

TITLE 50

TRADE REGULATIONS AND PRACTICES

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Chapter 646

1975 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 Antiprice 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[Amended by 1963 s.s. c.2 s.3; repealed by 1975 c.255 s.17]

646.105[1963 s.s. c.2 s.2; repealed by 1975 c.255 s.17]

646.110[Repealed by 1975 c.255 s.17]

646.120[Repealed by 1975 c.255 s.17]

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

646.140 Enjoining violations 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.

646.210[Repealed by 1971 c.744 s.27]

646.220[Repealed by 1971 c.744 s.27]

646.230[Repealed by 1971 c.744 s.27]

646.260[Repealed by 1975 c.255 s.17]

646.270[Repealed by 1975 c.255 s.17]

646.280[Repealed by 1975 c.255 s.17]

646.290[Repealed by 1975 c.255 s.17]

646.295[1973 c.491 s.2; repealed by 1975 c.255 s.17]

646.310[Repealed by 1975 c.92 s.1 and by 1975 c.255 s.17]

646.320[Repealed by 1975 c.92 s.1 and by 1975 c.255 s.17]

646.330[Repealed by 1975 c.92 s.1 and by 1975 c.255 s.17]

646.340[Repealed by 1975 c.92 s.1 and by 1975 c.255 s.17]

646.350[Repealed by 1975 c.92 s.1 and by 1975 c.255 s.17]

646.360[Repealed by 1975 c.92 s.1 and by 1975 c.255 s.17]

646.370[Repealed by 1975 c.92 s.1 and by 1975 c.255 s.17]

646.410[Repealed by 1975 c.255 s.17]

646.420[Repealed by 1975 c.255 s.17]

646.430[Repealed by 1975 c.255 s.17]

646.440[Repealed by 1975 c.255 s.17]

646.450[Repealed by 1975 c.255 s.17]

646.460[Repealed by 1975 c.255 s.17]

646.510[Repealed by 1953 c.391 s.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 s.1]

646.520[Repealed by 1953 c.391 s.2]

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

646.530[Repealed by 1953 c.391 s.2]

646.535 Unfair trade practices prohibited. No dealer shall 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 s.3; 1969 c.165 s.1]

646.540[Repealed by 1953 c.391 s.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 ss.4, 5]

646.550[Repealed by 1953 c.391 s.2]

646.560[Repealed by 1953 c.391 s.2]

646.570[Repealed by 1953 c.391 s.2]

646.580[Repealed by 1953 c.391 s.2]

646.590[Repealed by 1953 c.391 s.2]

646.600[Repealed by 1953 c.391 s.2]

UNLAWFUL TRADE PRACTICES

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

(1) "Trade" and "commerce" mean the advertising, offering for sale, sale or distribution of any services or any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this state.

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

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

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

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

(6) "Appropriate court" means the district or circuit court of a county:

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

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

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

(d) With the defendant's consent, where the prosecuting officer maintains his office.

(7) "Real estate, goods or services" means those which are or may be used or bought primarily for personal, family or household purposes, and includes franchises, distributorships and other similar business opportunities, but does not include insurance.

(8) A wilful violation occurs when the person committing the violation knew or should have known that his conduct was a violation.

[1965 c.490 s.2; 1967 c.599 s.1; 1971 c.744 s.5; 1973 c.235 s.1]

646.608 Unlawful business, trade practices; proof; Attorney General's rules. (1) A person engages in a practice hereby declared to be unlawful when in the course of his business, vocation or occupation he:

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

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

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

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

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

(f) Represents that real estate or goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or second-hand;

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

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

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

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

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

(l) Makes false or misleading representations relating to commissions or other compensation to be paid in exchange for permitting property to be used for model or demonstration purposes or in exchange for submitting names of other purchasers to the seller;

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

(n) Solicits by telephone or door to door as a seller unless the seller, within 30 seconds after beginning the conversation, identifies himself, whom he represents and the purpose of his call;

(o) In a sale of real estate, goods or services, gives or offers to give a rebate or discount or otherwise pays or offers to pay value to the buyer in consideration of the buyer giving to the seller the names of

prospective purchasers, lessees, or borrowers, or otherwise aiding the seller in making a sale, lease, or loan to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer enters into the transaction;

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

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

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

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

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

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

(4) No action or suit shall be brought under paragraph (s) of subsection (1) of this section unless the Attorney General has first established a rule in accordance with the provisions of ORS chapter 183 declaring the conduct to be unfair or deceptive in trade or commerce.

[1971 c.744 s.7 (enacted in lieu of 646.615); 1973 c.235 s.2; 1973 c.513 s.1; 1975 c.437 s.1]

646.609 "Pyramid club" defined. As used in paragraph (r) of subsection (1) of ORS 646.608, "pyramid club" means a sales device whereby a person, upon condition that he make an investment, is granted a license or right to solicit or recruit for economic gain one or more additional persons who are also granted such license or right upon condition of making an investment and who may further perpetuate the chain of persons who are granted such license or right upon such condition. A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for such license or right to recruit or solicit or the receipt of economic gain therefrom, does not change the identity of the scheme as a pyramid club. As used herein, investment means any acquisition, for a consideration other than personal services, of property, tangible or intangible, and includes without limitation, franchises, business op-

portunities and services. It does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale.

[1973 c.513 s.3]

646.610[Repealed by 1953 c.391 s.2]

646.612 Application of ORS 646.608. ORS 646.608 does not apply to:

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

(2) Acts done by the publisher, owner, agent or employe of a newspaper, periodical or radio or television station in the publication or dissemination of an advertisement, when the publisher, owner, agent or employe did not have knowledge of the false, misleading or deceptive character of the advertisement.

[1971 c.744 s.10]

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

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

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

[1971 c.744 s.14; 1973 c.235 s.3]

646.620[Repealed by 1953 c.391 s.2]

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

(1) Personal service thereof without this state;

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

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

(4) Such service as the court may direct in lieu of personal service within this state.

[1971 c.744 s.15; 1975 c.437 s.2]

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

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

(a) Granting injunctive relief to restrain the person from engaging in the advertising or sale of any real estate, goods or services or the conduct of any trade or commerce that is involved in the alleged or suspected violation;

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

(2) Any disobedience of any final order of a court under this section shall be punished as a contempt of court.

[1971 c.744 s.16; 1973 c.235 s.4]

646.630[Repealed by 1953 c.391 s.2]

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

(2) Except as provided in subsections (5) and (6) of this section, before filing a suit

under subsection (1) of this section, the prosecuting attorney shall in writing notify the person charged of the alleged unlawful trade practice and the relief to be sought. Such notice shall be served in the manner set forth in ORS 646.622 for the service of investigative demands. The person charged thereupon shall have 10 days within which to execute and deliver to the prosecuting attorney an assurance of voluntary compliance. Such assurance shall set forth what actions, if any, the person charged intends to take with respect to the alleged unlawful trade practice. The assurance of voluntary compliance shall not be considered an admission of a violation for any purpose. If the prosecuting attorney is satisfied with the assurance of voluntary compliance, it may be submitted to an appropriate court for approval and if approved shall thereafter be filed with the clerk of the court. The notice of the prosecuting attorney under this subsection shall not be deemed a public record until the expiration of 10 days from the service of the notice.

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

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

(b) Which does not contain any provision, including but not limited to the keeping of records, which the prosecuting attorney reasonably believes to be necessary to insure the continued cessation of the alleged unlawful trade practice, if such provision was included in a proposed assurance attached to the notice served pursuant to this section.

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

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

(6) If the prosecuting attorney alleges that he has reason to believe that the delay

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

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

(8) The court may award reasonable attorney fees to the prevailing party in a suit brought under this section. If the defendant prevails in such suit and the court finds that the defendant had in good faith submitted to the prosecuting attorney a satisfactory assurance of voluntary compliance prior to the institution of the suit or that the prosecuting attorney, in a suit brought under subsections (5) and (6) of this section, did not have reasonable grounds to proceed under those subsections, the court shall award reasonable attorney fees to the defendant. If the state prevails, the reasonable expenses of investigation, preparation and prosecution shall be taxed against the defendant, upon application of the prosecuting attorney, in the same manner as costs are taxed and shall be in addition thereto.

[1971 c.744 s.11; 1975 c.437 s.3]

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

646.636 Remedial power of court. The court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, of which he was deprived by means of any practice declared to be unlawful in ORS 646.608, or as may be necessary to insure cessation of unlawful trade practices.

[1971 c.744 s.12]

646.638 Civil action by private party; damages; attorney fees; effect of prior injunction; time for commencing action; counterclaim. (1) Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the wilful use or employment by another person of a method, act or practice declared unlawful by ORS

646.608, may bring an individual action in an appropriate court to recover actual damages or \$200, whichever is greater. The court or the jury, as the case may be, may award punitive damages and the court may provide such equitable relief as it deems necessary or proper.

(2) Upon commencement of any action brought under subsection (1) of this section the clerk of the court shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the Attorney General.

(3) In any action brought by a person under this section, the court may award, in addition to the relief provided in this section, reasonable attorney fees and costs.

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

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

(6) Notwithstanding subsection (5) of this section, in any action brought by a seller or lessor against a purchaser or lessee of real estate, goods or services, such purchaser or lessee may assert any counterclaim he has arising out of a violation of ORS 646.605 to 646.652.

[1971 c.744 s.13; 1973 c.235 s.5; 1975 c.437 s.4]

646.640[Repealed by 1953 c.391 s.2]

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

acting in the name of the state may petition for recovery of civil penalties.

(2) Any person who wilfully violates any provision of an assurance of voluntary compliance approved and filed with an appropriate court under ORS 646.632 shall forfeit and pay to the state a civil penalty to be set by the court of not more than \$25,000 per violation. Any prosecuting attorney may apply to an appropriate court for recovery of such civil penalty.

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

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

646.646 Loss of license or franchise by person violating injunction. Upon petition by the prosecuting attorney, the court may, in its discretion, order the dissolution or suspension or forfeiture of the license or franchise of any person who violates the terms of any injunction issued under ORS 646.632.

[1971 c.744 s 18]

646.650[Repealed by 1953 c.391 s.2]

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

[1971 c.744 s.19]

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

646.656 Remedies supplementary to existing statutory or common law remedies. The remedies provided in ORS 646.605 to 646.652 are in addition to all other remedies, civil or criminal, existing at common law or under the laws of this state.

[1971 c.744 s.21a]

646.660[Repealed by 1953 c.391 s.2]

646.670[Repealed by 1953 c.391 s.2]

646.680[Repealed by 1953 c.391 s.2]

646.690[Repealed by 1953 c.391 s.2]

646.700[Repealed by 1953 c.391 s.2]

ANTITRUST LAW

646.705 Definitions for ORS 136.617 and 646.705 to 646.805. As used in ORS 136.617 and 646.705 to 646.805, "trade or commerce" means trade or commerce within the state; or between the state and any state, territory, or foreign nation.
[1975 c.255 s.2]

646.710[Repealed by 1953 c.391 s.2]

646.715 Declaration of purpose. (1) The Legislative Assembly deems it to be necessary and the purpose of ORS 136.617, 646.705 to 646.805 and 646.990 is to encourage free and open competition in the interest of the general welfare and economy of the state, by preventing monopolistic and unfair practices, combination and conspiracies in restraint of trade and commerce, and for that purpose to provide means to enjoin such practices and provide remedies for those injured by them.

(2) Without limiting the scope of ORS 136.617, 646.705 to 646.805 and 646.990, it is the legislative purpose that it apply to intrastate trade or commerce, and to interstate trade or commerce which is primarily of an intrastate nature and over which federal jurisdiction, for whatever reason, has not been exercised by the Federal Trade Commission or the United States Department of Justice. The decisions of federal courts in construction of federal law relating to the same subject shall be persuasive authority in the construction of ORS 136.617, 646.705 to 646.805 and 646.990.

(3) The repeal by section 17, chapter 255, Oregon Laws 1975, of the statutes listed therein shall not be deemed to make lawful any conduct or act prohibited thereby which is made unlawful by ORS 646.725 and 646.730.

[1975 c.255 s.3]

646.720[Repealed by 1953 c.391 s.2]

646.725 Prohibited acts. Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is declared to be illegal.

[1975 c.255 s.4]

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

[1975 c.255 s.5]

646.740 Permitted activities. No provisions of ORS 136.617, 646.705 to 646.805 and 646.990 shall be construed to make illegal:

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

(2) The right of producers of agricultural commodities to join, belong to and act through cooperative bargaining associations under ORS 646.515 to 646.545;

(3) The activities of any person subject to regulation by the Public Utility Commissioner under ORS chapters 756 to 773 to the extent that such activities are so regulated and are lawful thereunder;

(4) The activities of any person subject to regulation by the Insurance Commissioner under ORS chapters 731 to 751 to the extent that such activities are so regulated and are lawful thereunder;

(5) The activities of any state or national banking institution or savings and loan association, and of any other lending institution, to the extent that such activities are regulated by the Superintendent of Banks or Savings and Loan Supervisor under the banking and loan association laws of Oregon under ORS chapters 706 to 726 and are lawful thereunder; or

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

[1975 c.255 s.6]

646.750 Investigative demand by Attorney General; petition to modify. (1) When it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by ORS 646.725 or 646.730, he may execute in writing and cause to be served an investigative demand upon any person who is believed to have documentary material relevant to the alleged or suspected violation. The investigative demand shall require such person to produce relevant documentary material for examination, at such reasonable time and place as may be stated in the investigative demand.

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

[1975 c.255 s.13]

646.760 Civil penalties; mitigation. (1) The Attorney General may prosecute an

action for appropriate injunctive relief and civil penalties in the name of the state for any violation of ORS 646.725 or 646.730. The court may assess for the benefit of the state a civil penalty of not more than \$100,000 for each violation of ORS 136.617, 646.705 to 646.805 and 646.990. Any act or series of acts by one or more individual persons (officers, agents or partners) on behalf of a corporation or other business entity may be found to constitute a violation or violations by such individual person or persons as well as by the corporation or other business entity, and separate penalties may be imposed against each of such individual defendants and corporate or other business entity defendants for such a violation. If the state prevails it shall also recover its necessary reasonable investigative costs and reasonable experts' fees and a reasonable attorney fee.

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

(3) The court shall take into consideration in mitigation of any penalty assessed under this section, any fine or penalty imposed against the defendant by a United States court in a final judgment under sections 1 to 45 of Title 15 of the United States Code, which the court finds to be based on the same or substantially the same acts of defendant.

[1975 c.255 s.8]

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

[1975 c.255 s.9]

646.780 Recovery of treble damages; exception; effect of action under federal law. (1) (a) A person including the state or any municipal corporation or political subdivision injured in its business or property by a violation of ORS 646.725 or 646.730 may sue therefor and shall recover threefold the damages sustained and the costs of suit,

including necessary reasonable investigative costs and reasonable experts' fees and a reasonable attorney fee, except that the state may recover only its actual damages sustained, plus costs of suit including necessary reasonable investigative costs and reasonable experts' fees and a reasonable attorney fee, if it brings an action pursuant to ORS 646.760 or commences a prosecution under ORS 646.815 and subsection (3) of 646.990.

(b) Notwithstanding paragraph (a) of this subsection, in any action under this section in which the plaintiff prevails solely on the basis of a judgment or decree entered in a proceeding under sections 1 to 45 of Title 15 of the United States Code or in another action by the state under ORS 646.760, 646.770 or this section, used as collateral estoppel against a defendant pursuant to ORS 646.805, plaintiff's recovery shall be limited to the actual damages sustained and the costs of suit, including necessary reasonable investigative costs and reasonable experts' fees and a reasonable attorney fee.

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

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

[1975 c.255 s.10]

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

[1975 c.255 s.7]

646.800 Time of commencing action. (1) An action under ORS 646.760 to recover a civil penalty shall be commenced within four years after the cause of action accrued, or within one year after the conclusion of any civil or criminal proceeding instituted by

the United States under the antitrust laws of the United States, except section 15a of Title 15 of the United States Code, based in whole or in part on the same matter complained of, whichever is later.

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

[1975 c.255 s.12]

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

(2) A final judgment or decree to the effect that a person has violated ORS 136.617, 646.705 to 646.805 and 646.990 in an action brought by the state under ORS 646.760, 646.770 or 646.780, other than a consent judgment or decree entered before any testimony has been taken which specifically provides therein that this subsection shall not be applicable, shall estop defendant from denial of any matters established in such action, in any other action against him under ORS 646.770 or 646.780, to the extent such judgment or decree would be an estoppel between the parties thereto with respect to such matters.

[1975 c.255 s.11]

646.810[Repealed by 1971 c.744 s.27]

646.815 Criminal prosecutions; effect of prior action seeking civil penalties. (1) Exclusive jurisdiction for criminal prosecu-

tion of any violation of ORS 646.725 or 646.730 is vested in the Attorney General.

(2) The commencement of trial seeking civil penalties in any action under ORS 646.760 shall bar any subsequent criminal prosecution for violation of ORS 646.725 or 646.730, based upon the same acts complained of. The commencement of trial in a criminal prosecution for violation of ORS 646.725 or 646.730 shall bar any subsequent action for recovery of civil penalties under ORS 646.760, based upon the same acts complained of, but shall not bar a subsequent suit for injunctive relief under ORS 646.760.

[1975 c.255 s.6 (2), (3)]

646.820[Repealed by 1971 c.744 s.27]

646.830[Repealed by 1971 c.744 s.27]

646.840[Repealed by 1971 c.744 s.27]

646.860 Tampering with odometer prohibited. (1) No person shall advertise for sale, sell, use or install on any part of a motor vehicle or on any odometer in a motor vehicle any device which causes the odometer to register any mileage other than the true mileage driven. For the purposes of this subsection the true mileage driven is that mileage driven by the vehicle as registered by the odometer within the manufacturer's designed tolerance.

(2) No person shall with the intent to defraud operate a motor vehicle on any street or highway knowing that the odometer of such vehicle is disconnected or nonfunctional.

(3) No person shall replace, disconnect, turn back or reset the odometer of any motor vehicle with the intent to reduce the number of miles indicated on the odometer gauge.

(4) This section does not apply to the disconnecting of the odometer of a new motor vehicle being driven from the premises of a manufacturer, distributor or dealer to the premises of another manufacturer, distributor or dealer, incident to the sale of the motor vehicle.

[1969 c.395 s.1]

646.870 Delivery of unrequested hazardous substances prohibited. No person shall deliver, or cause to be delivered, any hazardous substance, as defined in subsection (7) of ORS 453.005, to any residential premises without the prior consent of any occupant of such premises.

[1973 c.456 s.2]

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 646.860 is a misdemeanor.

(3) Violation of ORS 646.725 or 646.730 is a Class A misdemeanor.

[Amended by 1953 c.391 s.2; 1967 c.144 s.2; 1967 c.599 s.4; subsection (8) enacted as 1969 c.395 s.2; 1971 c.744 s.24; 1975 c.255 s.15; subsection (3) enacted as 1975 c.255 s.16(1)]

646.992 Penalty for unlawful delivery of hazardous substances. Violation of ORS 646.870 is a Class A misdemeanor.

[1973 c.456 s.3]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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,
October 1, 1975.

Thomas G. Clifford
Legislative Counsel