TITLE 50

TRADE REGULATIONS AND PRACTICES

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Chapter 646

1963 REPLACEMENT PART

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PRICE DISCRIMINATION IN COMMERCE AND FOOD COMMERCE

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

646.020 Definitions and explanations. (1) When used in ORS 646.010 to 646.180, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

646.050 Establishing prima facie case of discrimination; justification of discrimination. Upon proof being made, in any suit

or other proceeding in which any violation of ORS 646.010 to 646.180 is at issue, that there has been discrimination in price, or in services or facilities furnished, or in payment for services or facilities rendered or to be rendered, the burden of rebutting the prima facie case thus made by showing justification is upon the person charged with the violation; but this section does not prevent a seller rebutting the prima facie case so made by showing that his lower price, or the payment for or furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor or the services or facilities furnished by a competitor.

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

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

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

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

646.100 Sales below cost; advertising goods vendor not prepared to supply. (1) Except as otherwise permitted under ORS 646.120, no person engaged in commerce or food commerce, or both, in the course of such commerce, shall:

(a) Sell, offer for sale or advertise for sale, any article, product or commodity, or service or output of a service trade, at less than cost thereof to such vendor, or give, offer to give or advertise the intent to give away any article, product or commodity or service or output of a service trade, with the purpose or intent to injure competitors or destroy competition.

(b) Advertise brands or types of goods he is not prepared to supply.

(2) As used in this section:

(a) "Cost," as applied to production, includes the cost of raw materials, labor and all overhead expenses of the producer; as applied to distribution, "cost" means the replacement cost of the article, product or commodity to the distributor and vendor, plus the cost of doing business by the distributor and vendor; and, as applied to a wholesaler in food commerce, "cost" means the price paid.

(b) "Cost of doing business" or "overhead expense" is the average of all costs

of doing business incurred in the conduct of such business during the 12 months immediately preceding any alleged violation of ORS 646.010 to 646.180; or, if any person was engaged in business within the state for a shorter period of time, the average cost for such period immediately preceding any alleged violation of ORS 646.010 to 646.180 must include without limitation the following items of expense: Labor (including salaries of executives and officers), rent, interest on borrowed capital, depreciation, selling cost, maintenance of equipment, buildings and fixtures, transportation and delivery costs as fixed under tariffs approved by the Public Utility Commissioner of Oregon, light, heat, power and water, credit losses, all types of licenses, taxes, insurance and advertising.

(c) "Cost of doing business" or "overhead expense" of a retailer in food commerce is six percent of replacement cost or is the average monthly cost incurred in the conduct of such business during the 12 months immediately preceding any alleged violation of ORS 646.010 to 646.180, or whichever is lower. If any person was engaged in business within this state for a shorter period of time than one year, the average cost for such period that such person has been in business immediately preceding any alleged violation of this section shall be the monthly average for the purpose of this section. In computing such cost, it shall include, without limiting, all items of expense set forth in paragraph (b) of this subsection.

[Amended by 1963 (s.s.) c.2 §3]

Note: The 1963 amendment to ORS 646.100 takes effect March 2, 1964.

646.105 Evidence of intent to injure competitors or destroy competition. In all actions brought under ORS 646.010 to 646.180 proof of the limitation of the quantity of any article, product or commodity sold or offered for sale to any one customer to a quantity less than the entire supply thereof owned or possessed by the seller, or which he is otherwise authorized to sell, at the place of such sale or offering for sale, together with proof that the price at which the article, product or commodity is so sold or offered for sale is in fact below cost as that term is defined in ORS 646.100, raises a presumption of the purpose or intent to injure competitors or destroy competition. This section applies only to sales by persons conducting a retail business the principal part of which involves the resale to consumers of articles, products or commodities purchased or acquired for that purpose, as distinguished from persons principally engaged in the sale to consumers of articles, products or commodities of their own production or manufacture.

[1963 (s.s.) c.2 §2]

Note: ORS 646.105 takes effect March 2, 1964.

646.110 Cost of goods bought at forced sale. Except as otherwise provided in ORS 646.120, in establishing the cost of a given article, product or commodity to the distributor and vendor, the invoice cost of an article, product or commodity purchased at a forced, bankrupt, close-out sale or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of date of the sale of the article, product or commodity replaced through the ordinary channels of trade, unless:

(1) The article, product or commodity is kept separate from goods purchased in the ordinary channels of trade; and

(2) The article, product or commodity is advertised and sold as merchandise purchased at a forced, bankrupt, close-out sale, or by means other than through the ordinary channels of trade; and

(3) The advertising states the conditions under which the goods were so purchased, and the quantity of such merchandise to be sold or offered for sale.

646.120 ORS 646.100 and 646.110 not applicable to certain sales. The provisions of ORS 646.100 and 646.110 do not apply to any sale made:

(1) In closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any such stock or commodity if he does not sell new stocks of the discontinued commodity or merchandise within 90 days after the close-out, and in the case of the sale of seasonal goods or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation, if prior notice is given to the public thereof.

(2) When the goods are damaged or deteriorated in quality and prior notice is given to the public thereof.

(3) By an officer acting under the orders of any court.

(4) In an endeavor made in good faith to meet the legal prices of a competitor selling the same article or product in the same locality or trade area.

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

646.140 Enjoining violations and recovering triple damages. Any person injured by any violation, or who will suffer injury from any threatened violation, of ORS 646.010 to 646.180 may maintain an action in any court of general equitable jurisdiction of this state, to prevent, restrain or enjoin the violation or threatened violation. If in such action, a violation or threatened violation of ORS 646.010 to 646.180 is established, the court shall enjoin and restrain or otherwise prohibit such violation or threatened violation, and the plaintiff in the action is entitled to recover three-fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

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

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

646.170 Requiring defendant to testify. Any defendant in an action brought under the provisions of ORS 646.140 to 646.160 may be required to testify under the provisions of ORS 45.050, 45.140, 45.150, 45.160, 45.170, 45.210, 45.220, 45.230, 45.240, 45.310 and 45.380. In addition, the books and records of any such defendant may be brought into court and introduced, by reference, into evidence. No information so obtained may be used against the defendant as a basis for a criminal prosecution under subsection (1) of ORS 646.990.

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

646.190 to 646.200 [Reserved for expansion]

FAKE SALES

646.210 Definitions for ORS 646.210 to 646.230. As used in ORS 646.210 to 646.230:

(1) "Fake sale" means:

(a) The sale of goods, wares or merchandise at auction or otherwise, to agents or any persons purchasing or acquiring the same for or on behalf of the owner or other person interested in the sale thereof in behalf of the seller.

(b) The sale of a limited quantity of goods, wares and merchandise, when the advertisement thereof does not specify the quantity and number of items offered for sale.

(c) The sale, or offering for sale of goods, wares or merchandise of a different quality or brand, or bearing a different trademark, as the merchandise advertised for sale.

(d) The sale, or offering for sale of any goods, wares or merchandise the quantity, quality, brand or designation of which have been misrepresented by advertising or otherwise.

(2) "Person" means any individual, firm, corporation, joint stock company, association or any other group of persons associating themselves for the purpose of doing business.

646.220 Fake sales prohibited. No person shall conduct, maintain, operate or advertise at retail any fake sale of goods, wares or merchandise within Oregon.

646.230 Continuation of sale as daily offense. Each person violating ORS 646.220 is guilty of a separate offense for every

day during any portion of which any violation of any provision of ORS 646.220 is committed or continued or permitted by such person.

646.240 to 646.250 [Reserved for expansion]

UNFAIR GASOLINE SALES

646.260 Definitions; unfair discrimination, preferences, and price fixing agreements in gasoline sales prohibited. (1) As used in this section:

(a) "Person" means a person, firm, company, association or corporation, foreign or domestic.

(b) "Section" includes community, town, village or city in this state.

(c) "Wholesale" means the sale or consignment of gasoline in quantities of 50 gallons or more at a time to a purchaser.

(2) No person, who is engaged in the business of selling gasoline within the state and who is selling gasoline in more than one section shall, with the intent to suppress competition or create a monopoly, discriminate by direct or indirect methods between different sections by selling gasoline at a lower rate in one section, or any portion thereof, than such person charges for gasoline in another section, after making due allowance in the grade or quality and the cost of transportation from the refinery.

(3) No person engaged in the business of selling gasoline shall, with the intent to suppress competition or create a monopoly:

(a) Discriminate by direct or indirect methods in the sale of gasoline at wholesale between purchasers in any section.

(b) Make or carry into effect any contract, understanding or agreement with any person, corporation, partnership or association of persons in this state to fix prices with respect to the sale or distribution of gasoline so as to prevent or obstruct competition in the purchase, sale or distribution of gasoline.

(4) The conduct prohibited by subsections (2) and (3) of this section is unfair discrimination.

646.270 Contracts violating ORS 646.260 void. All contracts or agreements made in violation of any of the provisions of ORS 646.260 are void.

646.280 Exclusive contracts for gasoline sales; remedies for breach. In the event of any breach or threatened breach of any contract providing for the sale or consignment of gasoline to be sold or distributed by the vendee or consignee at retail, which provides that only the gasoline sold, manufactured, distributed or marked by the vendor or consignor shall be sold by the vendee or consignee, either party to the contract shall be entitled either to an injunction, mandatory or otherwise, to prevent a further breach of such contract or to a decree of specific performance thereof, or to both. Pending the adjudication of such suit either party to the contract shall be entitled, in a proper case, either to a restraining order or to a preliminary injunction, mandatory or otherwise, or to both.

646.290 Exclusive contract for gasoline sales embodying lease of real property; remedies. In the event of any breach of any lease upon real property, which is a part of or in any way connected, directly or indirectly, with any contract within the purview of ORS 646.280 by any party who is the vendor, consignor, vendee or consignee of gasoline covered by such contract to be sold or distributed at retail on such leased premises, the vendee, consignee, vendor or consignor of such gasoline shall be entitled either to an injunction, mandatory or otherwise, to prevent a further breach of the lease or to a decree of specific performance thereof, or to both. Pending the adjudication of such suit, the vendee, consignee, vendor or consignor shall be entitled, in a proper case, either to a restraining order or to a preliminary injunction, mandatory or otherwise, against the vendor, consignor, vendee or consignee, or to both.

646.300 [Reserved for expansion]

FAIR TRADE LAW

646.310 Definitions for ORS 646.310 to 646.370. As used in ORS 646.310 to 646.370:

(1) "Commodity" means any subject of commerce.

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

(3) "Producer" means any grower, baker, maker, manufacturer, bottler, packer, converter, processor or publisher.

(4) "Retailer" means any person selling a commodity to consumers for use.

(5) "Wholesaler" means any person selling a commodity other than a producer or retailer.

646.320 Contracts outside scope of ORS 646.310 to 646.370. ORS 646.310 to 646.370 do not apply to any contract or agreement between or among producers or distributors or, except as provided in subsection (3) of ORS 646.340, between or among wholesalers, or between or among retailers, as to sale or resale prices.

646.330 Sales exempted from ORS 646.340. No contract containing any of the provisions enumerated in ORS 646.310 to 646.370 shall be deemed to preclude the resale of any commodity covered thereby without reference to such contract in the following cases:

(1) In closing out the owner's stock for the bona fide purpose of discontinuing dealing in any such commodity and plain notice of the fact is given to the public, if the owner of such stock gives to the producer or distributor of the commodity prompt and reasonable notice in writing of his intention to close out the stock and an opportunity to purchase the stock at the original invoice price.

(2) When the goods are altered, second-hand, damaged, defaced or deteriorated and plain notice of the fact is given to the public in the advertisement and sale thereof; the notice shall be conspicuously displayed in all advertisements and shall be affixed to the commodity.

(3) By any officer acting under an order of court.

646.340 Authorized provisions in contracts affecting prices. A contract relating to the sale or resale of a commodity which bears, or the label or container of which bears or the vending equipment through which the commodity is sold bears, the trade-mark, brand or name of the producer or distributor of the commodity and which commodity is in free and open competition with commodities of the same general class produced or distributed by others is not in violation of any law of Oregon by reason of any of the following provisions which may be contained in the contract:

(1) That the buyer will not resell the commodity at less than the minimum price stipulated by the seller.

(2) That the buyer will require of any dealer to whom he may resell the commodity an agreement that he will not, in turn, resell at less than the minimum price stipulated by the seller.

(3) That the seller will not sell the commodity:

(a) To any wholesaler, unless the wholesaler will agree not to resell the commodity to any retailer unless the retailer will in turn agree not to resell the commodity except to consumers for use and at not less than the stipulated minimum price, and unless the wholesaler will likewise agree not to resell the commodity to any other wholesaler unless the other wholesaler will make the same agreement with any wholesaler or retailer to whom he may resell; or

(b) To any retailer, unless the retailer will agree not to resell the commodity except to consumers for use and at not less than the stipulated minimum price.

646.350 Persons authorized to establish prices. No minimum resale price shall be established for any commodity, under any contract entered into pursuant to the provisions of ORS 646.310 to 646.370 by any person other than the owner of the trade-mark, brand or name used in connection with the commodity or a distributor specifically authorized to establish the price by the owner of the trade-mark, brand or name.

646.360 Acts constituting evasions. For the purpose of preventing evasion of the resale price restrictions imposed in respect of any commodity by any contract entered into pursuant to ORS 646.310 to 646.370, except to the extent authorized by the contract, the following are violations of the resale price restriction, for which the remedies prescribed by ORS 646.370 are available:

(1) Offering or giving any article of value in connection with the sale of the commodity.

(2) Offering or making any concession of any kind, whether by the giving of coupons or otherwise, in connection with the sale.

(3) Selling or offering for sale the commodity in combination with any other commodity.

646.370 Advertising commodity for sale at less than stipulated price; remedy. Wilfully and knowingly advertising, offering for sale or selling any commodity at less than the price stipulated in any contract entered into pursuant to the provisions of ORS 646.330 to 646.360, whether the person so advertising, offering for sale or selling is

or is not a party to the contract, is unfair competition and is actionable at the suit of any person damaged thereby.

646.380 to 646.400 [Reserved for expansion]

RESTRICTIVE MOTOR VEHICLE FINANCING AGREEMENTS

646.410 Definitions for ORS 646.410 to 646.460. As used in ORS 646.410 to 646.460:

(1) "Dealer" means any person, firm, association or corporation or other organization of any kind, character or nature regularly engaged or intending to engage in the business of selling motor vehicles at retail within this state.

(2) "Financing" includes the buying, selling, assigning or dealing in conditional sales contracts, chattel mortgages or leases arising out of the retail sale of motor vehicles.

(3) "Manufacturer" means any person, firm, corporation, partnership or association engaged either directly or indirectly in the manufacture or wholesale distribution of motor vehicles.

(4) "Motor vehicle" means every self-propelled vehicle moving over the highways of this state, whether patented or unpatented.

(5) "Person" means any individual or individuals, firm, corporation, partnership, association, trustee, receiver or assignee for the benefit of creditors.

646.420 Declaration of policy. The policy of this state is that free and unrestrained competition shall prevail in the business of financing the purchase or sale of motor vehicles.

646.430 Manufacturer selling upon dealer's agreement to finance through designated person prohibited; agreement void. No manufacturer shall sell or enter into a contract to sell any motor vehicle to any dealer on the condition or under an agreement, either expressed or implied, that the dealer shall finance the purchase or sale of the motor vehicle only with or through a designated person. Any such condition, agreement or understanding is void and against the public policy of this state.

646.440 Threat to compel financing through designated person; manufacturer presumed responsible. Any threat, expressed or implied, made directly or indirectly to any dealer by any manufacturer, or by any person who is engaged in the business of financing the purchase or sale of motor vehicles and is affiliated with or controlled by any manufacturer, that the manufacturer will cease to sell, or will terminate or refuse to enter into a contract to sell motor vehicles to the dealer unless the dealer finances the purchase or sale of any such motor vehicle only with or through a designated person, is presumed to be made at the direction of and with the authority of the manufacturer and is prima facie evidence of the fact that the manufacturer has sold or intends to sell such motor vehicle on the condition or under the agreement prohibited in ORS 646.430.

646.450 Prohibited contracts void and unenforceable. Any contract or agreement in violation of the provisions of ORS 646.410 to 646.440 is void and shall not be enforceable in law or equity.

646.460 Prohibited acts. No person shall violate any of the provisions of ORS 646.410 to 646.460 and no employe, agent or officer of any person shall participate, in any manner, in making, enforcing or performing, or in aiding or abetting in the performance of any contract, condition, agreement or understanding prohibited by ORS 646.410 to 646.460.

646.470 to 646.500 [Reserved for expansion]

646.510 [Repealed by 1953 c.391 §2]

PRODUCERS' COOPERATIVE BARGAINING ASSOCIATIONS

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

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

(2) "Cooperative bargaining association" means an association of producers formed or operated pursuant to ORS chapter 62 with the purpose of group bargaining with respect to the sale of any agricultural commodity or commodities.

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

(b) "Dealer" shall not include any organization operating as an agricultural cooperative corporation.

(4) "Producer" means a person engaged in the business of producing agricultural commodities.

[1963 c.514 §1]

646.520 [Repealed by 1953 c.391 §2]

646.525 Cooperative bargaining associations authorized. Producers shall have the right to join voluntarily and belong to cooperative bargaining associations.

[1963 c.514 §2]

646.530 [Repealed by 1953 c.391 §2]

646.535 Unfair trade practices prohibited. No dealer shall maliciously and knowingly engage in the following unfair trade practices:

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

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

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

[1963 c.514 §3]

646.540 [Repealed by 1953 c.391 §2]

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

(2) The prevailing party in any action brought pursuant to subsection (1) of this section shall be allowed, in addition to the costs and disbursements otherwise prescribed by law, a reasonable sum for attorney's fees for the prosecution or defense of such action.

(3) Notwithstanding the provisions of ORS 46.060 to 46.080, the district court shall not have jurisdiction in any action for damages for violation of ORS 646.535.

[1963 c.514 §§4, 5]

646.550 [Repealed by 1953 c.391 §2]
646.560 [Repealed by 1953 c.391 §2]
646.570 [Repealed by 1953 c.391 §2]
646.580 [Repealed by 1953 c.391 §2]
646.590 [Repealed by 1953 c.391 §2]
646.600 [Repealed by 1953 c.391 §2]
646.610 [Repealed by 1953 c.391 §2]
646.620 [Repealed by 1953 c.391 §2]
646.630 [Repealed by 1953 c.391 §2]
646.640 [Repealed by 1953 c.391 §2]
646.650 [Repealed by 1953 c.391 §2]
646.660 [Repealed by 1953 c.391 §2]
646.670 [Repealed by 1953 c.391 §2]
646.680 [Repealed by 1953 c.391 §2]
646.690 [Repealed by 1953 c.391 §2]
646.700 [Repealed by 1953 c.391 §2]
646.710 [Repealed by 1953 c.391 §2]
646.720 [Repealed by 1953 c.391 §2]
646.730 to 646.800 [Reserved for expansion]

MISCELLANEOUS

646.810 Advertisements containing false or deceptive statements prohibited. (1) No person, with intent to sell or dispose of any real estate, merchandise, foods, drugs, medicinal preparations or other patent nostrums, securities, service or anything offered by such person, directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or an interest therein, shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or placed before the public within Oregon, in a newspaper or other publication, or in the form of a book, notice, hand bill, sign, poster, bill, circular, pamphlet, tag, label, letter or contrivance or in any other way or manner, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is untrue, deceptive or misleading.

(2) Subsection (1) of this section does not apply to publishers of newspapers, magazines or other publications who publish any such advertisement in good faith without knowledge of its false, deceptive or misleading character.

646.820 Using words connoting relationship with United States Government, or misrepresenting quality of articles sold, by private sellers of surplus materials prohibited. (1) No individual, corporation or partnership shall sell or offer for sale any surplus materials as defined in chapter 479, Public Laws 457, approved October 3, 1944, known as the Surplus Property Act of 1944, or carry or trade under, or in any way use in dealing with the public, directly or indirectly, any name which, by reason of the inclusion of a word or words such as "army," "navy," "United States," "federal," "treasury," "procurement," "G.I.," or any others which connote the United States Government or its armed forces, or any of its departments or agencies, has a tendency to lead the purchasing public to believe, contrary to fact, that the establishment at which such materials are offered for sale has some official relationship to the United States Government, or that all the articles sold or offered for sale are such surplus materials, or that the articles there sold are of higher quality and lower prices than those elsewhere obtainable.

(2) ORS 646.820 and 646.830 do not apply to any corporation all of the stock of which is owned by the United States Government.

646.830 Sale of surplus materials to person using name containing forbidden words prohibited. (1) No contract to sell, sale, or any other arrangement concerning the disposition of any surplus materials, as defined in the Surplus Property Act of 1944, shall be made to any individual, corporation or partnership who or which carries or trades under, or in any way uses in dealing with the public, or intends to use in retailing the same, directly or indirectly, any name which includes the words quoted or referred to in ORS 646.820.

(2) This section does not apply to any corporation all the stock of which is owned by the United States Government, nor does it apply to any establishment which, for 10 years prior to June 16, 1945, has utilized any such terms as a part of its trading name.

646.840 Misrepresentation as to producer of goods. (1) No person shall sell, attempt to sell, offer for sale, or assist in sale of any goods, product or output of any dealer, manufacturer or producer and wilfully and by the use of any trade name or otherwise represent the goods, product or output to be the goods, product or output of any other dealer, manufacturer or producer.

(2) No member of a firm or officer of a corporation shall knowingly permit any employe of the firm or corporation to sell, offer for sale or assist in the sale of any goods, product or output of any dealer, manufacturer, or producer and by the use of any trade name or otherwise to represent the goods, product or output to be the goods, product or output of any other dealer, manufacturer or producer.

646.850 to 646.980 [Reserved for expansion]

PENALTIES

646.990 Penalties. (1) Each violation of any of the provisions of ORS 646.010 to 646.180 by any person, firm or corporation, whether as principal, agent, officer or director, for himself or itself, or for another person, or for any firm or corporation, is punishable, upon conviction, by a fine of not less than $100 nor more than $500, or by imprisonment in the county jail not exceeding six months, or by both.

(2) Violation of ORS 646.220 and each separate offense under ORS 646.230 is punishable, upon conviction, by a fine not exceeding $500 or by imprisonment in the county jail not exceeding six months, or by both.

(3) Violation of ORS 646.260 is punishable, upon conviction, by a fine of not less than $500 nor more than $5,000, or by imprisonment in the county jail not exceeding one year, or by both.

(4) Violation of ORS 646.460 is punishable, upon conviction, by a fine of not more than $5,000 or by imprisonment in the penitentiary for not more than five years or in the county jail for not more than one year, or by both such fine and imprisonment.

(5) Violation of ORS 646.810 is punishable, upon conviction, by a fine of not more than $100 or by imprisonment in the county jail not exceeding 30 days.

(6) Violation of ORS 646.820 or 646.830 is punishable, upon conviction, by a fine of not more than $5,000 or by imprisonment in the county jail for not more than one year, or by both.

(7) Violation of ORS 646.840 is punishable, upon conviction, by a fine of not less than $50 nor more than $250, or by imprisonment in the county jail for not less than 20 nor more than 90 days, or by both.

[Amended by 1953 c.391 §2]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1963.

Sam R. Haley
Legislative Counsel