use or dispose of them in any manner the consumer sees fit without any obligation to the person including, but not limited to, requiring the consumer to ship, or bear the cost of shipping, any goods, wares, merchandise or products to the person.

(6) The following are exempt from the requirements of this section:

(a) A person that provides a service pursuant to a franchise issued by a political subdivision of the state or a license, franchise, certificate or other authorization issued by the Public Utility Commission of Oregon.

(b) A person that provides a service regulated by the Public Utility Commission of Oregon, the Federal Communications Commission or the Federal Energy Regulatory Commission.

(c) A person regulated by the Department of Consumer and Business Services under the Insurance Code.

(d) A bank, bank holding company, or the subsidiary or affiliate of either, or a credit union or other financial institution or trust company as those terms are defined in ORS 706.008, that is licensed under state or federal law.

(e) A person that is regulated as a service contract seller under ORS 646A.150 to 646A.172.

(f) A consumer finance company licensed under ORS chapter 725.

(g) A person that provides direct-to-home satellite services subject to regulation by the Federal Communications Commission. [2011 c.509 §3]

REPURCHASING

(Repurchase of Farm Implements by Supplier From Retailer)

646A.300 Definitions for ORS 646A.300 to 646A.322. As used in ORS 646A.300 to 646A.322:

(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. [Formerly 646.415]

646A.302 Application of ORS 646A.300 to 646A.322 to successor in interest or assignee of supplier. The obligations of a supplier under ORS 646A.300 to 646A.322 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. [Formerly 646.419]

646A.304 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. [Formerly 646.425]

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

Sec. 13. (1) The amendments to ORS 646.425 [renumbered 646A.304 in 2007] 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)]

646A.306 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 646A.300 to 646A.322 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. [Formerly 646.435]

646A.308 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 646A.304 or 646A.306, 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 646A.304 or 646A.306.

(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. [Formerly 646.445]

646A.310 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 646A.300 to 646A.322.

(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 646A.300 to 646A.322.

(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 objection 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. [Formerly 646.447]

646A.312 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. [Formerly 646.449]

646A.314 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. [Formerly 646.452]

646A.316 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 the 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. [Formerly 646.453; 2009 c.11 §82]

646A.318 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. [Formerly 646.454]

646A.320 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. [Formerly 646.456]

646A.322 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 646A.310, 646A.312, 646A.314, 646A.316, 646A.318 or 646A.320 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 646A.310, 646A.312, 646A.314, 646A.316, 646A.318 or 646A.320, 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 646.459]

(Repurchase of Motor Vehicles)

646A.325 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 646A.400 to 646A.418 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 646A.327, "motor vehicle" has the meaning given in ORS 646A.400. [Formerly 646.874]

646A.327 Attorney fees for action under ORS 646A.325. 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 646A.325. [Formerly 646.876]

MAILINGS AND DELIVERIES

(Mail Agents)

646A.340 Definitions for ORS 646A.340 to 646A.348. As used in ORS 646A.340 to 646A.348:

(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. [Formerly 646.221]

646A.342 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. [Formerly 646.225]

646A.344 Bond or letter of credit; action; exceptions. (1) Except as provided in subsection (5) of this section, a mail agent shall maintain:

(a) A surety bond in the sum of $10,000 executed by the mail agent as obligor, together with a surety company authorized to do business in this state as surety; or

(b) An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in the amount of $10,000.

(2) The bond or letter of credit must:

(a) Be executed to the State of Oregon and for the use of the state and of any person who may have a cause of action against the obligor of the bond or the letter of credit for a violation of ORS 646A.342 or for damages under ORS 646A.346.

(b) Provide that the obligor will comply with ORS 646A.342 and will pay to the state and to any person the moneys that may become due or owing to the state or to the person from the obligor for a violation of ORS 646A.342.

(3) The Attorney General shall approve the form of the bond or letter of credit.

(4) If a person recovers a judgment against a mail agent for a violation of ORS 646A.342 and execution issued upon the judgment is returned unsatisfied in whole or in part, the person may maintain an action upon the bond or letter of credit.

(5) Subsection (1) of this section does 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, and the space or unit is located on the same premises as the mailbox; and

(b) The mail agent services that the mail agent is providing to the tenant are incidental to and a part of the landlord-tenant relationship that exists between the mail agent and the tenant with respect to the leased space or unit. [Formerly 646.229]

646A.346 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 646A.342, 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. [Formerly 646.235]

646A.348 Action by Attorney General; civil penalty; injunction; damages; 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 646A.342 or 646A.344. Upon proof by a preponderance of the evidence of a violation of ORS 646A.342 or 646A.344, 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 646A.342 or 646A.344.

(3) The Attorney General may bring an action on behalf of a person to obtain the damages caused to the person by a mail agent's violation of ORS 646A.342 or 646A.344.

(4) The court may award reasonable attorney fees and costs of investigation, prepa-

ration 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. [Formerly 646.240]

(Delivery of Hazardous Materials)

646A.350 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. [Formerly 646.870]

646A.352 Penalty. Violation of ORS 646A.350 is a Class A misdemeanor. [Formerly 646.992]

(Other Mailings or Deliveries)

646A.360 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. [Formerly 646.872]

646A.362 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. [Formerly 646.879]

646A.365 Check, draft or payment instrument creating obligation for payment. A person may not mail or cause to be sent a check, draft or other payment instrument that, when deposited or cashed, obligates the depositor or payee thereafter to make any payment. This section does not apply to an extension of credit or an offer to lend money. [2007 c.304 §1]

AUTOMATIC DIALING AND ANNOUNCING DEVICES

646A.370 Definitions for ORS 646A.370 to 646A.374. As used in ORS 646A.370 to 646A.374:

(1) "Automatic dialing and announcing device" means an automated device that selects and dials telephone numbers and that, working alone or in conjunction with another device, disseminates a prerecorded or synthesized voice message to the telephone number called.

(2) "Call" means an attempt made to contact or a contact made with a subscriber by means of a telephone or telephone line.

(3) "Caller" means a person that attempts to contact or that contacts a subscriber by using a telephone or telephone line.

(4) "Caller identification service" means a telephone service that permits subscribers to see a caller's telephone number before answering the telephone.

(5) "Established business relationship" means a previous transaction or series of transactions between a caller and a sub-

scriber that occurred within the 18 months preceding a call.

(6) "Subscriber" means an individual who has obtained residential or wireless telephone services from a telecommunications provider, or a person who resides with the individual. [2007 c.823 §1]

646A.372 Limits on usage of automatic dialing and announcing device. (1) A caller may not use an automatic dialing and announcing device in order to call a subscriber unless the device is designed and operated so as to disconnect within 10 seconds after the subscriber terminates the call.

(2) A caller may not use an automatic dialing and announcing device that dials telephone numbers randomly or sequentially unless the range of telephone numbers from which the device chooses the number to dial does not include numbers for:

(a) Fire protection, law enforcement or other emergency agencies;

(b) Hospital and health care facilities, physician's offices, poison control centers or suicide prevention or domestic violence counseling services; and

(c) Subscribers who appear on a list compiled for the purpose of informing potential callers that the subscriber does not want to receive telephone solicitations.

(3) Subsection (2)(c) of this section does not apply to a caller who:

(a) Has an established business relationship with the subscriber;

(b) Is subject to regulation under the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq.;

(c) Is a representative of a public safety or law enforcement agency; or

(d) Is a representative of a school district or school if the subscriber is an employee of the school district, a student or the student's parent, guardian or other family member.

(4) A caller who uses an automatic dialing and announcing device may use the device to call a subscriber only between the hours of 9 a.m. and 9 p.m. [2007 c.823 §2]

646A.374 Prohibited actions. (1) A caller who uses an automatic dialing and announcing device in order to call a subscriber may not misrepresent or falsify, either in speaking with the subscriber or in the prerecorded or synthesized voice message disseminated during the call:

(a) The caller's identity and the identity of any person on behalf of whom the caller is making the call;

(b) The telephone number from which the caller is making the call;

(c) The location from which the caller is making the call; or

(d) The purpose for which the caller is making the call.

(2) A caller may not intentionally alter, misrepresent or falsify the information that a caller identification service would ordinarily provide to a subscriber who uses such a service.

(3) A person who provides a caller identification service is not subject to civil liability for a caller's violation of this section. [2007 c.823 §3]

646A.376 Enforcement; civil penalty. Violation of ORS 646A.372 or 646A.374 is an unlawful trade practice subject to enforcement under ORS 646.632. Notwithstanding the provisions of ORS 646.642, a civil penalty imposed for a violation of ORS 646A.372 or 646A.374 may not exceed $5,000. [2007 c.823 §4]

WARRANTY REGULATION AND ENFORCEMENT

(Enforcement of Express Warranties on New Motor Vehicles)

646A.400 Definitions for ORS 646A.400 to 646A.418. As used in ORS 646A.400 to 646A.418:

(1) "Collateral charge" means a charge, fee or cost to the consumer related to the sale or lease of a motor vehicle, such as:

(a) A sales, property or use tax;

(b) A license, registration or title fee;

(c) A finance charge;

(d) A prepayment penalty;

(e) A charge for undercoating, rustproofing or factory or dealer installed options; and

(f) The cost of an aftermarket item purchased within 20 days after delivery of the motor vehicle.

(2) "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.

(3)(a) "Motor home" means a motor vehicle that is a new or demonstrator vehicular unit built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab or van that becomes an integral part of

the completed vehicle, and that is designed to provide temporary living quarters for recreational, camping or travel use.

(b) "Motor home" does not include a trailer, camper, van or vehicle manufactured by an entity that primarily manufactures motor vehicles other than motor homes as defined in this subsection.

(c) "Motor home" does not include "living facility components," which means those items designed, used or maintained primarily for the living quarters portion of the motor home, including but not limited to the flooring, plumbing fixtures, appliances, water heater, fabrics, door and furniture hardware, lighting fixtures, generators, roof heating and air conditioning units, cabinets, countertops, furniture and audio-visual equipment.

(4) "Motor vehicle" means a passenger motor vehicle as defined in ORS 801.360 that is purchased in this state or is purchased outside this state but registered in this state. [Formerly 646.315; 2009 c.448 §1]

646A.402 Availability of remedy. The remedy under the provisions of ORS 646A.400 to 646A.418 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, the manufacturer's agent or the manufacturer's authorized dealer, for the purpose of repair or correction, during the two-year period 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 24,000 miles, whichever period ends first; 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 646A.408. [Formerly 646.325; 2009 c.448 §2]

646A.404 Consumer's remedies; manufacturer's affirmative defenses. (1) If the manufacturer or agents or authorized dealers of the manufacturer are unable to conform the motor vehicle to an applicable manufacturer's express warranty by repairing or correcting a 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 and collateral charges paid, less a reasonable allowance for the consumer's use of the motor vehicle. In lieu of refunding, as part of the collateral charges paid, the cost of an aftermarket item purchased within 20 days after delivery of the motor vehicle, the manufacturer may remove the aftermarket item from the motor vehicle, if the aftermarket item can be removed from the motor vehicle without damage, and return the aftermarket item to the consumer.

(2) Refunds must be made to the consumer and lienholder, if any, as the interests of the consumer and lienholder may appear.

(3)(a) As used in this section, "reasonable allowance for the consumer's use of the motor vehicle" means:

(A) For a motor vehicle that is not a motorcycle or a motor home, an amount of money equivalent to the motor vehicle mileage as described in paragraph (b) of this subsection, multiplied by the combined amount of the cash price or lease price of the motor vehicle and the amount of any collateral charges paid by the consumer, and divided by 120,000.

(B) For a motorcycle, an amount of money equivalent to the motor vehicle mileage as described in paragraph (b) of this subsection, multiplied by the combined amount of the cash price or lease price of the motorcycle and the amount of any collateral charges paid by the consumer, and divided by 25,000.

(C) For a motor home, an amount of money equivalent to the motor vehicle mileage as described in paragraph (b) of this subsection, multiplied by the combined amount of the cash price or lease price of the motor home and the amount of any collateral charges paid by the consumer, and divided by 90,000.

(b) The motor vehicle mileage for the purposes of the calculation described in paragraph (a) of this subsection is the motor vehicle's mileage at the time the manufacturer takes an action described in subsection (1) of this section, less 10 miles for mileage that the motor vehicle traveled during any period in which the consumer did not have use of the motor vehicle because the manufacturer or an agent or authorized dealer of the manufacturer was repairing the motor vehicle.

(4) It is an affirmative defense to a claim under ORS 646A.400 to 646A.418 that:

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

(b) A nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of the motor vehicle. [Formerly 646.335; 2009 c.448 §3]

646A.405 Manufacturer action under ORS 646A.404; request to Department of Transportation; notice to buyer; unlawful practice; rules. (1) A manufacturer that takes an action with respect to a motor vehicle under ORS 646A.404 (1)(a) or (b) shall request the Department of Transportation to:

(a) Title the motor vehicle in the manufacturer's name; and

(b) Inscribe on the certificate of title for the motor vehicle and in the department's records concerning the motor vehicle the notation "Lemon Law Buyback."

(2) A person that acquires a motor vehicle in order to sell, lease or otherwise transfer the motor vehicle and that knows or should have known that the manufacturer took an action with respect to the motor vehicle under ORS 646A.404 (1)(a) or (b) or that the certificate of title for the motor vehicle is inscribed with the notation specified in subsection (1) of this section, before selling, leasing or otherwise transferring the motor vehicle shall:

(a) Provide the buyer, lessee or transferee with a notice that states:

This vehicle was repurchased by its manufacturer in accordance with Oregon's consumer warranty law because of a defect in the vehicle. The title to this vehicle has been permanently inscribed with the notation "Lemon Law Buyback."

(b) Obtain the signature of the buyer, lessee or transferee on the notice in a space provided for that purpose under a statement in which the buyer, lessee or transferee acknowledges receiving and understanding the notice.

(3) Failure to comply with the requirements of subsection (1) or (2) of this section is an unlawful practice under ORS 646.608 and a person that fails to comply with the requirements is subject to the causes of action and remedies provided in ORS 646.632 and 646.638.

(4) The Director of Transportation may adopt rules to prescribe the form and content of the notice required under this section and to require the disclosure of other information the director deems necessary to inform a buyer, lessee or transferee of the condition of a motor vehicle that is subject to the provisions of this section or information that is otherwise material to a sale, lease or transfer of the motor vehicle. [2009 c.448 §10]

646A.406 Presumption of reasonable attempt to conform; extension of time for repairs; notice to manufacturer. (1) It is 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 two-year period 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 24,000 miles, whichever period ends first:

(a) The manufacturer or an agent or authorized dealer of the manufacturer has subjected the nonconformity to repair or correction three or more times and has had an opportunity to cure the defect alleged, but the nonconformity continues to exist;

(b) The motor vehicle is out of service by reason of repair or correction for a cumulative total of 30 or more calendar days or 60 or more calendar days if the vehicle is a motor home; or

(c) The manufacturer or an agent or authorized dealer of the manufacturer has subjected a nonconformity that is likely to cause death or serious bodily injury to repair or correction at least one time and has made a final attempt to repair or correct the nonconformity, but the nonconformity continues to exist.

(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 24,000 miles, the two-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) The presumption described in subsection (1) of this section does not 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. [Formerly 646.345; 2009 c.448 §4]

646A.408 Use of informal dispute settlement procedure as condition for remedy; binding effect on manufacturer. If a manufacturer, for the purpose of settling disputes that arise under ORS 646A.400 to 646A.418, establishes or participates in an informal dispute settlement procedure that substantially complies with the provisions of 16 C.F.R. part 703, as in effect on June 23,

2009, and causes a consumer to be notified of the procedure, ORS 646A.404 does not apply to a consumer who has not first resorted to the procedure. A decision resulting from arbitration pursuant to the informal dispute settlement procedure is binding on the manufacturer but is not binding on the consumer. [Formerly 646.355; 2009 c.448 §5]

646A.410 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 646A.408 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 646A.400 to 646A.418 in reaching their decisions. [Formerly 646.357]

646A.412 Action in court; damages if manufacturer does not act in good faith; attorney fees; expert witness fees; costs. (1) If a consumer brings an action in court under ORS 646A.400 to 646A.418 against a manufacturer and the consumer is granted one of the remedies specified in ORS 646A.404 (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 646A.404 (1), if the court finds that the manufacturer did not act in good faith.

(2) Except as provided in subsection (3) of this section, the court may award reasonable attorney fees, fees for expert witnesses and costs to a consumer who prevails in an appeal or action under ORS 646A.400 to 646A.418. If a court finds that a consumer brought an action under ORS 646A.400 to 646A.418 in bad faith or solely for the purposes of harassment, the court may award a prevailing manufacturer reasonable attorney fees.

(3) The court may award reasonable attorney fees, fees for expert witnesses and costs to the prevailing party in an appeal or action under ORS 646A.400 to 646A.418 that involves a motor home. [Formerly 646.359; 2009 c.448 §6]

646A.414 Limitations on actions against dealers. (1) Except as provided in ORS 646A.405, nothing in ORS 646A.400 to 646A.418 creates a cause of action by a consumer against a vehicle dealer.

(2) A manufacturer may not join a dealer as a party in a proceeding brought under ORS 646A.400 to 646A.418, nor may the manufacturer try to collect from a dealer damages assessed against the manufacturer in a proceeding brought under ORS 646A.400 to 646A.418. [Formerly 646.361; 2009 c.448 §7]

646A.416 Limitation on commencement of action. An action brought under ORS 646A.400 to 646A.418 must be commenced within one year after whichever of the following periods ends earlier:

(1) The period ending on the date on which the mileage on the motor vehicle reaches 24,000 miles;

(2) The two-year period following the date of the original delivery of the motor vehicle to the consumer; or

(3) The period that ends after an extension of time provided under ORS 646A.406 (3). [Formerly 646.365; 2009 c.448 §8]

646A.418 Remedies supplementary to existing statutory or common law remedies; election of remedies. Nothing in ORS 646A.400 to 646A.418 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 646A.400 to 646A.418 shall not be available insofar as it would result in recovery in excess of the recovery authorized by ORS 646A.404 without proof of fault resulting in damages in excess of such recovery. [Formerly 646.375]

(Vehicle Protection Product Warranties)

646A.430 Definitions for ORS 646A.430 to 646A.450. As used in ORS 646A.430 to 646A.450:

(1) "Consumer" means a person in this state who purchases a vehicle protection product or who possesses a vehicle protection product and is entitled to enforce a warranty for the product by reason of the person's possession.

(2) "Reimbursement insurance policy" means an insurance policy issued to a warrantor that:

(a) Reimburses the warrantor for expenses or other obligations the warrantor incurs in complying with the terms and conditions in a vehicle protection product warranty; or

(b) Pays on a warrantor's behalf all obligations due under the terms and conditions of the warrantor's vehicle protection product warranty.

(3) "Reimbursement insurer" means an insurer that issues a reimbursement insurance policy.

(4) "Seller" means a person engaged in the business of offering a vehicle protection product for sale to a consumer.

(5) "Vehicle protection product" means a product, system or service that is designed to prevent a particular type of loss or damage to a vehicle from theft, and that is:

(a) Provided as a product or system that is installed on or applied to a vehicle or provided as a service for a specific vehicle; and

(b) Accompanied by a written warranty.

(6) "Warrantor" means a person named under the terms of a vehicle protection product warranty as the contractual obligor to the consumer. "Warrantor" does not include an authorized insurer that provides a warranty reimbursement insurance policy. [2007 c.685 §1]

646A.432 Applicability of ORS 646A.430 to 646A.450; applicability of other law. (1) ORS 646A.430 to 646A.450 apply to vehicle protection product warranties that:

(a) Accompany vehicle protection products delivered to consumers in this state; and

(b) Require the warrantor, to the extent set forth in the warranty, to pay to the consumer expenses related to the loss of or damage to the vehicle.

(2) A vehicle protection product warranty subject to ORS 646A.430 to 646A.450 is not a service contract and is not subject to the provisions of ORS 646A.150 to 646A.172. A seller's or warrantor's selling or providing a warranty for a vehicle protection product in compliance with ORS 646A.430 to 646A.450 does not subject the seller or warrantor to ORS 646A.150 to 646A.172.

(3) A vehicle protection product warranty subject to ORS 646A.430 to 646A.450 is not insurance and is not subject to the provisions of the Insurance Code. A seller's or warrantor's selling or providing a warranty for a vehicle protection product in compliance with ORS 646A.430 to 646A.450 does not subject the seller or warrantor to the Insurance Code. [2007 c.685 §2]

646A.434 Sale of vehicle protection product; conditions and requirements. (1) A person may not offer for sale or sell a vehicle protection product that includes a vehicle protection product warranty unless, at the time of the sale, the seller or a warrantor provides to the consumer:

(a) A copy of the vehicle protection product warranty for the vehicle protection product; or

(b) A receipt for, or other written evidence of, the consumer's purchase of the vehicle protection product.

(2) A warrantor who complies with subsection (1)(b) of this section shall provide to the consumer a copy of the vehicle protection product warranty within 30 days after the date of purchase.

(3) The vehicle protection product warranty must:

(a) Be written and printed or typed;

(b) List, either preprinted on the warranty document or, if negotiated at the time of sale, in an addition to the warranty document, the purchase price and terms of sale for the vehicle protection product;

(c) List the name, address, phone number and other available contact information for the warrantor;

(d) List, either preprinted on the warranty document or in an addition to the warranty document at the time of sale, the name of and contact information for the administrator for the vehicle protection product warranty, if any, the name of the seller and the name of the consumer, if the consumer has provided the consumer's name to the warrantor;

(e) Specify the nature or contents of the vehicle protection product or the services included with the product and any limitations, exceptions or exclusions;

(f) Describe the procedure for making a claim under the warranty and provide an address and telephone number for submitting claims;

(g) Specify any restrictions governing the transferability or cancellation of the vehicle protection product warranty;

(h) Disclose the items for which the warrantor will pay incidental expenses, along with any formula the warrantor uses to calculate the expenses, or provide for a fixed sum for payment of incidental expenses;

(i) State the consumer's duties, including any duty to protect against further damage to the vehicle and any requirement to follow the warranty's instructions;

(j) State that a reimbursement insurance policy guarantees the obligations to the consumer set forth in the warranty;

(k) List the name and address and other available contact information for the reimbursement insurer and state that if the warrantor does not provide a covered service within 60 days after the date the consumer provides proof of loss or damage, the consumer may apply directly to the reimbursement insurer for reimbursement;

(L) List the name, mailing address and telephone number for the Department of Consumer and Business Services and state that the consumer may address unresolved

complaints concerning a warrantor or questions concerning the regulation of a warrantor to the department; and

(m) State that the vehicle protection product warranty is a product warranty and not insurance. [2007 c.685 §3]

646A.436 Warrantor registration; requirements; expiration; fees; rules. (1) A person may not conduct business as a warrantor in this state or make a representation that the person is a warrantor in this state unless the person registers in writing with the Director of the Department of Consumer and Business Services in a form the director prescribes by rule. For purposes of this section, a person who offers for sale or sells a vehicle protection product but does not offer a warranty with the product or is not contractually obligated to any performance under the terms and conditions of a warranty that accompanies the product is not a warrantor subject to this section.

(2) A registration form submitted to the director under this section shall contain the following information:

(a) The warrantor's name and telephone number and the address of the warrantor's principal office;

(b) The name, address and telephone number of the warrantor's agent for the service of process in this state if the agent is not the warrantor;

(c) The identities of the warrantor's executive officer and officers directly responsible for the warrantor's business operations related to vehicle protection product warranties;

(d) The name, address and telephone number of any person the warrantor designates to administer the warrantor's vehicle protection product warranties in this state;

(e) A copy of each warranty form the warrantor proposes to use in this state; and

(f) A copy of a warranty reimbursement insurance policy the warrantor intends to use to demonstrate the warrantor's financial responsibility in accordance with ORS 646A.438.

(3) A warrantor shall report any changes to the information provided in this section to the director not later than 30 days after the information has changed.

(4) A registration under this section expires on December 31 of each year. The director by rule shall prescribe a procedure for renewing a registration under this section.

(5) A warrantor shall pay a fee in an amount the director sets by rule for each registration or renewal under this section. The fee must be in an amount that, when aggregated with all other fees collected under this section, is sufficient to pay the expenses of administering and enforcing ORS 646A.430 to 646A.450. [2007 c.685 §4]

646A.438 Reimbursement insurance; requirements; insurer qualifications. (1) A warrantor shall obtain a reimbursement insurance policy from a qualified reimbursement insurer that covers all liability to the consumer under all vehicle protection product warranties a warrantor issues. A qualified reimbursement insurer is:

(a) An insurer authorized to transact insurance in this state under a certificate of authority issued in accordance with the Insurance Code; or

(b) A surplus lines insurer.

(2) The Department of Consumer and Business Services may not require any other financial security requirements or financial standards for warrantors. [2007 c.685 §5]

646A.440 Required provisions of reimbursement insurance policy; cancellation; notice. (1) A reimbursement insurance policy for a warranty issued in accordance with ORS 646A.430 to 646A.450 shall have the following provisions:

(a) The reimbursement insurer that issues the policy will reimburse or pay on behalf of the warrantor any amounts the warrantor is legally obligated to pay or will provide any service that the warrantor is legally obligated to perform under the vehicle protection product warranty.

(b) If the warrantor does not pay or provide to the consumer the amounts or the service for which the warrantor is legally obligated within 60 days after the date the consumer provides proof of loss or damage, the reimbursement insurer will pay the amount or provide the service directly to or on behalf of the consumer.

(c) A reimbursement insurer may not defend against a consumer's claim for payment of an amount or performance of a service described in paragraph (a) of this subsection on the basis that the consumer did not pay the premium for the reimbursement insurance policy. For the purposes of any claim a consumer makes under the policy, the consumer's payment for the vehicle protection product shall constitute payment of the premium for the reimbursement insurance policy.

(d) The warrantor to whom a reimbursement insurer issued a reimbursement insurance policy is an agent or representative of the reimbursement insurer for the purpose of obligating the reimbursement insurer to the consumer under the terms and conditions of the reimbursement insurance policy.

(2) A reimbursement insurer may not cancel a reimbursement insurance policy until the insurer delivers to the warrantor and the Director of the Department of Consumer and Business Services a written notice of cancellation.

(3) A reimbursement insurer that cancels a reimbursement insurance policy does not reduce the reimbursement insurer's responsibility for vehicle protection products that the warrantor issued and insured under the policy before the cancellation date.

(4) A warrantor that receives a cancellation notice for a reimbursement insurance policy shall:

(a) Obtain new reimbursement insurance from a reimbursement insurer qualified in accordance with ORS 646A.438 and file proof with the Director of the Department of Consumer and Business Services that the warrantor has obtained new insurance; or

(b) Discontinue offering vehicle protection product warranties as of the date of cancellation and until the warrantor obtains new reimbursement insurance from a reimbursement insurer qualified in accordance with ORS 646A.438. [2007 c.685 §6]

646A.442 Vehicle protection product warranty administrator. A warrantor may designate a person as an administrator for the warrantor's vehicle protection product warranties under ORS 646A.430 to 646A.450. [2007 c.685 §7]

646A.444 Recordkeeping requirements for warrantor; record retention. (1) A warrantor shall maintain accurate accounts, books and other records for transactions regulated under ORS 646A.430 to 646A.450 and shall make the records available to the Director of the Department of Consumer and Business Services for inspection during normal business hours. The warrantor's records shall include:

(a) A copy of the warranty for each unique form of vehicle protection product sold;

(b) The name and address of each consumer;

(c) A list of the locations where the warrantor's vehicle protection products are offered for sale or sold; and

(d) Dates, descriptions, amounts and receipts for payments to consumers for claims related to the vehicle protection product warranty or any expenditures related to providing the vehicle protection product warranty.

(2) Except as provided in subsection (4) of this section, a warrantor shall retain all records required under subsection (1) of this section for at least two years after the period of coverage specified in the vehicle protection product warranty has expired.

(3) A warrantor may maintain records required under this section in an electronic form. If the warrantor maintains a record in a format other than paper, the warrantor shall reformat the record into a legible paper copy at the director's request.

(4) A warrantor that no longer conducts business in this state shall maintain the warrantor's records until 10 years after the date of the last sale of a vehicle protection product that includes the warrantor's warranty. [2007 c.685 §8]

646A.446 Prohibited conduct for warrantor. (1) A warrantor may not use in the warrantor's name:

(a) "Casualty," "surety," "insurance," "mutual" or any other word descriptive of the casualty, insurance or surety business; or

(b) A name deceptively similar to the name or description of any insurance company, surety corporation or other warrantor.

(2) A warrantor may use the word "guaranty" or a similar word in the warrantor's name. [2007 c.685 §9]

646A.448 Prohibited activities. (1) A warrantor or a warrantor's representative, in the warrantor's vehicle protection product warranty or in an advertisement or literature for the warranty, may not:

(a) Make, permit or cause to be made any false or misleading statement; or

(b) Intentionally omit a material statement that would be considered misleading if omitted.

(2) A seller or warrantor may not require, as a condition of financing, that a retail purchaser of a motor vehicle purchase a vehicle protection product. [2007 c.685 §10]

646A.450 Rules; investigative powers of department. (1) The Director of the Department of Consumer and Business Services may adopt rules to implement and enforce ORS 646A.430 to 646A.450.

(2) The director may investigate warrantors or other persons as reasonably necessary to enforce ORS 646A.430 to 646A.450 and to protect consumers in this state. [2007 c.685 §11]

646A.452 Enforcement by Attorney General. The Attorney General may enforce violations of ORS 646A.430 to 646A.450 under ORS 646.608. [2007 c.685 §12]

(Warranties on Assistive Devices)

646A.460 Definitions for ORS 646A.460 to 646A.476. As used in ORS 646A.460 to 646A.476:

(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 646A.464 (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 646A.464 (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 or impairment 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 disability 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 of 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. [Formerly 646.482]

646A.462 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. [Formerly 646.484]

646A.464 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 646A.462; 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 646A.462:

(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 646A.466 (1) or (2) have arisen and in addition to the remedies relating to collateral costs provided by ORS 646A.460 to 646A.476. [Formerly 646.486]

646A.466 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. [Formerly 646.488]

646A.468 Procedures for replacement or refund. (1) To receive the refund or replacement described in ORS 646A.466, 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 646A.466 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. [Formerly 646.490]

646A.470 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 646A.466, 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 646A.466, there shall be no deduction from the full purchase price in calculating the refund under ORS 646A.466;

(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. [Formerly 646.492]

646A.472 Dispute resolution. (1) A consumer shall have the option of submitting any dispute arising under ORS 646A.460 to 646A.476 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 records 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 646A.460 to 646A.476.

(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. [Formerly 646.494]

646A.474 Applicability of other laws; waiver. ORS 646A.460 to 646A.476 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 646A.460 to 646A.476 is void. [Formerly 646.496]

646A.476 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 646A.460 to 646A.476. 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 646A.460 to 646A.476 shall include collateral costs, beginning at the time of the violation, whether or not the consumer acquired the rights provided by ORS 646A.466. If a consumer has submitted a dispute arising under ORS 646A.460 to 646A.476 to a dispute resolution procedure as described in ORS 646A.472, 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 646A.472 because the consumer was not granted one of the remedies by ORS 646A.460 to 646A.476, 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. [Formerly 646.498]

VEHICLE REPAIR SHOPS

646A.480 Definitions for ORS 646A.480 to 646A.495. As used in ORS 646A.480 to 646A.495:

(1)(a) "Motor vehicle" means a self-propelled device, other than a motor home, that is used:

(A) To transport persons or property upon a public highway; and

(B) For personal, family or household purposes.

(b) "Motor vehicle" does not include a motor vehicle owned as part of a fleet and maintained under the terms of a maintenance contract.

(2) "Owner" means an individual who has legal authority or apparent legal authority to make decisions concerning the maintenance or repair of a motor vehicle.

(3) "Owner's designee" means an individual who received permission in accordance with ORS 646A.495 to make decisions concerning the repair or maintenance of a motor vehicle.

(4)(a) "Vehicle repair shop" means an individual, corporation, partnership, limited liability company or other business entity that in exchange for payment evaluates the condition of, maintains or repairs a motor vehicle.

(b) "Vehicle repair shop" does not include a motor vehicle body and frame repair shop, as defined in ORS 746.275. [2009 c.133 §1]

646A.482 Estimate required before beginning work; contents; evaluation. (1) A vehicle repair shop shall prepare an estimate of the cost of work the vehicle repair shop proposes to perform on a motor vehicle before beginning the work. The vehicle repair shop not later than before receiving final payment shall give a copy of the estimate, either as a separate document or in the form of an invoice, to the owner or the owner's designee. The vehicle repair shop shall retain a copy of the estimate. The estimate, at a minimum, must:

(a) Describe the general nature of the proposed work;

(b) Divide the work into separate tasks, to the extent that the work may be divided into separate tasks; and

(c) List:

(A) The estimated cost of labor and the parts or component systems the vehicle repair shop proposes to replace;

(B) The amount of any incidental charges; and

(C) The total estimated cost, which may consist of a reasonable range.

(2) If a vehicle repair shop proposes to disassemble all or a portion of a motor vehicle or to remove parts or components of a motor vehicle in order to evaluate the condition of the motor vehicle for the purpose

of recommending or proposing additional work, in addition to complying with the requirements shown in subsection (1) of this section, the estimate must:

(a) List the total estimated cost of performing the disassembly and evaluation and a separate estimate of the cost for reassembly, assuming for the purpose of the estimate that the owner or owner's designee elects not to proceed with work the vehicle repair shop may recommend or propose after evaluating the condition of the motor vehicle; and

(b) State the estimated amount of time, calculated from the date on which the owner or owner's designee authorizes the disassembly, evaluation and reassembly of the motor vehicle, that the vehicle repair shop would reasonably take to reassemble the motor vehicle if all necessary parts are available and if the owner or owner's designee, on the day that the owner or owner's designee receives the estimate, elects not to proceed with work the vehicle repair shop recommends or proposes after evaluating the condition of the motor vehicle. [2009 c.133 §2]

646A.486 Prohibited actions if estimate exceeds $200; revision of estimate; methods to obtain owner authorization. (1) Except as provided in subsection (2) of this section, a vehicle repair shop may not take any of the following actions if an estimate prepared under ORS 646A.482 shows that taking the action will cost the owner or the owner's designee more than $200:

(a) Evaluate the condition of a motor vehicle.

(b) Disassemble all or a portion of a motor vehicle or remove parts or components of a motor vehicle in order to evaluate the condition of the motor vehicle.

(c) Perform labor or replace or recondition a part in order to:

(A) Repair a motor vehicle; or

(B) Maintain the motor vehicle in or restore the motor vehicle to an operable condition or a condition that conforms with an identified or recognized standard.

(d) Use a work method or procedure, perform a task or labor or replace a part in a manner that differs from the method, procedure, task, labor or part described or identified in the estimate, if the change increases the cost specified in the estimate by more than 10 percent or by more than $200, whichever amount is less.

(2) A vehicle repair shop shall obtain a separate authorization from the owner or the owner's designee before taking an action described in subsection (1) of this section. After consulting with the owner or owner's designee, the vehicle repair shop shall:

(a) Cross out, remove from or otherwise indicate on the estimate prepared under ORS 646A.482 the work the vehicle repair shop will not perform on the motor vehicle and recalculate and display on the estimate the cost of work the vehicle repair shop will perform before obtaining authorization or assent from the owner or owner's designee; or

(b) Prepare a new estimate in accordance with ORS 646A.482 and void the previous estimate before obtaining authorization or assent from the owner or owner's designee.

(3) The vehicle repair shop may obtain authorization or assent by any of the following means:

(a) Obtaining the signature of the owner or owner's designee under a statement printed on the estimate that authorizes the action.

(b) Obtaining the oral assent of the owner or owner's designee by telephone. The vehicle repair shop shall provide the owner or owner's designee with all material information shown on the estimate and shall note on the estimate the name and telephone number of the person that gives the assent and the date and time of the call.

(c) Receiving by facsimile, electronic mail or other electronic means a written message that authorizes the work. A facsimile message must display the signature of the person that gives the authorization and the date and time of transmission. An electronic mail or other electronic message must show the name of the person that gives the authorization and the date and time of transmission. The vehicle repair shop shall attach the facsimile or a printout of the electronic mail or other electronic message to a copy of the estimate. [2009 c.133 §3]

646A.490 Additional prohibited actions; reassembly required; copies. (1) A vehicle repair shop may not:

(a) Charge a person for work not performed on a motor vehicle even if the work is shown on an estimate for which the vehicle repair shop has obtained an authorization from the owner or the owner's designee.

(b) Provide or install used parts or any component system composed of new and used parts if an estimate prepared under ORS 646A.482 indicates that the vehicle repair shop will use new parts or component systems in work performed on the motor vehicle.

(c) Knowingly provide or install, without disclosing to the owner or the owner's designee, a used or reconditioned part.

(2) A vehicle repair shop shall:

(a) Reassemble, if all necessary parts are available, approximately within the time indicated on an estimate prepared under ORS 646A.482 (2), a motor vehicle that the vehicle repair shop has disassembled or from which the vehicle repair shop has removed parts in order to evaluate the condition of the motor vehicle.

(b) Maintain for not less than one year, in electronic or printed form, legible copies of all documents required or provided under ORS 646A.480 to 646A.495. [2009 c.133 §4]

646A.495 Owner designee; waiver of authorization requirement. (1) An owner may designate a person as the owner's designee:

(a) In writing, either on the estimate prepared under ORS 646A.482 or by means of a separate document. The owner shall sign a written designation made in accordance with this paragraph. If the designation is a separate document, the vehicle repair shop shall attach a copy of the document to the estimate.

(b) Orally or by telephone. For a designation made in accordance with this paragraph, the vehicle repair shop shall note on the estimate the name and telephone number of the person who made the designation, the name of the owner's designee and, if the person made the designation by telephone, the date and time of the call.

(2) An owner may waive the authorization requirement set forth in ORS 646A.486 (2) only when the owner receives an explanation of the authorization requirements and signs a separate document directly under a statement that conspicuously identifies the authorization requirement.

(3) An owner may not designate a motor vehicle repair shop or a principal, agent or employee of a motor vehicle repair shop as the owner's designee.

(4) For purposes of this section, a statement is conspicuous if a reasonable person reading the separate document should have noticed the statement. [2009 c.133 §5]

INFANT CRIB SAFETY

646A.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 646A.500 to 646A.514 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. [Formerly 646.500]

646A.502 Short title. ORS 646A.500 to 646A.514 may be referred to as the Infant Crib Safety Act. [Formerly 646.501]

646A.504 Definitions for ORS 646A.500 to 646A.514. As used in ORS 646A.500 to 646A.514:

(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 646A.500 to 646A.514;

(b) By virtue of the person's occupation, purports to have knowledge or skill peculiar to the cribs governed by ORS 646A.500 to 646A.514; 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. [Formerly 646.502]

646A.506 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 646A.500 to 646A.514 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. [Formerly 646.503]

646A.508 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 646A.506 (1) to (3) commits a Class A violation.

(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 646A.506 (1) to (3) commits a Class B violation. [Formerly 646.504; 2011 c.597 §259]

646A.510 Exemptions. (1) An antique or vintage crib that is clearly not intended for use by an infant is exempt from the provisions of ORS 646A.500 to 646A.514 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. [Formerly 646.505]

646A.512 Private right of action; attorney fees. Any person may maintain an action against a commercial user who violates ORS 646A.506 (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. [Formerly 646.506]

646A.514 Scope of remedies. Remedies available under ORS 646A.508 and 646A.512 are in addition to any other remedies available under law to an aggrieved party. [Formerly 646.507]

CHILDREN'S PRODUCTS

646A.525 Definitions for ORS 646A.525 to 646A.535. As used in ORS 646A.525 to 646A.535:

(1)(a) "Children's product" means a consumer product that is designed or intended:

(A) For the care of or use by a child under 12 years of age; or

(B) To come into contact with a child under 12 years of age at the time the product is used.

(b) "Children's product" does not include:

(A) A medication, drug, food or other product that is intended to be ingested; or

(B) A crib, as defined in ORS 646A.504.

(2) "Retailer" means a person that, in the ordinary course of the person's business, sells or offers for sale, leases, sublets or otherwise distributes a children's product to consumers in this state.

(3)(a) "Warning" means a communication about a health or safety hazard that a children's product poses to consumers that is:

(A) Directed to a retailer; and

(B) Intended to inform the retailer about the health or safety hazard, instruct the retailer to remove the children's product from inventory or provide the retailer with a method to eliminate the health or safety hazard.

(b) "Warning" does not include a communication:

(A) Directed to consumers; and

(B) Affixed to the children's product or packaging related to the children's product or provided by the retailer to the consumer as part of a transaction related to the children's product. [2008 c.31 §1]

646A.530 Prohibited sales of certain children's products; recall notices and warnings; disposal of recalled children's products; compliance with warning instructions. (1) A retailer may not sell or offer for sale, lease, sublet or otherwise distribute a children's product to consumers in this state if the children's product is:

(a) Subject to a recall notice issued by or in cooperation with the United States Consumer Product Safety Commission or a successor agency;

(b) The subject of a warning issued by the children's product manufacturer or the Consumer Product Safety Commission or a successor agency that the intended use of the children's product constitutes a health or safety hazard, unless the retailer has eliminated the hazard and made the children's product safe for sale, lease, subletting or distribution to consumers in strict compliance with standards and instructions provided in or related to the warning; or

(c) Subject to a declaration by the Director of the Oregon Health Authority under ORS 453.055 or under rules adopted by the Oregon Health Authority that the children's product is a banned hazardous substance.

(2) A retailer shall subscribe to or arrange to receive recall notices and warnings issued by the Consumer Product Safety Commission and warnings issued by manufacturers from which the retailer receives children's products.

(3) A retailer shall dispose of a children's product identified in a recall notice or warning issued by or in cooperation with the Consumer Product Safety Commission or a successor agency in strict compliance with disposal instructions included with or related to the recall notice or warning.

(4) A retailer shall comply strictly with all return, repair, retrofitting, labeling or remediation instructions issued with or related to a warning issued by the Consumer Product Safety Commission or a successor agency, an agency of this state or the children's product manufacturer. [2008 c.31 §2; 2009 c.595 §1162]

646A.535 Assistance of Attorney General in obtaining recall notices. The Attorney General shall assist retailers in obtaining information the retailers may need to subscribe to or arrange to receive recall notices issued by the United States Consumer Product Safety Commission for children's products. The assistance shall include, but is not limited to, providing links from the Attorney General's website to a website maintained by or in cooperation with the Consumer Product Safety Commission for the purpose of disseminating product recall notices. [2008 c.31 §3]

LICENSES

646A.550 Short title. ORS 646A.555 may be cited as the Oregon Young Entrepreneurs Act. [2009 c.276 §1]

646A.555 License to engage in business activity not required for individual under 17 years of age. (1) Except as provided in subsection (2) of this section and notwithstanding any other provision of law, the State of Oregon, a political subdivision of the state or an agency of the state or of a political subdivision of the state may not require an individual under 17 years of age who is a resident of this state to obtain a license or permit to engage in a business activity in which the individual operates as a sole proprietor under the individual's own name.

(2) This section does not affect a statute, rule, ordinance or other provision of law that requires a license, certificate, registration, permit or other authorization to conduct a business activity that is subject to regulation for the purpose of protecting the environment or the public health, safety or welfare. [2009 c.276 §2]

PORTABLE ELECTRONICS INSURANCE

646A.575 Definitions for ORS 646A.575 to 646A.590. As used in ORS 646A.575 to 646A.590:

(1) "Customer" means a person that purchases or leases portable electronics.

(2) "Enrolled customer" means a customer that purchases portable electronics insurance coverage from a vendor policyholder.

(3) "Insurer" means an insurer as defined in ORS 731.106 that issues, sells or offers for sale policies of portable electronics insurance to vendor policyholders.

(4) "Limited license" means a license that authorizes a vendor to issue, sell or offer for sale portable electronics insurance coverage.

(5) "Location" means a physical location in this state or a website, call center site or similar electronic or telephonic location where portable electronics may be purchased or leased.

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

(7) "Portable electronics" means an electronics device that is portable and includes accessories and services, including but not limited to wireless services, related to use of the device.

(8)(a) "Portable electronics insurance coverage" means insurance that provides coverage for the repair or replacement of portable electronics in the event of loss, theft, inoperability due to mechanical failure, malfunction, damage or need for repair or replacement as a result of some other covered source of peril.

(b) "Portable electronics insurance coverage" does not include:

(A) A service contract as defined in ORS 646A.152 that is governed by ORS 646A.150 to 646A.172;

(B) A warranty;

(C) A maintenance agreement as defined in ORS 646A.152; or

(D) A policy of insurance covering the obligations of a vendor or of a portable electronics manufacturer under a warranty.

(9) "Supervising entity" means an insurer as defined in ORS 731.106, or an insurance producer as defined in ORS 731.104, that may or may not issue, sell or offer for sale policies of portable electronics insurance to vendor policyholders.

(10) "Vendor" means a person engaged in the business of selling or leasing or offering for sale or lease portable electronics.

(11) "Vendor policyholder" means a vendor that holds a limited license under ORS 646A.577 and that has been issued a policy by an insurer or a supervising entity pursuant to which the vendor may issue, sell or offer for sale portable electronics insurance coverage to customers. [2011 c.393 §1]

646A.577 Limited license required; application; fee; renewal; prohibited representations. (1) A vendor may not issue, sell or offer for sale portable electronics insurance coverage unless the vendor has been issued a limited license by the Department of Consumer and Business Services under this section.

(2)(a) An application for a limited license under this section must be submitted on a form in accordance with paragraph (b) of this subsection and accompanied by a fee as prescribed by the department by rule.

(b) The application must, at a minimum, include:

(A) The name and street address of an employee, agent or authorized representative of the vendor who is the person designated by the vendor as being responsible for the vendor's compliance with ORS 646A.575 to 646A.590; and

(B) The name and address in this state of a person designated by the vendor as the vendor's agent upon whom may be served, in the manner described in ORS 59.155, at any time any process, notice or demand in a civil proceeding brought in connection with portable electronics insurance coverage, including a proceeding brought by the Director of the Department of Consumer and Business Services.

(c) A vendor licensed under this section shall annually update the contact information provided to the department under paragraph (b) of this subsection.

(3)(a) A limited license issued under this section is valid for two years unless suspended or revoked by the department.

(b) A limited license may be renewed upon expiration for another two-year period upon application of the vendor and payment of a fee as prescribed by the department by rule.

(4) A vendor licensed under this section may not advertise, represent or otherwise hold itself out as being licensed to sell any other type of insurance unless the vendor is actually licensed under the laws of this state to sell the other type of insurance. [2011 c.393 §2]

646A.580 Cost of coverage; billing requirements; remission to insurer or supervising entity; funds held in trust; compensation. (1) A vendor policyholder may bill and collect the cost of portable electronics insurance coverage purchased by an enrolled customer. Any charge to the enrolled customer for coverage that is not included in the cost to the enrolled customer

to purchase or lease portable electronics must be separately itemized in writing. If the coverage is included with the purchase or lease of portable electronics, whether or not the coverage is included in the cost to the enrolled customer of the purchase or lease of the portable electronics, the vendor policyholder shall clearly and conspicuously disclose in writing to the enrolled customer that the coverage is included with the purchase or lease of the portable electronics.

(2) If authorized by an insurer or a supervising entity, a vendor policyholder that bills and collects the cost of portable electronics insurance coverage from an enrolled customer is not required to deposit the amount paid in a segregated account but shall remit the amount collected to the insurer or the supervising entity within 60 days of receipt from the enrolled customer.

(3) Moneys collected by a vendor policyholder from an enrolled customer for the cost of portable electronics insurance coverage are funds held by the vendor policyholder in trust for the benefit of the insurer or the supervising entity.

(4) A vendor policyholder may receive compensation from an insurer or a supervising entity for billing and collecting the cost of portable electronics insurance coverage purchased by enrolled customers.

(5) Vendor policyholders, insurers and supervising entities are not subject to ORS 744.083 and 744.084. [2011 c.393 §3]

646A.582 Written disclosure requirements. A vendor policyholder shall make available to prospective customers of portable electronics written materials that disclose:

(1) That portable electronics insurance coverage may duplicate coverage already held by the customer, including but not limited to homeowner's insurance or renter's insurance;

(2) That issuance of portable electronics insurance coverage is not required for the customer to purchase or lease portable electronics;

(3) The material terms of coverage, including but not limited to:

(a) The identity of and contact information for the insurer or the supervising entity that issued the insurance policy to the vendor policyholder;

(b) The amount of any applicable deductible and how the deductible is required to be paid when a claim is made;

(c) The benefits of coverage; and

(d) Whether the covered portable electronics will be repaired or replaced with a similar make and model, with a new or reconditioned device, accessory or part, or with a device, accessory or part from other than the original manufacturer;

(4) The process and requirements for returning portable electronics, and any fees that will apply in the event the enrolled customer does not comply with the process and requirements; and

(5) That the enrolled customer may cancel the portable electronics insurance coverage at any time and that the person paying the premium shall receive a refund of the unused portion of any amount that has been paid for coverage. A reasonable administrative fee may be charged in an amount not to exceed 10 percent of the refund due. [2011 c.393 §4]

646A.585 Exceptions to license requirement; prohibited representations; acts of employees. (1) An employee, agent or authorized representative of a vendor policyholder may issue, sell or offer for sale portable electronics insurance coverage to a customer without obtaining a limited license under ORS 646A.577 if:

(a) The vendor policyholder has been issued a limited license under ORS 646A.577; and

(b) The insurer or the supervising entity that issued a policy of portable electronics insurance to the vendor policyholder develops a training program for employees, agents and authorized representatives of the vendor policyholder that:

(A) Is completed by employees, agents and authorized representatives of the vendor policyholder who are directly engaged in the issuing, selling or offering for sale of portable electronics insurance coverage to customers;

(B) Includes basic instruction about portable electronics insurance coverage and the disclosures required under ORS 646A.582; and

(C) If delivered electronically, includes a supplementary education program that is conducted and overseen by employees of the insurer or the supervising entity.

(2) An employee, agent or authorized representative of a vendor policyholder who is authorized to issue, sell or offer for sale portable electronics insurance coverage under this section may not advertise, represent or otherwise hold themselves out as holding a limited license under ORS 646A.577 or being a licensed insurer or insurance producer as those terms are defined in ORS 731.104 and 731.106 unless the employee, agent or authorized representative has been issued a limited license or is licensed as an insurer or insurance producer under the laws of this state.

(3) The acts of an employee, agent or authorized representative of a vendor policyholder who is authorized to issue, sell or offer for sale portable electronics insurance coverage under this section are deemed to be the acts of the vendor policyholder for purposes of ORS 646A.575 to 646A.590. [2011 c.393 §5]

646A.588 Restrictions on modification or termination of coverage; notice. (1) Except as provided in subsections (2) and (3) of this section, the insurer or the supervising entity that has issued a policy of portable electronics insurance to a vendor policyholder may not modify or terminate the terms and conditions of the policy unless the insurer or the supervising entity:

(a) Provides the vendor policyholder and enrolled customers with notice of the modification or termination not less than 60 days prior to the effective date of the modification or termination; and

(b) In the event of a modification only, provides:

(A) The vendor policyholder with a revised policy or endorsement evidencing the modification; and

(B) Each enrolled customer with a revised certificate, endorsement or other evidence of a change in terms and conditions, updated written materials and a summary of the material changes to the terms and conditions of coverage.

(2)(a) An insurer or a supervising entity may terminate an enrolled customer's portable electronics insurance coverage:

(A) Upon discovery of fraud or material misrepresentation made by the enrolled customer in obtaining the coverage or in the presentation of a claim; or

(B) For nonpayment of a premium.

(b) The insurer or the supervising entity must notify the enrolled customer at least 15 days before a termination under this subsection.

(3) An insurer or a supervising entity may immediately terminate an enrolled customer's portable electronics insurance coverage if the enrolled customer ceases to have active wireless service with the vendor policyholder or the enrolled customer exhausts the aggregate limit of liability, and the insurer or the supervising entity sends notice of termination to the enrolled customer within 30 days after the active service ceases or the limit has been exhausted.

(4) A vendor policyholder that has issued portable electronics insurance coverage to an enrolled customer may not terminate the coverage unless the vendor policyholder provides the enrolled customer with notice of the termination not less than 30 days prior to the effective date of the termination.

(5)(a) Notice to a vendor policyholder or enrolled customer that is required under this section may either be sent as an electronic record in accordance with ORS 84.001 to 84.061 and 84.070, or:

(A) In the case of a vendor policyholder, mailed by registered or certified mail or delivered to the vendor policyholder at the vendor policyholder's principal place of business in this state; or

(B) In the case of an enrolled customer, mailed by registered or certified mail to the enrolled customer's last known mailing address.

(b) An insurer, a supervising entity or a vendor policyholder providing notice under this section must maintain proof of providing the notice for a minimum of three years after the termination of the portable electronics insurance coverage. [2011 c.393 §6]

646A.590 Rules. The Department of Consumer and Business Services shall adopt rules to carry out the provisions of ORS 646A.575 to 646A.590. [2011 c.393 §7]

646A.592 Enforcement. In addition to all other penalties and enforcement provisions provided by law, if a person violates a provision of ORS 646A.575 to 646A.590 or a rule adopted by the Department of Consumer and Business Services under ORS 646A.590, the department may:

(1) Suspend or revoke the person's limited license issued under ORS 646A.577;

(2) Modify the terms of the person's limited license issued under ORS 646A.577 to limit:

(a) The locations at which a vendor policyholder may issue, sell or offer for sale portable electronics insurance coverage; or

(b) The ability of employees, agents or authorized representatives of the vendor policyholder to issue, sell or offer for sale portable electronics insurance coverage; and

(3) Impose a civil penalty in the manner provided in ORS 183.745 not to exceed $1,000 per violation or $10,000 for multiple violations. [2011 c.393 §8]

IDENTITY THEFT PREVENTION

646A.600 Short title. ORS 646A.600 to 646A.628 shall be known as the Oregon Consumer Identity Theft Protection Act. [2007 c.759 §1]

646A.602 Definitions for ORS 646A.600 to 646A.628. As used in ORS 646A.600 to 646A.628:

(1)(a) "Breach of security" means unauthorized acquisition of computerized data

that materially compromises the security, confidentiality or integrity of personal information maintained by the person.

(b) "Breach of security" does not include good-faith acquisition of personal information by a person or that person's employee or agent for a legitimate purpose of that person if the personal information is not used in violation of applicable law or in a manner that harms or poses an actual threat to the security, confidentiality or integrity of the personal information.

(2) "Consumer" means an individual who is also a resident of this state.

(3) "Consumer report" means a consumer report as described in section 603(d) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(d)), as that Act existed on October 1, 2007, that is compiled and maintained by a consumer reporting agency.

(4) "Consumer reporting agency" means a consumer reporting agency as described in section 603(p) of the federal Fair Credit Reporting Act (15 U.S.C. 1681a(p)) as that Act existed on October 1, 2007.

(5) "Debt" means any obligation or alleged obligation arising out of a consumer transaction, as defined in ORS 646.639.

(6) "Encryption" means the use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without the use of a confidential process or key.

(7) "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.

(8) "Identity theft" has the meaning set forth in ORS 165.800.

(9) "Identity theft declaration" means a completed and signed statement documenting alleged identity theft, using the form available from the Federal Trade Commission, or another substantially similar form.

(10) "Person" means any individual, private or public corporation, partnership, cooperative, association, estate, limited liability company, organization or other entity, whether or not organized to operate at a profit, or a public body as defined in ORS 174.109.

(11) "Personal information":

(a) Means a consumer's first name or first initial and last name in combination with any one or more of the following data elements, when the data elements are not rendered unusable through encryption, redaction or other methods, or when the data elements are encrypted and the encryption key has also been acquired:

(A) Social Security number;

(B) Driver license number or state identification card number issued by the Department of Transportation;

(C) Passport number or other United States issued identification number; or

(D) Financial account number, credit or debit card number, in combination with any required security code, access code or password that would permit access to a consumer's financial account.

(b) Means any of the data elements or any combination of the data elements described in paragraph (a) of this subsection when not combined with the consumer's first name or first initial and last name and when the data elements are not rendered unusable through encryption, redaction or other methods, if the information obtained would be sufficient to permit a person to commit identity theft against the consumer whose information was compromised.

(c) Does not include information, other than a Social Security number, in a federal, state or local government record that is lawfully made available to the public.

(12) "Redacted" means altered or truncated so that no more than the last four digits of a Social Security number, driver license number, state identification card number, account number or credit or debit card number is accessible as part of the data.

(13) "Security freeze" means a notice placed in a consumer report, at the request of a consumer and subject to certain exemptions, that prohibits the consumer reporting agency from releasing the consumer report for the extension of credit unless the consumer has temporarily lifted or removed the freeze. [2007 c.759 §2]

646A.604 Notice of breach of security; delay; methods of notification; contents of notice; application of notice requirement. (1) Any person that owns, maintains or otherwise possesses data that includes a consumer's personal information that is used in the course of the person's business, vocation, occupation or volunteer activities and was subject to a breach of security shall give notice of the breach of security following discovery of such breach of security, or receipt of notification under subsection (2) of this section, to any consumer whose personal information was included in the information that was breached. The disclosure notification shall be made in the most expeditious time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement as provided in subsection (3) of this section, and consistent with any measures necessary to determine sufficient contact information for the consumers,

determine the scope of the breach and restore the reasonable integrity, security and confidentiality of the data.

(2) Any person that maintains or otherwise possesses personal information on behalf of another person shall notify the owner or licensor of the information of any breach of security immediately following discovery of such breach of security if a consumer's personal information was included in the information that was breached.

(3) The notification to the consumer required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation and that agency has made a written request that the notification be delayed. The notification required by this section shall be made after that law enforcement agency determines that its disclosure will not compromise the investigation and notifies the person in writing.

(4) For purposes of this section, notification to the consumer may be provided by one of the following methods:

(a) Written notice.

(b) Electronic notice if the person's customary method of communication with the consumer is by electronic means or is consistent with the provisions regarding electronic records and signatures set forth in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001) as that Act existed on October 1, 2007.

(c) Telephone notice, provided that contact is made directly with the affected consumer.

(d) Substitute notice, if the person demonstrates that the cost of providing notice would exceed $250,000, that the affected class of consumers to be notified exceeds 350,000, or if the person does not have sufficient contact information to provide notice. Substitute notice consists of the following:

(A) Conspicuous posting of the notice or a link to the notice on the Internet home page of the person if the person maintains one; and

(B) Notification to major statewide television and newspaper media.

(5) Notice under this section shall include at a minimum:

(a) A description of the incident in general terms;

(b) The approximate date of the breach of security;

(c) The type of personal information obtained as a result of the breach of security;

(d) Contact information of the person subject to this section;

(e) Contact information for national consumer reporting agencies; and

(f) Advice to the consumer to report suspected identity theft to law enforcement, including the Federal Trade Commission.

(6) If a person discovers a breach of security affecting more than 1,000 consumers that requires disclosure under this section, the person shall notify, without unreasonable delay, all consumer reporting agencies that compile and maintain reports on consumers on a nationwide basis of the timing, distribution and content of the notification given by the person to the consumers. In no case shall a person that is required to make a notification required by this section delay any notification in order to make the notification to the consumer reporting agencies. The person shall include the police report number, if available, in its notification to the consumer reporting agencies.

(7) Notwithstanding subsection (1) of this section, notification is not required if, after an appropriate investigation or after consultation with relevant federal, state or local agencies responsible for law enforcement, the person determines that no reasonable likelihood of harm to the consumers whose personal information has been acquired has resulted or will result from the breach. Such a determination must be documented in writing and the documentation must be maintained for five years.

(8) This section does not apply to:

(a) A person that complies with the notification requirements or breach of security procedures that provide greater protection to personal information and at least as thorough disclosure requirements pursuant to the rules, regulations, procedures, guidance or guidelines established by the person's primary or functional federal regulator.

(b) A person that complies with a state or federal law that provides greater protection to personal information and at least as thorough disclosure requirements for breach of security of personal information than that provided by this section.

(c) A person that is subject to and complies with regulations promulgated pursuant to Title V of the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. 6801 to 6809) as that Act existed on October 1, 2007. [2007 c.759 §3]

646A.606 Security freeze; requirements; effect. (1) A consumer may elect to place a security freeze on the consumer's consumer report by sending a written request to a consumer reporting agency at an address designated by the agency to receive such requests, or a secure electronic request at a website designated by the agency to receive such requests if such method is made

available by the consumer reporting agency at the agency's discretion.

(2) If the consumer is the victim of identity theft or has reported to a law enforcement agency the theft of personal information, the consumer may include a copy of the police report, incident report or identity theft declaration.

(3) The consumer must provide proper identification and any fee authorized by ORS 646A.610.

(4) Except as provided in ORS 646A.614, if a security freeze is in place, information from a consumer report may not be released without prior express authorization from the consumer.

(5) This section does not prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to the consumer report. [2007 c.759 §4]

646A.608 Deadline for placement of security freeze; confirmation; personal identification number; lifting and removal; fees. (1) A consumer reporting agency shall place a security freeze on a consumer report no later than five business days after receiving from the consumer:

(a) The request described in ORS 646A.606 (1);

(b) Proper identification; and

(c) A fee, if applicable.

(2) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer, to the last known address for the consumer as contained in the consumer report maintained by the consumer reporting agency, within 10 business days after placing the freeze and, with the confirmation, shall provide the consumer with a unique personal identification number or password or similar device to be used by the consumer when providing authorization for release of the consumer's consumer report for a specific period of time or for permanently removing the security freeze. The consumer reporting agency shall also include with such written confirmation information regarding the process of lifting a freeze, and the process of temporarily lifting a freeze for allowing access to information from the consumer's credit report for a period of time while the freeze is in place.

(3) If a consumer wishes to allow the consumer's consumer report to be accessed for a specific period of time while a freeze is in effect, the consumer shall contact the consumer reporting agency using a point of contact designated by the consumer reporting agency, request that the freeze be temporarily lifted and provide the following:

(a) Proper identification;

(b) The unique personal identification number or password or similar device provided by the consumer reporting agency pursuant to subsection (2) of this section;

(c) The information regarding the time period for which the consumer report shall be available to users of the credit report; and

(d) A fee, if applicable.

(4) A consumer reporting agency that receives a request from the consumer to temporarily lift a freeze on a credit report pursuant to subsection (3) of this section shall comply with the request no later than three business days after receiving from the consumer:

(a) Proper identification;

(b) The unique personal identification number or password or similar device provided by the consumer reporting agency pursuant to subsection (2) of this section;

(c) The information regarding the time period for which the consumer report shall be available; and

(d) A fee, if applicable.

(5) A security freeze shall remain in place until the consumer requests, using a point of contact designated by the consumer reporting agency, that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer, who provides:

(a) Proper identification;

(b) The unique personal identification number or password or similar device provided by the consumer reporting agency pursuant to subsection (2) of this section; and

(c) A fee, if applicable.

(6) No later than December 31, 2008, the Director of the Department of Consumer and Business Services shall report to the chairs of the legislative committees that considered ORS 646A.600 to 646A.628 concerning the minimum amount of time necessary, using current technology, to place, temporarily lift or remove a freeze on a consumer report, and to verify a consumer's identity. If the chair of any legislative committee is vacant at the time of making the report, the report shall also be made to the President of the Senate and the Speaker of the House of Representatives. [2007 c.759 §5]

646A.610 Permissible fees. (1) A consumer reporting agency may not charge a fee to a consumer who is the victim of identity theft or who has reported to a law enforcement agency the theft of personal information, provided the consumer has submitted to the consumer reporting agency a copy of a

valid police report, incident report or identity theft declaration.

(2) A consumer reporting agency may charge a reasonable fee of no more than $10 to a consumer, other than a consumer described in subsection (1) of this section, for each freeze, temporary lift of the freeze, removal of the freeze or replacing a lost personal identification number or password previously provided to the consumer, regarding access to a consumer credit report. [2007 c.759 §6]

646A.612 Conditions for lifting or removing security freeze. A consumer reporting agency shall temporarily lift or remove a freeze placed on a consumer's credit report only in the following cases:

(1) Upon the consumer's request, pursuant to ORS 646A.608 (3) or (5).

(2) If the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer, the consumer reporting agency may remove the security freeze. If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subsection, the consumer reporting agency shall notify the consumer in writing at least five business days prior to removing the freeze placed on the consumer report. [2007 c.759 §7]

646A.614 Effect of security freeze on use of consumer reports. The provisions of ORS 646A.606 to 646A.610 do not apply to the use of a consumer report by or for any of the following:

(1) A person, or the person's subsidiary, affiliate, agent or assignee with which the consumer has or, prior to assignment, had an account, contract or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract or debtor-creditor relationship. For purposes of this subsection, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases and account upgrades and enhancements;

(2) Any person acting pursuant to a judgment, court order, warrant or subpoena;

(3) A federal, state or local governmental entity, including a law enforcement agency or court, or their agents or assignees, acting to investigate fraud or acting to investigate or collect delinquent taxes or unpaid judgments or court orders or to fulfill their statutory or regulatory duties provided such responsibilities are consistent with a permissible purpose under section 604 of the federal Fair Credit Reporting Act (15 U.S.C. 1681b) as that Act existed on October 1, 2007;

(4) The use of credit information for the purposes of prescreening as provided by the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) as that Act existed on October 1, 2007;

(5) Any person for the sole purpose of providing a credit file monitoring subscription service, or similar service to which the consumer has subscribed;

(6) A consumer reporting agency for the sole purpose of providing a consumer with a copy of the consumer's consumer report upon the consumer's request;

(7) Any person or entity for the use of setting or adjusting rates, for claims handling or underwriting for insurance purposes, to the extent permitted by law;

(8) A subsidiary, affiliate, agent, assignee or prospective assignee of a person to whom access has been granted under ORS 646A.608 (3) for purposes of facilitating the extension of credit or other permissible use;

(9) A child support agency acting pursuant to Title IV-D of the Social Security Act (42 U.S.C. 651 et seq.) as that Act existed on October 1, 2007; and

(10) A person for the sole purpose of screening an applicant for a residential dwelling unit as described in ORS 90.295 (1). [2007 c.759 §8]

646A.616 Effect of request for consumer report subject to security freeze. If a third party requests access to a consumer report on which a security freeze is in effect, the request is in connection with an application for credit or any other use, the consumer does not allow the consumer's consumer report to be accessed for that period of time, and the third party cannot obtain the consumer report through ORS 646A.614, the third party may treat the application as incomplete. [2007 c.759 §9]

646A.618 Prohibition on changes to consumer report subject to security freeze; entities subject to requirement to place security freeze. (1) If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a consumer credit report without sending a written confirmation of the change to the consumer within 30 days of the change being posted to the consumer's report: name, date of birth, Social Security number and address. Written confirmation is not required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and to the former address.

(2) The following entities are not required to place a security freeze on a credit report:

(a) A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer reporting agencies, and does not maintain a database of credit information from which new consumer credit reports are produced. However, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a consumer report by another consumer reporting agency.

(b) A check services or fraud prevention services company that issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers or similar methods of payments.

(c) A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse or similar negative information regarding a consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution. [2007 c.759 §10]

646A.620 Prohibition on printing, displaying or posting Social Security numbers; exemptions. (1) Except as otherwise specifically provided by law a person shall not:

(a) Print a consumer's Social Security number on any materials not requested by the consumer or part of the documentation of a transaction or service requested by the consumer that are mailed to the consumer unless redacted;

(b) Print a consumer's Social Security number on any card required for the consumer to access products or services provided by the person; or

(c) Publicly post or publicly display a consumer's Social Security number unless redacted. As used in this paragraph, "publicly post or publicly display" means to communicate or otherwise make available to the public.

(2) This section does not prevent the collection, use, or release of a Social Security number as required by state or federal law, including statute, Oregon Rules of Civil Procedure or rule adopted by the Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals or the judge of the Oregon Tax Court, or the use or printing of a Social Security number for internal verification or administrative purposes or for enforcement of a judgment or court order.

(3) This section does not apply to records that are required by state or federal law, including statute, Oregon Rules of Civil Procedure or rule adopted by the Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals or the judge of the Oregon Tax Court, to be made available to the public.

(4) This section does not apply to a Social Security number in any of the following records or copies of records in any form or storage medium maintained or otherwise possessed by a court, the State Court Administrator or the Secretary of State:

(a) A record received on or before October 1, 2007;

(b) A record received after October 1, 2007, if, by state or federal statute or rule, the person that submitted the record could have caused the record to be filed or maintained in a manner that protected the Social Security number from public disclosure; or

(c) A record, regardless of the date created or received, that is:

(A) An accusatory instrument charging a violation or crime;

(B) A record of oral proceedings in a court;

(C) An exhibit offered as evidence in a proceeding; or

(D) A judgment or court order. [2007 c.759 §11]

646A.622 Requirement to develop safeguards for personal information; conduct deemed to comply with requirement. (1) Any person that owns, maintains or otherwise possesses data that includes a consumer's personal information that is used in the course of the person's business, vocation, occupation or volunteer activities must develop, implement and maintain reasonable safeguards to protect the security, confidentiality and integrity of the personal information, including disposal of the data.

(2) The following shall be deemed in compliance with subsection (1) of this section:

(a) A person that complies with a state or federal law providing greater protection to personal information than that provided by this section.

(b) A person that is subject to and complies with regulations promulgated pursuant to Title V of the Gramm-Leach-Bliley Act of 1999 (15 U.S.C. 6801 to 6809) as that Act existed on October 1, 2007.

(c) A person that is subject to and complies with regulations implementing the Health Insurance Portability and Accountability Act of 1996 (45 C.F.R. parts 160 and 164) as that Act existed on October 1, 2007.

(d) A person that implements an information security program that includes the following:

(A) Administrative safeguards such as the following, in which the person:

(i) Designates one or more employees to coordinate the security program;

(ii) Identifies reasonably foreseeable internal and external risks;

(iii) Assesses the sufficiency of safeguards in place to control the identified risks;

(iv) Trains and manages employees in the security program practices and procedures;

(v) Selects service providers capable of maintaining appropriate safeguards, and requires those safeguards by contract; and

(vi) Adjusts the security program in light of business changes or new circumstances;

(B) Technical safeguards such as the following, in which the person:

(i) Assesses risks in network and software design;

(ii) Assesses risks in information processing, transmission and storage;

(iii) Detects, prevents and responds to attacks or system failures; and

(iv) Regularly tests and monitors the effectiveness of key controls, systems and procedures; and

(C) Physical safeguards such as the following, in which the person:

(i) Assesses risks of information storage and disposal;

(ii) Detects, prevents and responds to intrusions;

(iii) Protects against unauthorized access to or use of personal information during or after the collection, transportation and destruction or disposal of the information; and

(iv) Disposes of personal information after it is no longer needed for business purposes or as required by local, state or federal law by burning, pulverizing, shredding or modifying a physical record and by destroying or erasing electronic media so that the information cannot be read or reconstructed.

(3) A person complies with subsection (2)(d)(C)(iv) of this section if the person contracts with another person engaged in the business of record destruction to dispose of personal information in a manner consistent with subsection (2)(d)(C)(iv) of this section.

(4) Notwithstanding subsection (2) of this section, a person that is an owner of a small business as defined in ORS 285B.123 (2) complies with subsection (1) of this section if the person's information security and disposal program contains administrative, technical and physical safeguards and disposal measures appropriate to the size and complexity of the small business, the nature and scope of its activities, and the sensitivity of the personal information collected from or about consumers. [2007 c.759 §12]

646A.624 Powers of director; penalties. (1) The Director of the Department of Consumer and Business Services may:

(a) Make such public or private investigations within or outside this state as the director deems necessary to determine whether a person has violated any provision of ORS 646A.600 to 646A.628, or to aid in the enforcement of ORS 646A.600 to 646A.628.

(b) Require or permit a person to file a statement in writing, under oath or otherwise as the director determines, as to all the facts and circumstances concerning the matter to be investigated.

(c) Administer oaths and affirmations, subpoena witnesses, compel attendance, take evidence and require the production of books, papers, correspondence, memoranda, agreements or other documents or records that the director deems 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).

(2) If a person fails to comply with a subpoena so issued or a party or witness refuses to testify on any matters, the judge of the circuit court or of 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.

(3) If the director has reason to believe that any person has engaged or is engaging in any violation of ORS 646A.600 to 646A.628, the director may issue an order, subject to ORS chapter 183, directed to the person to cease and desist from the violation, or require the person to pay compensation to consumers injured by the violation. The director may order compensation to consumers only upon a finding that enforcement of the rights of the consumers by private civil action would be so burdensome or expensive as to be impractical.

(4)(a) In addition to all other penalties and enforcement provisions provided by law, any person who violates or who procures, aids or abets in the violation of ORS 646A.600 to 646A.628 shall be subject to a penalty of not more than $1,000 for every violation, which shall be paid to the General Fund of the State Treasury.

(b) Every violation is a separate offense and, in the case of a continuing violation,

each day's continuance is a separate violation, but the maximum penalty for any occurrence shall not exceed $500,000.

(c) Civil penalties under this section shall be imposed as provided in ORS 183.745. [2007 c.759 §13]

646A.626 Rules. In accordance with ORS chapter 183, the Director of the Department of Consumer and Business Services may adopt rules for the purpose of carrying out the provisions of ORS 646A.600 to 646A.628. [2007 c.759 §14]

646A.628 Allocation of moneys. Notwithstanding ORS 705.145 (2), (3) and (5), the Director of the Department of Consumer and Business Services can allocate as deemed appropriate the moneys derived pursuant to ORS 86A.095 to 86A.198, 86A.990, 86A.992, 650.005 to 650.100, 697.005 to 697.095, 697.602 to 697.842, 705.350 and 717.200 to 717.320 and 731.804 and ORS chapters 59, 645, 706 to 716, 723, 725 and 726 to implement ORS 646A.600 to 646A.628. [2007 c.759 §15; 2009 c.541 §23; 2009 c.604 §24]

MORTGAGE RESCUE FRAUD PREVENTION ACT

(Foreclosure Consultants)

646A.700 Short title. ORS 646A.702 to 646A.720 and 646A.725 to 646A.750 may be cited as the Mortgage Rescue Fraud Protection Act. [2008 c.19 §1]

646A.702 Definitions for ORS 646A.702 to 646A.720. As used in ORS 646A.702 to 646A.720:

(1) "Default" means having one or more homeowner obligations in arrears to an extent that a notice of default could properly be recorded against the residence.

(2) "Family" means a spouse, domestic partner, parent, stepparent, grandparent, child, stepchild, grandchild, sibling, aunt, uncle, cousin or in-law.

(3) "Foreclosure consultant," except as provided in ORS 646A.705, means a person that directly or through association with another makes a solicitation, representation or offer to a homeowner to perform, for or with the intent to receive compensation from or on behalf of the homeowner, a service that the solicitation, representation or offer indicates will accomplish one or more of the following:

(a) Prevent, postpone or stop a foreclosure sale.

(b) Obtain a forbearance from a beneficiary or mortgagee.

(c) Assist the homeowner in exercising a right of redemption.

(d) Obtain an extension of the period within which the homeowner may reinstate the homeowner's obligation.

(e) Obtain the waiver of an acceleration clause that is:

(A) Contained in a promissory note or contract; and

(B) Secured by or contained in a deed of trust for, or mortgage on, a residence in foreclosure or in default.

(f) Assist the homeowner in obtaining a loan or advance of funds.

(g) Avoid or ameliorate an impairment of the homeowner's credit resulting from a recorded notice of foreclosure or default.

(4) "Foreclosure consulting contract" means an agreement between a foreclosure consultant and a homeowner for the provision of services by a foreclosure consultant in regard to a residence in foreclosure or in default.

(5) "Homeowner" means the record owner of a residence.

(6) "Residence in foreclosure" means residential real property:

(a) Consisting of one to four single-family dwelling units;

(b) On which the owner occupies a dwelling unit; and

(c) Against which a notice of default has been recorded. [2008 c.19 §2]

646A.705 Persons that are not foreclosure consultants. The following are not foreclosure consultants for purposes of ORS 646A.702 to 646A.720:

(1) An individual licensed to practice law in this state, if performing services within an attorney-client relationship.

(2) A person that holds or is owed an obligation that is secured by a lien on a residence in foreclosure or default, if performing services in connection with the obligation or lien.

(3) A person doing business under authority of an Oregon or federal law regulating banks, trust companies, savings and loan associations, credit unions or insurance companies, or as a licensee under ORS chapter 725, if performing business services within the scope of that authority or license.

(4) A subsidiary, affiliate or agent of a person described in subsection (3) of this section, if performing business services within the scope of the person's authority or license as the person's subsidiary, affiliate or agent.

(5) The judgment creditor of a homeowner, if the creditor's claim accrued before a notice of sale was sent to the creditor under ORS 86.740.

(6) A title insurer authorized to conduct business in Oregon or an insurance producer licensed to conduct business in Oregon, if performing title insurance or settlement services within the scope of that authority or license.

(7) A mortgage broker or mortgage lender licensed under ORS 86A.095 to 86A.198 to conduct business in Oregon, if acting within the scope of that license.

(8) A real estate licensee under ORS 696.022 or an escrow agent licensed under ORS 696.511, if acting within the scope of that license.

(9) A tax-exempt organization that offers counseling or advice to homeowners in foreclosure, if the organization:

(a) Is not directly or indirectly related to for-profit lenders or foreclosure purchasers;

(b) Does not contract to provide services to or receive services from for-profit lenders or foreclosure purchasers; and

(c) Has provided counseling or advice to homeowners for five years or more.

(10) A creditors' committee, trustee or debtor in possession participating in a proceeding under the jurisdiction of the United States Bankruptcy Court.

(11) Any person whose employment with regard to a residential real property matter under the jurisdiction of the United States Bankruptcy Court is approved by order of the bankruptcy court.

(12) A person that is a member of the homeowner's family or is owned or controlled by a member of the homeowner's family. [2008 c.19 §3; 2011 c.9 §83]

646A.710 Foreclosure consulting contract; requirements; void provisions. (1) A written foreclosure consulting contract is required for any services that a foreclosure consultant provides to a homeowner. A foreclosure consultant shall provide a homeowner with a copy of the foreclosure consulting contract at least 24 hours before the homeowner signs the contract. The foreclosure consulting contract must:

(a) Be written in a language that is spoken by the homeowner and that was used in discussions between the homeowner and foreclosure consultant to describe the foreclosure consultant's services or to negotiate the contract and, except as provided in paragraph (f) of this subsection, be printed in at least 12-point type.

(b) Fully disclose the nature and extent of the services the foreclosure consultant is to provide.

(c) Fully disclose the terms and total amount of any compensation the foreclosure consultant or a person working in association with the foreclosure consultant is to receive.

(d) Be dated and personally signed by the homeowner and the foreclosure consultant.

(e) Contain on the first page the name and address, facsimile number and electronic mail address of the foreclosure consultant to which a notice of cancellation may be delivered.

(f) Contain, in immediate proximity to the space reserved for the homeowner's signature, a notice in substantially the following form and printed in at least 14-point boldfaced type:

NOTICE REQUIRED BY OREGON LAW

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME. YOU SHOULD CONTACT A LAWYER OR OTHER PROFESSIONAL ADVISER BEFORE SIGNING.

YOU MAY CANCEL THIS CONTRACT AT ANY TIME.

If you cancel, you must pay for any services that were provided under this contract before the cancellation and repay any money spent on your behalf under this contract. You have 60 days after cancellation to pay for services and to repay any money spent on your behalf. You must also pay any interest allowed by this contract, which may not exceed nine percent per year.

_____ (name of foreclosure consultant) or any person working with _____ (name of foreclosure consultant) CANNOT ask you to sign or have you sign any lien, mortgage or deed that transfers an interest in your home or property to _____ (name of foreclosure consultant) or any person working with _____ (name of foreclosure consultant).

_____ (name of foreclosure consultant) or any person working with _____ (name of foreclosure consultant) CANNOT guarantee you that they will be able to refinance your home or arrange for you to keep your home.

The law requires that this contract contain the entire agreement. You should not rely

on any other written or oral agreement or promise.

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(2) A foreclosure consulting contract provision is void if the provision provides for the homeowner to:

(a) Waive any rights of the homeowner under ORS 646A.702 to 646A.720;

(b) Consent to jurisdiction for litigation or dispute resolution in a state other than Oregon;

(c) Consent to a choice of laws provision that applies the laws of a state other than Oregon;

(d) Consent to venue in a county other than the county in which the residence in foreclosure or default is located; or

(e) Pay any costs or fees incurred by the foreclosure consultant to enforce the contract, other than court costs and filing fees incurred in a successful circuit court action. [2008 c.19 §4]

646A.715 Cancellation; effective date; payment for services provided before cancellation or breach; form; sufficiency of notice. (1) In addition to any other cancellation or rescission right, a homeowner may cancel a foreclosure consulting contract as provided under this section at any time.

(2) Cancellation under this section occurs when the homeowner gives written notice of cancellation to the foreclosure consultant:

(a) At a physical address specified in the foreclosure consulting contract; or

(b) At a facsimile number or electronic mail address specified in the foreclosure consulting contract.

(3)(a) If the homeowner gives written notice of cancellation under this section by mail, the notice is effective when deposited in the United States mail with the proper address and postage.

(b) If the homeowner gives written notice of cancellation under this section by facsimile or electronic mail, the notice is effective upon receipt. Proof of a transmission by the homeowner to the facsimile number or electronic mail address specified in the foreclosure consulting contract creates a rebuttable presumption that the foreclosure consultant received the notice at the time of the transmission.

(4) A homeowner who cancels or breaches a foreclosure consulting contract under this section shall, no later than 60 days after the cancellation or breach, pay for any services performed in good faith under the contract by or on behalf of the foreclosure consultant prior to the cancellation or breach and repay any moneys paid or advanced under the contract by or on behalf of the foreclosure consultant. The homeowner shall also pay any interest allowed by the foreclosure consulting contract, not to exceed nine percent per year.

(5) Failure of the homeowner to repay moneys as provided in subsection (4) of this section does not invalidate the cancellation of the foreclosure consulting contract.

(6) When both parties have signed the foreclosure consulting contract, the foreclosure consultant shall immediately provide the homeowner with a signed and dated copy of the contract and a cancellation form. The cancellation form must:

(a) Be in duplicate;

(b) Be on a separate sheet of paper attached to the foreclosure consulting contract;

(c) Be easily detachable; and

(d) Contain a statement in substantially the following form and printed in at least 14-point boldfaced type:

HOW TO CANCEL

_____ (Date of Contract)

YOU MAY CANCEL THIS CONTRACT WITHOUT PENALTY AT ANY TIME.

To cancel the contract, mail or deliver a signed and dated copy of this Notice of Cancellation, or write something saying you want to cancel, and send it to _____ (name of foreclosure consultant) at _____ (address of foreclosure consultant). You can cancel by fax or e-mail. Send any cancellation by fax to _____ or any cancellation by e-mail to _____.

If you cancel, you must pay for any services that were provided under the contract before the cancellation and repay any money spent on your behalf under the contract. You have 60 days after cancellation to pay for services and to repay any money spent on your behalf. You must also pay any interest allowed under the contract, which may not exceed nine percent per year.

NOTICE OF CANCELLATION

TO: _____ (name of foreclosure consultant)

_____ (address, fax or e-mail of foreclosure consultant)

I cancel this contract.

Date: _____

Your (homeowner's) printed name and address:

_____

Your (homeowner's) signature:

_____

_____

(7) A written notice of cancellation under this section is sufficient, however expressed, if the notice indicates the intent of the homeowner to cancel the foreclosure consulting contract. The contract may not require the homeowner to use the notice of cancellation form set forth in subsection (6) of this section. [2008 c.19 §5]

646A.720 Prohibited acts of foreclosure consultant. A foreclosure consultant may not:

(1) Claim, demand, charge, collect or receive any compensation from a homeowner unless the foreclosure consultant has performed in good faith under the contract:

(a) Each service the foreclosure consultant contracted to perform for the homeowner; or

(b) Each service to be compensated, prior to the homeowner canceling or breaching the contract.

(2) Claim, demand, charge, collect or receive interest or other compensation that exceeds nine percent per year on any services performed, any loan by the foreclosure consultant to the homeowner or any moneys paid or advanced to the homeowner under the foreclosure consulting contract.

(3) Take a wage assignment, lien on real or personal property or other security for the payment of compensation.

(4) Receive consideration from a third party in connection with services provided by a foreclosure consultant to a homeowner, unless the consideration is first fully disclosed in writing to the homeowner.

(5) Directly or indirectly acquire an interest in a residence in foreclosure or default transferred by a homeowner with whom the foreclosure consultant has contracted, including any interest transferred to or through a member of the foreclosure consultant's family or to or through a subsidiary, affiliate or related entity in which the foreclosure consultant or a member of the foreclosure consultant's family is a primary member, shareholder or owner.

(6) Receive compensation from a third party for facilitating or arranging for entry into an equity conveyance as defined in ORS 646A.725 by a homeowner with whom the foreclosure consultant has contracted.

(7) Facilitate or arrange for entry into an equity conveyance as defined in ORS 646A.725 by a homeowner with whom the foreclosure consultant has contracted, if the foreclosure consultant knows or should know that the equity purchaser has failed to comply with ORS 646A.735 (1).

(8) Take a power of attorney from a homeowner except for the purpose of obtaining or inspecting documents.

(9) Induce or attempt to induce any homeowner to enter into a foreclosure consulting contract that does not comply in all respects with ORS 646A.702 to 646A.720.

(10) Directly or by implication make a statement or engage in conduct that is false, deceptive, misleading or likely to cause confusion or misunderstanding regarding a:

(a) Foreclosure consultant service;

(b) Foreclosure consulting contract; or

(c) Residence in foreclosure or default. [2008 c.19 §6]

(Equity Conveyances)

646A.725 Definitions for ORS 646A.725 to 646A.750. As used in ORS 646A.725 to 646A.750:

(1) "Bona fide purchaser" means a person that purchases a residential real property from an equity purchaser:

(a) For valuable consideration;

(b) In good faith;

(c) Without knowledge of any continuing right to, or equity in, the property by the equity seller; and

(d) Without knowledge of any violation of ORS 646A.725 to 646A.750 by the equity purchaser regarding the property.

(2) "Business day" does not mean a Saturday or a legal holiday described in ORS 187.010 or 187.020.

(3) "Equity conveyance":

(a) Means a transaction that involves:

(A) The transfer of an interest in a residence in foreclosure by an equity seller to an equity purchaser, or to another person acting in association with the equity purchaser, that allows the equity purchaser or other person to obtain legal or equitable title to all or part of the residential real property; and

(B) A subsequent conveyance, or agreement for a subsequent conveyance, of an interest in the residential real property from the equity purchaser or person acting in association with the equity purchaser to the equity seller to allow the equity seller to possess the property during, or after termination of, the foreclosure process.

(b) Does not mean a transfer of interest by means of a nonjudicial foreclosure sale or by means of a sheriff's sale or other judicial foreclosure action.

(4) "Equity conveyance contract" means a written contract between an equity seller and an equity purchaser that contains an agreement for an equity conveyance.

(5) "Equity purchaser," except as provided in ORS 646A.730, means a person that enters into an equity conveyance that transfers to the person, or to another acting in association with the person, an interest in residential real property sufficient to allow obtaining legal or equitable title to all or part of the property.

(6) "Equity recapture payment" means the resale price for a property, less the following:

(a) Amounts owing as of the closing of the resale for liens or other encumbrances created or suffered by the equity seller.

(b) Amounts paid after the transfer of interest in the property by the equity seller and before the closing of the resale on liens or other encumbrances created or suffered by the equity seller.

(c) Cash received by the equity seller from the equity purchaser under the equity conveyance contract.

(d) Title, escrow and other customary closing costs incurred by the equity purchaser under the equity conveyance contract or because of the resale.

(e) Real estate commissions and charges incurred by the equity purchaser under the equity conveyance contract or because of the resale.

(f) Charges for prorated taxes and homeowner association dues, attributable to a period of time prior to the transfer of interest in the property by the equity seller.

(g) Attorney fees incurred by the equity purchaser under the equity conveyance contract or because of the resale.

(h) Reimbursement of actual repair and maintenance expenses.

(i) Reimbursement for the construction of improvements to the property.

(7) "Equity seller" means a natural person who is the record owner of a residence in foreclosure at the time an interest in the residence is transferred under an equity conveyance to an equity purchaser or to a person acting in association with an equity purchaser.

(8) "Primary housing expenses" means the total amount required to pay regular principal, interest, rent, utilities, hazard insurance, real estate taxes and association dues on a residential real property.

(9) "Resale" means a sale by an equity purchaser to a bona fide purchaser of residential real property that is the subject of an equity conveyance contract.

(10) "Resale price" means the gross sale price of a residential real property upon resale.

(11) "Residence in foreclosure" means residential real property:

(a) Consisting of one to four single-family dwelling units;

(b) On which the owner occupies a dwelling unit; and

(c) Against which a notice of default has been recorded.

(12) "Settlement agent" means a provider of settlement services who:

(a) Is a licensed escrow agent, title insurance agent or attorney; and

(b) Is not the equity purchaser or an employee or associate of the equity purchaser.

(13) "Settlement conference" means an in-person meeting between an equity seller and a settlement agent:

(a) For the purpose of completing documents incident to the transfer of an interest as part of an equity conveyance; and

(b) During which the settlement agent provides the equity seller with the HUD-1 settlement statement used by the United States Department of Housing and Urban Development. [2008 c.19 §9]

646A.730 Persons that are not equity purchasers. The following are not equity purchasers for purposes of ORS 646A.725 to 646A.750:

(1) A party to a deed in lieu of foreclosure.

(2) A creditors' committee, trustee or debtor in possession participating in a proceeding under the jurisdiction of the United States Bankruptcy Court.

(3) Any person whose employment with regard to a residential real property matter under the jurisdiction of the United States Bankruptcy Court is approved by order of the bankruptcy court.

(4) A family or living trust in which the equity seller is the beneficiary or a member of the beneficiary. [2008 c.19 §10]

646A.735 Written contract; requirements; void provisions; power of attorney prohibited. (1) A written contract is required for every equity conveyance. An equity purchaser shall provide an equity seller with a copy of the equity conveyance contract at least 24 hours before the equity

seller signs the contract. The equity conveyance contract must:

(a) Be written in a language that is spoken by the equity seller and that was used in discussions between the equity seller and equity purchaser to describe the equity purchaser's services or to negotiate the terms of the contract and, except as provided in paragraph (f) of this subsection, be printed in at least 12-point type;

(b) Contain the entire agreement of the parties;

(c) Be dated and personally signed by the equity seller and the equity purchaser and witnessed by a notary public;

(d) Contain on the first page the name and address, facsimile number and electronic mail address of the settlement agent to which a notice of cancellation may be delivered;

(e) Describe in detail the terms of the equity conveyance including:

(A) The name and business address, and any telephone number, facsimile number and electronic mail address, of the person to whom the equity seller will transfer an interest in the residence in foreclosure;

(B) The address of the residence in foreclosure;

(C) The total consideration the equity purchaser and any other party are to give as a result of the transfer of interest;

(D) The time at which the interest is to be transferred to the equity purchaser or other person and the terms of the transfer;

(E) Any financial or legal obligations that the equity seller may remain subject to, including a description of any mortgages, liens or other obligations that will remain in place;

(F) Any services the equity purchaser will perform for the equity seller before or after the transfer of interest;

(G)(i) The terms of any post-transfer conveyance or agreement for a conveyance to the equity seller to allow the equity seller to remain in the home, including but not limited to the terms of any rental agreement, repurchase agreement, contract for deed, land installment contract or option to buy; and

(ii) Any provisions for eviction or removal of the equity seller in the case of late payment;

(H) An explanation of how any repurchase price or fee associated with any conveyance of title or deed back to the equity seller will be calculated; and

(I) An explanation of the percentage of any equity recapture payment the equity seller is to receive if the equity seller does not exercise a right to receive back a conveyance of title or deed; and

(f) Contain, in immediate proximity to the space reserved for the equity seller's signature, a notice in substantially the following form and printed in at least 14-point boldfaced type:

NOTICE REQUIRED BY OREGON LAW

THIS IS AN IMPORTANT LEGAL CONTRACT. YOU ARE TRANSFERRING YOUR DEED OR TITLE AND THIS COULD RESULT IN THE PERMANENT LOSS OF YOUR HOME. CONTACT A LAWYER OR OTHER PROFESSIONAL ADVISER BEFORE SIGNING.

YOU MAY CANCEL THIS CONTRACT WITHIN THREE (3) BUSINESS DAYS.

If you cancel, you must pay for services that were provided under this contract before cancellation and repay any money spent on your behalf under this contract. You have 60 days after cancellation to pay for the services and repay any money spent on your behalf. You must also pay any interest allowed by this contract, which may not exceed nine percent per year.

The law requires that this contract contain the entire agreement. You should not rely on any other written or oral agreement or promise.

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(2) An equity conveyance contract provision is void if the provision provides for an equity seller to:

(a) Waive any rights of the equity seller under ORS 646A.725 to 646A.750;

(b) Consent to jurisdiction for litigation or dispute resolution in a state other than Oregon;

(c) Consent to a choice of laws provision that applies the laws of a state other than Oregon;

(d) Consent to venue in a county other than the county in which the residential real property is located; or

(e) Pay any costs or fees that the equity purchaser or a person acting in association with the equity purchaser incurred to enforce the contract, other than court costs and filing fees incurred in a successful circuit court action.

(3) An equity conveyance may not be carried out using a power of attorney from the equity seller to the equity purchaser or a person acting in association with the equity purchaser. [2008 c.19 §11]

646A.740 Cancellation; effective date; rebuttable presumption of delivery; payment for services; form; sufficiency of notice; return of documents. (1) In addition to any other cancellation or rescission right, an equity seller may cancel an equity conveyance contract as provided under this section before the earlier of:

(a) Midnight of the third business day after the equity seller signs a document purporting to transfer an interest in the residence in foreclosure; or

(b) A foreclosure sale of the residence in foreclosure.

(2) If the equity seller gives a written notice of cancellation under this section by mail, the notice is effective upon the earlier of:

(a) Delivery to the physical address of the equity purchaser or settlement agent; or

(b) Actual receipt by the equity purchaser or settlement agent.

(3) If the equity seller gives a written notice of cancellation under this section by facsimile number or electronic mail, the notice is effective upon the earlier of:

(a) Delivery to the facsimile or electronic mail address of the equity purchaser or the settlement agent; or

(b) Actual receipt by the equity purchaser or settlement agent.

(4) Proof of a transmission by the equity seller to the facsimile number or electronic mail address of the equity purchaser or of the settlement agent creates a rebuttable presumption that the notice of cancellation was delivered to the facsimile number or electronic mail address of the equity purchaser or settlement agent at the time of transmission.

(5) An equity seller who cancels or breaches an equity conveyance contract under this section shall, no later than 60 days after the cancellation or breach, pay for any services provided in good faith under the contact prior to the cancellation or breach and repay any moneys paid or advanced under the contract by or on behalf of the equity purchaser. The equity seller shall also pay any interest stated in the equity conveyance contract, not to exceed nine percent per year.

(6) Failure of the equity seller to repay moneys as provided in subsection (5) of this section does not invalidate the cancellation of the equity conveyance contract.

(7) When both parties have signed the equity conveyance contract, the equity purchaser shall immediately provide the equity seller with a signed and dated copy of the contract and a cancellation form. The cancellation form must:

(a) Be in duplicate;

(b) Be on a separate sheet of paper attached to the contract;

(c) Be easily detachable; and

(d) Contain a statement in substantially the following form and be printed in at least 14-point boldfaced type:

HOW TO CANCEL

IF YOU DECIDE NOT TO TRANSFER YOUR DEED OR TITLE, YOU MAY CANCEL THIS CONTRACT.

THE NOTICE OF CANCELLATION MUST BE RECEIVED WITHIN THREE (3) BUSINESS DAYS AFTER YOU SIGNED THE CONTRACT.

Date of Contract: _____

Your notice of cancellation must be received before midnight on: _____ (date).

To cancel the contract, deliver a signed and dated copy of this Notice of Cancellation, or write something saying you want to cancel, and deliver it to _____ (name of settlement agent) at _____ (address of settlement agent). You can cancel by fax or e-mail. Deliver any cancellation by fax to _____ or any cancellation by e-mail to _____.

If you cancel, you must pay for any services that were provided under the contract before you canceled and repay any money spent on your behalf under the contract. You have 60 days after cancellation to pay for the services and repay any money spent on your behalf. You must also pay any interest allowed under the contract, which may not exceed nine percent per year.

NOTICE OF CANCELLATION

TO: _____ (name of settlement agent)

_____ (address, fax and e-mail of settlement agent)

I cancel the contract. Please return all signed documents to me.

Date: _____

Your (homeowner's) printed name and address:

_____

Your (homeowner's) signature:

_____

_____

(8) Notwithstanding subsection (1)(a) of this section, the period during which the equity seller may cancel the equity conveyance contract does not commence until the equity purchaser has complied with subsection (7) of this section.

(9) A notice of cancellation under this section is sufficient, however expressed, if the notice indicates the intent of the equity seller to cancel the equity conveyance contract. The equity conveyance contract may not require the equity seller to use the notice of cancellation form described in subsection (7) of this section.

(10) No later than 10 days after receipt of a notice of cancellation given in accordance with this section, the equity purchaser shall return, without condition, any original deed, title and contract, and any other document of transfer signed by the equity seller. [2008 c.19 §12]

646A.745 Required and prohibited acts. (1) An equity purchaser shall:

(a) Prior to an equity seller signing an equity conveyance contract:

(A) Verify and be able to demonstrate that the equity seller has or will have a reasonable ability to pay for the subsequent reconveyance of the residential real property interest back to the equity seller as provided under the equity conveyance contract; or

(B) If the equity conveyance contract provides for a lease with an option to repurchase the residential real property, verify and be able to demonstrate that the equity seller has or will have a reasonable ability to make the lease payments and repurchase the property within the term of the option to repurchase.

(b) Arrange for the equity seller and the settlement agent to complete a settlement conference before the equity seller transfers any interest under the equity conveyance contract.

(c) Comply with the requirements of the federal Home Ownership and Equity Protection Act (15 U.S.C. 1639) and its implementing regulations for any equity conveyance in which the equity seller obtains a vendee interest in a contract for deed.

(d) Ensure that title to, or other interest in, the residential real property is timely reconveyed to the equity seller as provided under the terms of the equity conveyance contract.

(e) If a residential real property is resold within 24 months after the equity seller enters into an equity conveyance contract, pay the equity seller cash or consideration in an amount equal to at least 82 percent of the equity recapture payment from the resale no later than 15 days after the receipt of cash or consideration from or on behalf of the purchasers of the property.

(f) Timely record the memorandum of agreement required by ORS 646A.750.

(2) An equity purchaser may not:

(a) As part of an equity conveyance contract, enter into repurchase or lease terms that are commercially unreasonable or unfair to an equity seller, or engage in any other unfair conduct.

(b) Represent, directly or indirectly, that the equity purchaser is acting as a financial adviser or foreclosure consultant to the equity seller or otherwise is acting on behalf of the equity seller.

(c) Make a false representation regarding the equity purchaser's possession of professional credentials that indicate knowledge or expertise regarding real property transactions.

(d) Represent, directly or indirectly, that the equity purchaser is assisting the equity seller in preventing a foreclosure, if the equity conveyance contract does not provide for the equity seller to completely redeem the residential real property and regain title.

(e) Directly or by implication make a statement or engage in conduct that is false, deceptive, misleading or likely to cause confusion or misunderstanding regarding an equity conveyance, including but not limited to a statement or conduct with regard to:

(A) The value of a residence in foreclosure;

(B) The amount of proceeds the equity seller would receive after a foreclosure sale;

(C) An equity conveyance contract term; or

(D) The equity seller's rights or obligations incident to or arising out of the equity conveyance.

(f) Before the equity seller's right to cancel an equity conveyance contract has expired:

(A) Record or cause to be recorded an instrument of conveyance or other document the equity seller signed;

(B) Transfer or purport to transfer any interest in the residential real property to any third party; or

(C) Encumber or purport to encumber any interest in the residential real property with any third party. [2008 c.19 §13]

646A.750 Rebuttable presumptions; accounting; bona fide purchaser; memorandum of agreement; form. (1) For purposes of determining whether an equity purchaser has violated ORS 646A.745 (1)(a), there is a rebuttable presumption that:

(a) An equity seller has or will have a reasonable ability to pay for a subsequent reconveyance of a residential real property if, on the date the equity seller signs the equity conveyance contract, the monthly payments projected for the equity seller's primary housing expenses under the contract and monthly payments for regular principal and interest payments on other personal debt do not, in total, exceed 60 percent of the equity seller's monthly gross income.

(b) The equity purchaser has failed to verify that the equity seller has a reasonable ability to pay for a subsequent reconveyance of a property if the equity purchaser has not obtained supporting documents other than a statement by the equity seller of assets, liabilities and income.

(2) If a property is resold within 24 months after an equity seller enters into an equity conveyance contract, at the time of making the equity recapture payment to the equity seller under ORS 646A.745 (1)(e), the equity purchaser shall provide the equity seller with a detailed accounting of the basis for the payment amount. The accounting shall include detailed documentation of the amounts subtracted by the equity purchaser from the resale price to determine the amount of the equity recapture payment.

(3) A bona fide purchaser that enters into a transaction with an equity seller or equity purchaser receives good title to the property, free and clear of:

(a) The rights of the parties to an equity conveyance contract or a memorandum of agreement; or

(b) Any cancellation of the equity conveyance contract.

(4) ORS 646A.725 to 646A.750 do not impose a duty on a property purchaser, settlement agent, title insurer or title insurance producer regarding the application of the proceeds of a resale of property by an equity purchaser.

(5) At the time of presenting an equity conveyance for recording, the equity purchaser shall present a memorandum of agreement for recording in the county where the residential real property is located. The memorandum of agreement must be signed by the equity purchaser and the equity seller, witnessed by a notary public and in substantially the following form:

MEMORANDUM OF AGREEMENT

DATED: _____

SELLER NAME (print): _____

PURCHASER NAME (print): _____

EXPIRATION DATE: _____, unless otherwise extended by written agreement between the parties.

LEGAL DESCRIPTION AND PROPERTY ADDRESS: _____

TERMS OF AGREEMENT: _____

TRUE AND ACTUAL CONSIDERATION IS: _____

SELLER SIGNATURE: _____

PURCHASER SIGNATURE: _____

[2008 c.19 §14]

646A.755 Acts not precluded. ORS 646A.725 to 646A.750 do not preclude an equity seller from:

(1) Seeking to have a transfer of interest under an equity conveyance declared to be an equitable mortgage; or

(2) Asserting any claim against an equity purchaser for an equitable mortgage. [2008 c.19 §15]

646A.760 Civil action for damages; attorney fees and costs; limitation on commencement of action. (1) As used in this section, "equity seller" has the meaning given that term in ORS 646A.725.

(2) In addition to any action by the Attorney General under ORS 646.607 or any other cause of action, an equity seller may bring an action for damages incurred by the equity seller resulting from a violation of ORS 646A.725 to 646A.750.

(3) If a court finds that a defendant in an action under this section committed a violation of ORS 646A.725 to 646A.750 knowingly, in addition to any award of damages for other violations of ORS 646A.725 to 646A.750, the court shall award the equity seller three times the amount of the actual damages sustained by the equity seller as a result of the knowing violation.

(4) The court may award an equity seller prevailing in an action under this section

reasonable attorney fees, costs and expenses. If a court finds that an equity seller brought an action under this section in bad faith or solely for purposes of harassment, the court may award a prevailing defendant reasonable attorney fees.

(5) An action under this section must be commenced within six years. [2008 c.19 §17]

(Penalties)

646A.765 Penalties. Violation of a provision of ORS 646A.702 to 646A.720 or 646A.725 to 646A.750 is a Class A misdemeanor. [2008 c.19 §18; 2011 c.597 §260]