

Chapter 618

1977 REPLACEMENT PART

Weights and Measures

DEFINITIONS

618.010 Definitions

GENERAL PROVISIONS

618.016 Policy

618.021 Duties of director

618.026 Delegation of duties and powers of department and director

618.031 Rulemaking authority

618.036 Establishing weights and measures system; use of federal system

618.041 Standards for weights and measures system; security of state primary standard

618.046 Secondary standards; verification of accuracy

618.051 Specifications and tolerances of commercial weights and measures; consideration of federal requirements; status of nonconforming weights and measures

618.056 Testing and inspecting weights and measures offered for sale or used commercially

618.061 Testing weights and measures at institutions supported by state funds

618.066 Department to investigate weights and measures law violations

618.071 Inspection and investigation authority of department; written notices for minor violations

618.076 Approving use of weights and measures; use of certain terms describing condition of equipment; seizure and destruction of nonconforming equipment

618.081 Owners of weights and measures required to correct deficiencies; reexamination of incorrect weights and measures prior to use

618.086 Orders restricting distribution of weights and measures; violating terms of orders prohibited

618.091 Security seal to be attached to weights and measures devices

618.096 Prohibited acts involving commercial weights and measures

618.101 Evidentiary presumptions regarding weights and measures law

618.115 Voluntary inspection of weighing or measuring instruments; fees

LICENSING OF COMMERCIALY OPERATED WEIGHING OR MEASURING INSTRUMENTS

618.121 License required for commercially operated weighing or measuring instrument; scope of license

618.126 Exemptions from licensing requirement

618.131 Weights and measures licenses in addition to other licenses; effect of conflicting laws

618.136 Establishing license fees; renewals; disposition of fees

618.141 Maximum license fees

618.146 Term of licenses; suspension and revocation of licenses

618.151 Use of unlicensed weighing or measuring instrument prohibited; reapplication required when license expires; applicability of penalty fee

618.156 Forms, certificates and identification tags; license application forms

618.161 Notice of violation to owner or operator of unlicensed weighing or measuring instrument; tagging or sealing instruments to prevent unauthorized use

COMMODITY SALES REGULATIONS

618.201 Department to weigh or measure packaged commodities; distribution of commodities ordered withheld from sale prohibited

618.206 Manner of selling commodities; exemptions

618.211 Labeling of packaged commodities; use of labeling terms restricted; scope of rules

618.216 Cost per unit labeling requirements

618.221 Restriction on manner of packaging commodities; fill of container requirements

618.226 Commodity price and quantity advertising requirements; restriction on use of certain advertising terms

618.231 "Weight" defined; construction of term in sales transactions

618.236 Price misrepresentation prohibited; expressing fractional prices

618.241 Written invoice of certain commodity sales required; contents of writing

618.246 Sale by weight required for certain food products; labeling requirements

LICENSING LAW ENFORCEMENT

618.401 Definitions for ORS 618.401 to 618.466

618.406 Citations for enforcement of weights and measures licensing laws; delegation of authority of director

618.411 Effect of other laws on prosecutions under this chapter

618.416 Inspector's authority to issue citation

618.421 Citation for violation of weights and measures licensing laws; form of complaint and summons

618.426 Private person may commence action

618.431 Contents of summons

DEFINITIONS

618.010 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Advertising" or "advertisement" means any public notice or announcement of commodities for sale, services to be performed, equipment or facilities for hire, or any other thing offered to the public, via publishing or broadcasting media or by signs, banners, posters, handbills, labels or similar devices, for the purpose of inducing, directly or indirectly, the purchase or use of such commodities, services, equipment or facilities.

(2) "Commercial" or "commercially used" means any application or use in connection with or related to transactions in which, in exchange for commodities received or services rendered, consideration is given in terms of currency, negotiable instruments, credit, merchandise or any other thing of value.

(3) "Commodity" means any merchandise, product or substance produced or distributed for sale to, or use by, others.

(4) "Commodity in bulk form" means any quantity of a commodity that is not a commodity in package form.

(5) "Commodity in package form" means any quantity of a commodity put up or packaged in any manner in advance of sale, in units suitable for either wholesale or retail sale by weight, volume, measure or count, exclusive, however, of any auxiliary shipping container inclosing packages that individually conform to the requirements of ORS 618.010 to 618.246. An individual item or lot of any commodity not in package form as defined in this subsection, but on which there is marked a selling price based on an established price per unit of weight or of measure, is a commodity in package form.

(6) "Department" means the State Department of Agriculture.

(7) "Director" means the Director of Agriculture.

(8) "Inspector" means any state officer or employe designated by the director as a supervisor of, or an inspector of, weights and measures.

(9) "Intrastate commerce" means any and all commerce or trade begun, carried on and completed wholly within the limits of this state.

(10) "Introduced into intrastate commerce" means the time and place at which the first sale and delivery of a commodity is made

within this state, the delivery being made either directly to the purchaser or to a common carrier for shipment to the purchaser.

(11) "Liquid-fuel measuring device" means any meter, pump, tank, gage or apparatus used for volumetrically determining the quantity of any internal combustion engine fuel, liquefied petroleum gas or low-viscosity heating oil.

(12) "National Bureau of Standards" means the National Bureau of Standards of the Department of Commerce of the United States.

(13) "Person" has the meaning for that term provided in ORS 174.100.

(14) "Remote readout" means any console, cabinet, panel or instrument connected to or associated with a weighing or measuring device which indicates, displays or prints values of weight or measure at a location physically separate from the weighing or measuring device.

(15) "Sale" and "sell" include barter and exchange.

(16) "Security seal" means a lead-and-wire seal, or similar nonreusable closure, attached to a weighing or measuring instrument or device for protection against undetectable access, removal, adjustment or unauthorized use.

(17) "Vehicle" means any wheeled conveyance in, upon or by which any property, livestock or commodity is or may be transported or drawn, but does not include railroad rolling stock.

(18) "Weighing device" means any scale, balance or apparatus used for gravimetrically determining the quantity of any commodity on a discrete or continuous basis.

(19) "Weights and measures" means all weights and measures, instruments and devices of every kind for weighing and measuring, and any appliances and accessories associated with any or all such instruments and devices. However, "weights and measures" does not include meters for the measurement of electricity, gas or water when operated in a system of a public utility, as that term is defined in ORS 757.005. None of the provisions of ORS 618.010 to 618.246 apply to such public utility meters or to any associated appliances or accessories.

[Amended by 1973 c.293 §1; 1975 c.615 §1, 1977 c.132 §3]

GENERAL PROVISIONS

618.016 Policy. It is the express intent and purpose of ORS 618.010 to 618.356 and 618.991 to establish statutory authority for the administration, regulation and enforcement of weights and measures requirements generally within this state. The objectives of state supervision of weights and measures under ORS 618.010 to 618.356 and 618.991 include the following:

(1) Assuring that weights and measures in commercial service within the state are suitable for their intended use, properly installed, accurate and are so maintained by their owner or user.

(2) Preventing unfair dealing by weight or measure in any commodity or service advertised, packaged, sold or purchased within this state.

(3) Making available to all users of physical standards or weighing and measuring equipment the precision calibration and related metrological certification capabilities of the weights and measures facilities of the department.

(4) Promoting uniformity, to the extent such conformance is practicable and desirable, between weights and measures requirements of this state and those of other states and federal agencies.

(5) Encouraging desirable economic growth while protecting the consumer through the adoption by rule of weights and measures requirements as necessary to ensure equity among buyers and sellers.

[1973 c.293 §3]

618.021 Duties of director. The director shall:

(1) Maintain custody of the state standards of weight and measure and of the other standards and equipment provided for by ORS 618.010 to 618.356 and 618.991;

(2) Keep accurate records of all standards and equipment;

(3) Exercise general supervision over the weights and measures sold or offered for sale or in use in this state; and

(4) Report to the Governor annually, and at such other times as the Governor may require, on all of the activities of the director in carrying out ORS 618.010 to 618.356 and 618.991.

[1973 c.293 §5]

618.026 Delegation of duties and powers of department and director. Except for rule making, the duties and powers of the department and the director pursuant to ORS 618.010 to 618.356 and 618.991 may be delegated at the discretion of the director.

[1973 c.293 §14]

618.031 Rulemaking authority. (1) The department is authorized to make any rules necessary to carry out ORS 618.010 to 618.246, but in making such rules the department shall consider so far as is practicable and desirable the requirements established by other states and by authority of the United States. Such rules shall govern the use or application of weights and measures and weights and measures transactions in this state.

(2) Such rules may:

(a) Establish standards of net weight, measure or count, and reasonable standards of fill for any commodity in package form;

(b) Establish procedures governing the technical and reporting activities to be followed, and prescribe report and record forms and marks of approval and rejection to be used by inspectors of weights and measures in the discharge of their duties;

(c) Prescribe exemptions for weights and measures from the sealing, labeling or marking requirements of ORS 618.010 to 618.246;

(d) Establish procedures governing the voluntary registration of commercial weighing and measuring device servicemen and service agencies;

(e) Establish schedules of fees for licensing commercial weighing and measuring devices and for testing or certification;

(f) Prescribe specifications relating to the advertising, labeling, dispensing and selling of commodities in bulk form to or by retail outlets reasonably necessary for the protection of purchasers thereof;

(g) Establish guidelines to assure that amounts of commodities or services sold or offered for sale are represented accurately and informatively to all interested parties; and

(h) Prescribe specifications, tolerances and other technical requirements for weights and measures so as to eliminate from use, weights and measures:

(A) That are not accurate;

(B) That are of such construction that they are faulty, in that they are not reasonably

permanent in their adjustment or will not repeat their indications correctly; or

(C) That facilitate the perpetration of deceit or misrepresentation.

(3) Nothing in subsection (2) of this section is intended to limit the authority of the department to make any other rules necessary to carry out ORS 618.010 to 618.246.

[1973 c.293 §6; 1975 c.615 §2; 1977 c.132 §4]

618.036 Establishing weights and measures system; use of federal system.

The department may utilize, for all commercial purposes in this state, either that system of weights and measures customarily used in the United States or the metric system of weights and measures. In prescribing the basic units of weight and measure, tables of weight and measure, weight and measure equivalents, specifications, tolerances and other technical requirements for commercial weighing and measuring devices, the department shall recognize those published by the National Bureau of Standards, and they shall be applicable to weighing and measuring equipment and transactions in this state.

[1973 c.293 §15]

618.041 Standards for weights and measures system; security of state primary standard. (1) Standards of weight and measure that are traceable to the United States prototype standards and that are supplied by the Federal Government or that are otherwise approved as being satisfactory by the National Bureau of Standards shall be the state's primary standards of weight and measure.

(2) The state primary standards shall be kept in a safe and suitable place in the metrology laboratory of the office of weights and measures, and shall not be removed from the laboratory except for repairs or for calibration as may be prescribed by the National Bureau of Standards.

[1973 c.293 §16]

618.046 Secondary standards; verification of accuracy. The state shall supply secondary standards and such other equipment as is necessary to carry out ORS 618.010 to 618.356 and 618.991. Such standards shall be verified, by comparison with the state primary standards prescribed in ORS 618.041, upon their initial receipt and thereafter as often as the department considers necessary.

[1973 c.293 §17]

618.051 Specifications and tolerances of commercial weights and measures; consideration of federal requirements; status of nonconforming weights and measures. The department by rule shall prescribe the specifications, tolerances and other technical requirements applicable to commercial weights and measures within this state. In so doing the department shall take cognizance of those uniform requirements recommended by the National Bureau of Standards and published in appropriate National Bureau of Standards handbooks and supplements thereto. For the purposes of ORS 618.010 to 618.356 and 618.991, weights and measures are correct when in conformance with all applicable sections of ORS 618.010 to 618.356 and 618.991 and rules promulgated pursuant thereto. All other weights and measures are incorrect.

[1973 c.293 §18]

618.056 Testing and inspecting weights and measures offered for sale or used commercially. The department may inspect and test, to ascertain if they are correct, all weights and measures sold, offered or exposed for sale. The department may, as often as it considers necessary, cause to be inspected and tested, to ascertain if they are correct, all weights and measures commercially used:

(1) In determining the weight, measurement or count of commodities or things sold, offered or exposed for sale, on the basis of weight, measure or count; or

(2) In computing the basic charge or payment for services rendered on the basis of weight, measure or count. However, the department by rule may provide for tests to be made on representative samples of such devices. The lots of which samples are representative shall be held to be correct or incorrect upon the basis of the results of the inspection and tests on such samples; or

(3) In determining quantities or amounts when a charge is made for such determination. However, in the case of single-service devices designed to be used commercially only once and to be then discarded, or devices uniformly mass-produced, as by means of a mold or die, and not susceptible of individual adjustment, the inspection and testing of each individual device is not required and the inspecting and testing requirements of this section will be satisfied when inspections and tests are made on representative samples of such devices. The lots of which samples are representative shall be held to be correct or

incorrect upon the basis of the results of the inspections and tests on such samples.

[1973 c.293 §8; 1977 c 132 §5]

618.060 [Repealed by 1973 c 293 §55]

618.061 Testing weights and measures at institutions supported by state funds. The department shall, from time to time, test all weights and measures used in checking the receipt or disbursement of supplies in every institution for the maintenance of which moneys are appropriated by the Legislative Assembly, and report its findings in writing to the supervisory board or to the executive officer of the institution concerned.

[1973 c.293 §7]

618.065 [Formerly 618.750; repealed by 1973 c.293 §55]

618.066 Department to investigate weights and measures law violations. The department shall investigate complaints made to it concerning violations of ORS 618.010 to 618.356 and 618.991 and, upon its own initiative, shall conduct such investigations as it considers appropriate to develop information relating to prevailing procedures in commercial quantity determination and relating to possible violations of ORS 618.010 to 618.356 and 618.991, and in order to promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

[1973 c.293 §9]

618.070 [Repealed by 1973 c.293 §55]

618.071 Inspection and investigation authority of department; written notices for minor violations. When necessary for the enforcement of ORS 618.010 to 618.356 and 618.991, or rules promulgated pursuant thereto, the department is:

(1) Authorized to enter during normal business hours any premises, including buildings or mobile facilities, where commercial transactions are conducted, commodities are located, or weights and measures are employed.

(a) If such premises are not open to the public, a department representative shall first present his credentials and obtain consent before making entry thereto.

(b) If such entry is denied, the department may apply for a search warrant from any person authorized to issue search warrants.

(2) Empowered to stop any commercial vehicle and, after presentment of credentials, require the person in charge to move the

vehicle to a designated place for inspection on probable cause that a violation of ORS 618.010 to 618.356 and 618.991 has occurred or is occurring.

(3) Authorized, in the public interest, to issue written notices or warnings to violators for minor infractions of ORS 618.010 to 618.356 and 618.991 in lieu of referring the matter to the district attorney.

[1973 c 293 §13]

618.076 Approving use of weights and measures; use of certain terms describing condition of equipment; seizure and destruction of nonconforming equipment. (1) The department shall approve for use such weights and measures as it finds upon inspection and test to be correct, as provided in ORS 618.051, and shall reject such weights and measures as it finds upon inspection or test to be incorrect, as provided in ORS 618.051, but which in its best judgment are susceptible of satisfactory repair.

(2) In carrying out this section and pursuant to ORS 618.031, the department may use such terms as "rejected," "illegal," "incorrect," "condemned," "correct," "tested," "approved," "certified" or terms of similar import on marks or tags or certificates necessary to convey to all interested parties the condition or status of the device or apparatus so marked or tagged.

(3) In accordance with ORS 561.605 to 561.630, the department may condemn, seize and destroy incorrect weights and measures that are not susceptible of satisfactory repair. Similarly, weights and measures that have been rejected may also be seized, confiscated and destroyed by the department if such are not corrected as required by ORS 618.081, or if such weights and measures are used or disposed of contrary to the requirements of ORS 618.081.

[1973 c 293 §12]

618.080 [Repealed by 1973 c 293 §55]

618.081 Owners of weights and measures required to correct deficiencies; reexamination of incorrect weights and measures prior to use. The owner of weights and measures rejected pursuant to ORS 618.076 shall cause such weights and measures to be made correct within the time specified by the department or may dispose of such weights and measures in such manner as is authorized by the department. Weights and measures that have been rejected shall not again be used commercially until they have been officially reexamined by the department and

found to be correct, or approval for use is given by the department, or the rejection tag has been removed and the rejected device repaired and placed in service by a person or firm so authorized by the department.

[1973 c.293 §20]

618.086 Orders restricting distribution of weights and measures; violating terms of orders prohibited. (1) The department is authorized to issue stop-use orders, hold orders, and removal orders with respect to weights and measures being, or susceptible of being, commercially used, and to issue hold orders and removal orders with respect to packages or amounts of commodities sold, offered or exposed for sale, or in process of delivery, whenever in the course of its enforcement of ORS 618.010 to 618.356 and 618.991 it is considered necessary.

(2) No person shall use, remove from the premises or vehicles specified, or fail to remove from the premises or vehicles specified, any weight, measure or package or amount of commodity contrary to the terms of a stop-use order, hold order, or removal order issued under the authority of this section.

[1973 c.293 §11]

618.090 [Repealed by 1973 c 293 §55]

618.091 Security seal to be attached to weights and measures devices. A security seal shall be affixed to any adjustment mechanism, readout compensator, primary indicator, or retainer to prevent removal of a measurement element, in such manner as the department by rule may prescribe, on all commercial weights and measures.

[1973 c 293 §19]

618.096 Prohibited acts involving commercial weights and measures. No person shall:

(1) Use, or have in his possession for the purpose of using for any commercial purpose specified in ORS 618.056, sell, offer or expose for sale or hire, or have in his possession for the purpose of selling or hiring, an incorrect weight or measure or any device or instrument used or intended for use to falsify any weight or measure.

(2) Use, or have in his possession for the purpose of current use for any commercial purpose specified in ORS 618.056, a weight or measure that does not bear a seal or mark such as is specified in ORS 618.076 unless such weight or measure has been exempted from testing by ORS 618.056 or by a rule of the department or unless the device has been

placed in service as provided by rule of the department.

(3) Dispose of any rejected or condemned weight or measure in a manner contrary to ORS 618.010 to 618.356 and 618.991 or rules promulgated pursuant thereto.

(4) Remove, alter or deface any security seal, tag, seal or mark placed on any weight or measure by the department.

(5) Sell, offer or expose for sale, less than the quantity he represents of any commodity, thing or service.

(6) Take more than the quantity he represents of any commodity, thing or service when, as buyer, he furnishes the weight or measure by means of which the amount of the commodity, thing or service is determined.

(7) Keep for the purpose of sale, advertise, sell, offer or expose for sale, any commodity, thing or service in a condition or manner contrary to ORS 618.010 to 618.356 and 618.991 or rules promulgated pursuant thereto.

(8) Use in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is not so positioned that its indications may be accurately read and the weighing or measuring operation observed from a reasonable customer position.

(9) Violate any other provision of ORS 618.010 to 618.356 and 618.991 or rules promulgated pursuant thereto.

[1973 c.293 §50]

618.100 [Repealed by 1973 c 293 §55]

618.101 Evidentiary presumptions regarding weights and measures law. For the purposes of ORS 618.010 to 618.356 and 618.991, proof of the existence of a weight or measure or a weighing or measuring instrument or device in or about any building, inclosure, stand or vehicle in which or from which it is shown that buying or selling is commonly carried on, is presumptive proof of the regular use of such weight or measure or weighing or measuring instrument or device for commercial purposes and of such use by the person in charge of such building, inclosure, stand or vehicle.

[1973 c.293 §51]

618.110 [Repealed by 1973 c.293 §55]

618.115 Voluntary inspection of weighing or measuring instruments; fees. In addition to the authority otherwise granted to the department to inspect and test weighing

or measuring instruments or devices, the department may, at the request of an owner or user thereof, inspect and test weighing or measuring instruments or devices to ascertain if they are correct. As authorized by paragraph (e) of subsection (2) of ORS 618.031, the department may establish fees for performing the services and the person requesting the services shall pay the established fees to the department.

[1977 c.132 §2]

Note: 618.115 was enacted into law by the Legislative Assembly and was added to and made a part of ORS chapter 618 but not added to or made a part of any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

618.120 [Repealed by 1973 c.293 §55]

LICENSING OF COMMERCIALY OPERATED WEIGHING OR MEASURING INSTRUMENTS

618.121 License required for commercially operated weighing or measuring instrument; scope of license. No person shall operate or use for commercial purposes within the state any weighing or measuring instrument or device specified in ORS 618.141 that is not licensed in accordance with the requirements of ORS 618.010 to 618.356 and 618.991 unless exempted as provided in ORS 618.126. Any license issued under ORS 618.010 to 618.356 and 618.991 applies only to the instrument or device specified in the license. However, the department may permit such license to be applicable to a replacement for the original instrument or device.

[1973 c.293 §30]

618.126 Exemptions from licensing requirement. Commercial weighing or measuring instruments or devices specified in ORS 618.141 are exempt from the licensing requirements in ORS 618.121 if any of the following apply:

(1) Ownership and use of the instrument or device is limited to federal, state or local government agencies in the performance of official functions.

(2) The instrument or device is of a readily portable type, not intended for use within the state in excess of 30 days annually, and for which proof exists of satisfactory examination within the immediately preceding six months by a state or local weights and measures authority.

(3) The instrument or device is subject to inspection under ORS 761.330. However, this exemption does not apply to combination railroad-track and motor-vehicle scales.

[1973 c.293 §31]

618.130 [Repealed by 1973 c.293 §55]

618.131 Weights and measures licenses in addition to other licenses; effect of conflicting laws. (1) The licenses required by ORS 618.010 to 618.356 and 618.991 are in addition to any other licenses required by law.

(2) If ORS 618.010 to 618.356 and 618.991 are in conflict with any other statutes, ordinances or regulations, the provisions of ORS 618.010 to 618.356 and 618.991 take precedence.

[1973 c.293 §53]

618.136 Establishing license fees; renewals; disposition of fees. (1) The license fee for each type or class of commercial weighing or measuring instrument or device shall be established by the department in an amount not to exceed the maximum limits set forth in ORS 618.141. Such fees shall be established in the amounts necessary for the department to carry out and enforce the provisions of ORS 618.010 to 618.246 relating to the supervision of commercial weighing and measuring instruments or devices, and to maintain an emergency fund with an unencumbered balance in an amount not to exceed the cost of administering ORS 618.010 to 618.246 during a representative four-month period in order to assure the orderly supervision of commercial weighing and measuring instruments or devices within this state.

(2) License fees become past due July 1 each year for renewals, and on the date of first commercial use for original installations.

(3) All moneys received by the department pursuant to ORS 618.010 to 618.246 shall be paid into the State Treasury and deposited in the General Fund to the credit of the Department of Agriculture Account. Such moneys are continuously appropriated to the department for the purpose of administering those provisions of ORS 618.010 to 618.246 relating to testing, inspection, licensing and regulation of commercial weighing and measuring instruments or devices.

[1973 c.293 §32; 1977 c.132 §8]

618.141 Maximum license fees. The license fees established pursuant to ORS 618.136 for weighing or measuring instruments or devices shall not exceed the following:

	Maximum Fee
Discrete Weighing Devices (Manufacturer's rated capacity)	
0-400 pounds.....	\$ 10
401-1,160 pounds.....	\$ 15
1,161- 7,500 pounds.....	\$ 25
7,501-60,000 pounds.....	\$ 75
60,001 pounds or more	\$ 110
Continuous Weighing Systems (Manufacturer's rated capacity)	
Under 10 tons per hour.....	\$ 80
10-150 tons per hour	\$ 135
151-1,000 tons per hour	\$ 270
Over 1,000 tons per hour	\$ 675
Liquid-Fuel Metering Devices for Noncorrosive Fuels Contained at Atmospheric Pressure (Maximum device flowrate)	
Under 20 gallons per minute.....	\$ 10
20-150 gallons per minute	\$ 20
Over 150 gallons per minute	\$ 35
Special Liquid-Fuel Measuring Equipment (Type)	
Liquefied petroleum gas meters	
3/4-inch pipe diameter or under	\$ 45
Over 3/4-inch pipe diameter	\$ 85
Tanks, under 500 gallons capacity when used as measure containers with or without gage rods or markers	
	\$ 55
Tanks, 500 or more gallons capacity when used as measure containers with or without gage rods or markers	
	\$ 110

Any weighing or measuring device specified in this section that is equipped or associated with a remote readout shall be subject to an additional fee equal to 50 percent of the established basic device license fee. The additional fee shall apply individually to each remote readout associated with each device, up to a maximum of \$100 in such additional fee per device.

[1973 c 293 §34, 1977 c.132 §6]

618.146 Term of licenses; suspension and revocation of licenses. (1) All weighing and measuring instrument or device licenses issued under ORS 618.010 to 618.356 and 618.991 expire on June 30 next after the date of issuance.

(2) In accordance with the provisions of ORS 183.310 to 183.500, any license issued under ORS 618.010 to 618.356 and 618.991

may be suspended or revoked by the department if the instrument or device is operated or used contrary to ORS 618.010 to 618.356 and 618.991 or rules promulgated pursuant thereto.

[1973 c.293 §33]

618.150 [Repealed by 1973 c.293 §55]

618.151 Use of unlicensed weighing or measuring instrument prohibited; reapplication required when license expires; applicability of penalty fee. (1) The owner or person in possession of weighing or measuring instruments or devices for which the license fees have not been paid in the manner required by ORS 618.010 to 618.356 and 618.991 shall not use such weighing or measuring instruments or devices for commercial purposes.

(2) A person who has failed to pay the license fee for any weighing or measuring instrument or device in the manner required by ORS 618.010 to 618.356 and 618.991 shall not subsequently be issued a license by the department for any such instruments or devices until he makes written application for a license to the department and submits to the department an amount of money equal to the regular license fee for the instrument or device, plus a penalty fee for each instrument or device to reimburse the department in part for its collection costs. Beginning on the past due date and every month thereafter until the license fee and penalty is paid, a penalty fee of 50 cents per instrument or device shall be added to the required license fee. The penalty fee to be paid in such cases shall not be less than \$1.

(3) No penalty fee is required of any person whose properly executed application for a license is accompanied by his signed statement that prior to the date of such application the weighing or measuring instrument or device requested to be licensed has not been used commercially during the preceding 12 months or since the expiration of the previous license, whichever time is less.

[1973 c 293 §35]

618.156 Forms, certificates and identification tags; license application forms.

(1) The department shall prescribe such forms, certificates and identification tags as it considers necessary to carry out the licensing provisions of ORS 618.010 to 618.356 and 618.991.

(2) The department shall provide a certificate or other evidence of device license compliance to each person fulfilling the weighing or

measuring device licensing requirements of ORS 618.010 to 618.356 and 618.991.

(3) Application for a weights and measures license shall be made upon a form prescribed and furnished by the department and shall contain such information as the department may require.

[1973 c.293 §36]

618.160 [Repealed by 1973 c.293 §55]

618.161 Notice of violation to owner or operator of unlicensed weighing or measuring instrument; tagging or sealing instruments to prevent unauthorized use.

When weighing or measuring instruments or devices specified in ORS 618.141 are in commercial use and a valid license for such instruments or devices has not been procured by the owner or operator thereof, the department after giving notice of such requirements to the owner or operator is authorized to prohibit the further commercial use of the unlicensed instruments or devices until the proper license has been issued. The department may employ and attach to the instruments or devices such forms, notices or security seals as it considers necessary to prevent the continued unauthorized use of the instruments or devices.

[1973 c.293 §37]

618.170 [Repealed by 1973 c.293 §55]

618.175 [1961 c.643 §6; repealed by 1973 c.293 §55]

618.180 [Repealed by 1973 c.293 §55]

618.190 [Amended by 1961 c.643 §1, repealed by 1973 c.293 §55]

618.200 [Repealed by 1973 c.293 §55]

COMMODITY SALES REGULATIONS

618.201 Department to weigh or measure packaged commodities; distribution of commodities ordered withheld from sale prohibited.

(1) The department, as often as necessary to provide adequate protection, shall weigh or measure and inspect packages or amounts of commodities sold, offered or exposed for sale, or in the process of delivery, to determine whether they contain the amounts represented and whether they are sold, offered or exposed for sale in accordance with ORS 618.010 to 618.356 and 618.991. If such packages or amounts of commodities are found not to contain the amounts represented, or are found to be sold, offered or exposed for sale in violation of ORS 618.010 to 618.356 and 618.991, the depart-

ment may order them withheld from sale and may so mark or tag them.

(2) In carrying out the provisions of this section, the department may employ recognized sampling procedures under which the compliance of a given lot of packages will be determined on the basis of the result obtained on a sample selected from and representative of such lot.

(3) No person shall:

(a) Sell, offer or expose for sale, in intrastate commerce, any package or amount of commodity that has been ordered withheld from sale and marked or tagged as provided in this section until such package or amount of commodity has been brought into full compliance with all the requirements of ORS 618.010 to 618.356 and 618.991; or

(b) Otherwise dispose of any package or amount of the commodity that has been ordered withheld from sale and marked or tagged as provided in this section and that has not been brought into compliance with the requirements of ORS 618.010 to 618.356 and 618.991, in any manner, except with the specific approval of the department.

[1973 c.293 §10]

618.206 Manner of selling commodities; exemptions. (1) Commodities in liquid form shall be sold only by liquid measure or weight and, except as otherwise provided in ORS 618.010 to 618.356 and 618.991, commodities not in liquid form shall be sold only by weight, measure of length or area, or count. However, liquid commodities may be sold by weight, and commodities not in liquid form may be sold by count only if such methods give accurate information as to the quantity of commodity sold.

(2) The provisions of subsection (1) of this section do not apply to:

(a) Commodities sold for immediate consumption on the premises where sold;

(b) Vegetables sold by the head or bunch;

(c) Commodities in containers standardized by the laws of this state or the United States;

(d) Commodities in package form when there exists a general consumer usage to express the quantity in some other manner;

(e) Concrete aggregates, concrete mixtures and loose solid materials such as earth, soil, gravel, crushed stone and like substances sold by cubic measure; or

(f) Unprocessed vegetable and animal fertilizer sold by cubic measure.

(3) The department may make such reasonable rules as are necessary to assure that the amounts of commodity for sale reflect accurate and fair practices.

[1973 c 293 §21]

618.210 [Repealed by 1973 c.293 §55]

618.211 Labeling of packaged commodities; use of labeling terms restricted; scope of rules. (1) Except as otherwise provided in ORS 618.010 to 618.356 and 618.991 and the rules promulgated pursuant thereto, any commodity in package form introduced, delivered for introduction into or received in intrastate commerce and sold, offered or exposed for sale in intrastate commerce, shall bear on the outside of the package definite, plain and conspicuous declarations of:

(a) The identity of the commodity in the package, unless it is visible through the wrapper;

(b) The net quantity of the contents in terms of weight, measure or count; and

(c) In the case of any package sold, offered or exposed for sale in any place other than on the premises where packed, the name and place of business of the manufacturer, packer or distributor, as may be prescribed by rule.

(2) In connection with the requirements of paragraph (b) of subsection (1) of this section, neither the qualifying term "when packed" or any words of similar import, nor any term qualifying a unit of weight, measure or count such as "jumbo," "giant" or "full" that tends to exaggerate the amount of commodity in a package shall be used.

(3) In connection with the requirements of paragraph (b) of subsection (1) of this section, the department by rule may establish:

(a) Reasonable variations to be allowed, including variations below the declared weight or measure caused by ordinary and customary exposure, only after the commodity is introduced into intrastate commerce, to conditions that normally occur in good distribution practice and that unavoidably result in decreased weight or measure. However, such variations shall not be permitted to the extent that the average of the quantities in the packages comprising a shipment, display or other lot is below the quantity stated, and no unreasonable shortage in any package shall be permitted even though overages in other packages in the same shipment, display or lot compensate for such shortage;

(b) Exemptions for small packages; and

(c) Exemptions for commodities put up in variable weights or sizes for sale intact and either customarily not sold as individual units or customarily weighed or measured at time of sale to the consumer.

[1973 c.293 §22]

618.216 Cost per unit labeling requirements. In addition to the declarations required by ORS 618.211, any commodity in package form which is one of a lot containing random weights, measures or counts of the same commodity and which states the total selling price of the package, shall bear on the outside of the package a plain and conspicuous declaration of the corresponding price per unit of weight, measure or count in terms consistent with ORS 618.206.

[1973 c 293 §23]

618.220 [Repealed by 1973 c.293 §55]

618.221 Restriction on manner of packaging commodities; fill of container requirements. No commodity in package form shall be so wrapped, nor shall it be in a container so made, formed or filled as to mislead the purchaser as to the quantity of the contents of the package, and the contents of a container shall not fall below such reasonable standard of fill as may be prescribed for the commodity by the department.

[1973 c 293 §24]

618.226 Commodity price and quantity advertising requirements; restriction on use of certain advertising terms. (1) Whenever a commodity in package form is advertised in any manner and the retail price of the package is stated in the advertisement, there shall be closely and conspicuously associated with such statement of price a declaration of the quantity of contents of the package as is required to appear on the package.

(2) If the applicable law requires a dual declaration of net quantity to appear on the package, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure need appear in the advertisement.

(3) There shall not be included as part of the declaration required under this section such qualifying terms as "when packed," "minimum," "not less than" or any other terms of similar import, nor any term qualifying a unit of weight, measure or count such as "jumbo," "giant" or "full" that tends to exaggerate the amount of commodity in a package.

gerate the amount of commodity in the package.

[1973 c.293 §25]

618.230 [Repealed by 1973 c.293 §55]

618.231 "Weight" defined; construction of term in sales transactions. The word "weight" when referring to the quantity of any commodity means net weight. Whenever any commodity is sold on the basis of weight, the net weight of the commodity shall be employed, and all contracts concerning commodities shall be so construed.

[1973 c 293 §26]

618.236 Price misrepresentation prohibited; expressing fractional prices. (1) Whenever any commodity or service is sold, offered or exposed for sale, by weight, measure or count, the price shall not be misrepresented, nor shall the price be represented in any manner calculated or tending to mislead or deceive an actual or prospective purchaser.

(2) Whenever an advertised, posted or labeled price per unit of weight, measure or count includes a fraction of a cent, all elements of the fraction shall be prominently displayed and the numeral or numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and width of, the numerals representing the whole cents.

[1973 c.293 §27]

618.240 [Repealed by 1973 c 293 §55]

618.241 Written invoice of certain commodity sales required; contents of writing. In the case of sales to or by retail outlets including restaurants, hospitals, boarding houses and similar institutions, sales of commodities in bulk form whose value exceeds \$10 shall be accompanied by a printed or written delivery ticket or invoice bearing the following information:

(1) Name and address of the vendor and the purchaser.

(2) Date and place of the delivery.

(3) Product identity and net quantity delivered.

(4) Quantity upon which charges are based if different from the delivered quantity by reason of processing customarily performed subsequent to a sale, but prior to delivery to a purchaser.

[1973 c 293 §28]

618.246 Sale by weight required for certain food products; labeling requirements. (1) Except for immediate consumption on the premises where sold, or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all poultry, or parts thereof, meat, meat products, fish and seafood, sold, offered or exposed for sale as food, shall be sold, offered or exposed for sale by weight.

(2) If meat, poultry, fish or seafood is combined with or associated with some other food element to form either a distinctive food product or a food combination, such food product or combination shall be sold, offered or exposed for sale by weight. The quantity representation may be the total weight of the food product or combination and a quantity representation need not be made for each of the several elements of the food product or combination.

(3) In the case of ready-to-cook whole-carcass stuffed poultry, ready-to-cook stuffed poultry roasts, rolls, bars and logs, and ready-to-cook stuffed poultry products designated by terms of similar import, the label must show the total net weight and, in close proximity, the net weight of the poultry exclusive of stuffing ingredients.

[1973 c.293 §29]

618.250 [Repealed by 1973 c.293 §55]

618.260 [Repealed by 1973 c 293 §55]

618.270 [Repealed by 1973 c.293 §55]

618.280 [Repealed by 1973 c.293 §55]

618.290 [Repealed by 1971 c.743 §432]

618.300 [Repealed by 1973 c.293 §55]

618.301 [1973 c.293 §38; repealed by 1977 c 132 §9 and 1977 c 842 §23]

618.306 [1973 c 293 §39; repealed by 1977 c 132 §9 and 1977 c 842 §23]

618.310 [Repealed by 1973 c.293 §55]

618.311 [1973 c 293 §40; 1975 c.304 §3; repealed by 1977 c 132 §9 and 1977 c 842 §23]

618.316 [1973 c.293 §46; repealed by 1977 c.132 §9 and 1977 c.842 §23]

618.320 [Repealed by 1973 c 293 §55]

618.321 [1973 c.293 §47; repealed by 1977 c.132 §9 and 1977 c 842 §23]

618.326 [1973 c.293 §49, repealed by 1977 c 132 §9 and 1977 c.842 §23]

618.330 [Repealed by 1973 c 293 §55]

618.331 [1973 c.293 §41; repealed by 1977 c 132 §9 and 1977 c 842 §23]

618.336 [1973 c.293 §42, repealed by 1977 c.132 §9 and 1977 c.842 §23]

618.340 [Amended by 1953 c.373 §8; repealed by 1973 c.293 §55]

618.341 [1973 c.293 §43; repealed by 1977 c.132 §9 and 1977 c.842 §23]

618.346 [1973 c.293 §44; repealed by 1977 c.132 §9 and 1977 c.842 §23]

618.351 [1973 c.293 §45; repealed by 1977 c.132 §9 and 1977 c.842 §23]

618.356 [1973 c.293 §48; repealed by 1977 c.132 §9 and 1977 c.842 §23]

LICENSING LAW ENFORCEMENT

618.401 Definitions for ORS 618.401 to 618.466. As used in ORS 618.401 to 618.466, unless the context requires otherwise:

(1) "Deputy state sealer" means the person appointed by the director to supervise the weights and measures section.

(2) "Inspector" means a state employe designated by the director as a supervisor or inspector of weights and measures.

(3) "Person" has the meaning for that term provided in ORS 174.100.
[1973 c.374 §4]

618.406 Citations for enforcement of weights and measures licensing laws; delegation of authority of director. (1) In the enforcement of the licensing laws of this chapter, the director has authority to issue and serve citations to any person violating such laws.

(2) The director may delegate the powers referred to in subsection (1) of this section to the deputy state sealer and to inspectors.
[1973 c.374 §5]

618.410 [Repealed by 1973 c.293 §55]

618.411 Effect of other laws on prosecutions under this chapter. Prosecutions for violations of ORS 1.510, 1.520 and 618.401 to 618.466 are valid and proper, notwithstanding the existence of any other general or specific law of this state dealing with the same or similar subject matters.
[1973 c.374 §7]

618.416 Inspector's authority to issue citation. When any inspector to whom the authority to perform the duties specified in ORS 1.510, 1.520 and 618.401 to 618.466 has been delegated by the director, has reasonable cause to believe that there has been committed in his presence an act which is a violation

of the licensing laws of this chapter, or rules promulgated pursuant thereto, the inspector may issue and serve a citation to the violator.
[1973 c.374 §8]

618.420 [Repealed by 1973 c.293 §55]

618.421 Citation for violation of weights and measures licensing laws; form of complaint and summons. (1) A citation conforming to the requirements of this section shall be used for all violations of the licensing laws of this chapter, and rules promulgated pursuant thereto.

(2) The citation shall consist of, and be prepared in, four copies:

(a) The complaint copy, to be forwarded to the court.

(b) The abstract of record copy, to be forwarded to the court, and thereafter forwarded by the court pursuant to ORS 618.461.

(c) The department record copy, to be forwarded to the department.

(d) The summons copy, to be given to the person cited.

(3) Each of the citation copies shall contain the following applicable information in blanks provided therefor:

(a) The name of the court and the court's docket or file number.

(b) The name and residence of the person cited.

(c) The offense of which the person is charged, the date, time and place at which the offense occurred, the date on which the citation was issued and the name of the complainant.

(d) The time and place at which the person cited is to appear in court.

(e) The bail fixed for the offense.

(4) The complaint copy shall also contain a form of certificate to the effect that the complainant certifies, under penalties of false swearing, that he has reasonable grounds to believe, and does believe, that the person cited committed the offense contrary to law or rule. The certification if made by a special police officer need not be made before a magistrate or any other person. A private person shall certify before a magistrate, clerk or deputy clerk of the court and this action shall be entered in the court record. A certificate conforming to the requirements of this section shall be considered the equivalent of a sworn complaint.

(5) The summons copy shall also contain a notice to the person cited that a complaint is to be filed. The reverse side of the citation shall contain a form substantially as follows:

READ CAREFULLY

You must do one of the following:

1. Appear in court at the time mentioned in this citation and request a hearing. The court will then set a time for a hearing; or

2. Mail to the court this citation, together with a check or money order in the amount of the bail indicated on the other side of this citation and tell the court you request a hearing. This citation and the bail must be in the court's possession before the time when this citation requires you to appear in court. If you don't want a hearing, but wish to explain your side, send your explanation with the citation and bail; or

3. Sign the plea of guilty below and send this citation to the court, together with check or money order in the amount of bail indicated on the other side of this citation. This citation and the bail must be in the court's possession before the time when this citation requires you to appear in court.

Note: If you have already given bail or other security for your appearance, proceed as mentioned above, but do not send in any additional sum as bail.

APPEARANCE, PLEA OF GUILTY AND WAIVER

I, the undersigned, do hereby enter my appearance on the complaint of the offense charged on the other side of this citation. I have been informed of my right to a trial, that my signature to this plea of guilty will have the same force and effect as a judgment of court. I do hereby plead guilty to said offense as charged, waive my right to a hearing by the court, and agree to pay the penalty prescribed for my offense.

(Defendant's signature)

(Address)

Mail your remittance to the court listed on reverse side.

— NOTICE —

If you fail to comply with these instructions, the court is authorized to issue a warrant for your arrest.

(6) The complaint may be set aside by the court upon the motion of the person cited before plea when it does not conform to the requirements of this section. However, this section does not prohibit a requirement for language in addition to that specified in this section.

[1973 c 374 §9]

618.426 Private person may commence action. A private person may commence an action for a violation of the licensing laws of this chapter, and rules promulgated pursuant thereto, as provided in subsection (4) of ORS 618.421.

[1973 c 374 §10]

618.430 [Repealed by 1973 c.293 §55]

618.431 Contents of summons. A summons part of a citation shall state an alleged violation of the licensing laws of this chapter, and rules promulgated pursuant thereto, and shall be considered sufficient if it contains the following:

(1) The name of the court, the name of the persons cited, the date on which the citation was issued, the name of the complainant and the time and place at which the person cited is to appear in court.

(2) A statement or description of the alleged offense in such a manner as can be readily understood by a person making a reasonable effort to do so, and the date, time and place at which the offense is alleged to have occurred.

(3) A notice to the person cited that a complaint is to be filed with the court based on the offense.

(4) The amount of bail, if any, fixed for the offense.

[1973 c.374 §11]

618.436 Contents of complaint. Except as provided in this section, a complaint part of a citation shall state an alleged violation of the licensing laws of this chapter, and rules prescribed pursuant thereto, and shall be considered sufficient if it contains the following:

(1) The name of the court, the name of the state in whose name the action is brought and the name of the defendant.

(2) A statement or description of the alleged offense in such a manner as can be readily understood by a person making a reasonable effort to do so and the date, time and place at which the offense is alleged to have occurred.

(3) A certificate as provided in subsection (4) of ORS 618.421.
[1973 c.374 §12]

618.441 Delivery of summons and complaint. The person issuing the citation shall cause the summons copy or the citation to be delivered to the person cited and shall cause the complaint copy and abstract of record copy to be delivered to the court. When the complaint is certified by a private person the court shall cause the summons copy to be delivered to the defendant and the department copy forwarded to the department.

[1973 c.374 §13]

618.446 Appearance of person cited; return of summons and bail in lieu of appearance. The person cited shall either appear in court at the time indicated in the summons copy, or prior to such time shall deliver to the court the summons copy, together with check or money order in the amount of the bail set forth in the summons, and inclosing therewith:

- (1) A request for a hearing; or
- (2) A statement of matters in explanation or mitigation of the offense charged; or
- (3) The executed appearance, waiver of hearing and plea of guilty appearing on the summons; and
- (4) His signature and address in the space provided.

[1973 c 374 §14]

618.451 Effect of written statement of person cited. If the person cited has submitted to the court a written statement as provided in subsection (2) of ORS 618.446, such shall constitute a waiver of hearing and consent to judgment by the court declaring a forfeiture of bail on the basis of such statement and any testimony or written statement of the arresting special police officer or other witnesses which may be presented to the court.

[1973 c.374 §15]

618.456 Hearing on request of person cited; notice. If the person cited requests a hearing or if, pursuant to ORS 618.461, the court directs that a hearing be had, the court

shall fix a date and time for the hearing and, unless notice is waived, shall at least five days in advance of the hearing mail to the defendant notice of the date and time so fixed.

[1973 c.374 §16]

618.460 [Repealed by 1973 c.293 §55]

618.461 Hearing for citation after first conviction; judgment; post-judgment procedure; disposition of fines; appropriation of funds. In any case, the court shall direct that a hearing be held for each subsequent citation after a first conviction of violation of any licensing law of this chapter, or rule promulgated pursuant thereto. The court may enter the appropriate judgment, impose a fine, direct that the fine be paid out of the bail deposited by the defendant and remit to the defendant any amount by which the bail deposited exceeds the fine. No sentence to jail may be imposed, nor any fine imposed in excess of the bail deposited by the defendant, unless a hearing is held. The court shall complete the complaint copy for its record and forward the completed abstract of record copy to the department with one-half of any fine or bail collected. All such funds shall be forwarded to the State Treasurer and deposited in the General Fund to the credit of the Department of Agriculture Account. Such funds are continuously appropriated to the department for enforcement and administration of the licensing laws of this chapter, and rules promulgated pursuant thereto.

[1973 c 374 §17]

618.466 Warrant of arrest when person cited fails to comply; warrant not to be issued later than 60 days after forfeiture of security. (1) If a person cited fails to comply with ORS 618.446, or if he fails to appear at any time fixed by the court, a warrant for his arrest may be issued. A warrant issued by a circuit, district or justice court may be served, without further indorsement, in any county in this state.

(2) No warrant of arrest may be issued pursuant to the section after a period of 60 days from the date of the entry of an order declaring a forfeiture of bail or other security given by the person cited. Unless a warrant has been issued before the expiration of such period, the order of forfeiture of bail shall be considered a final disposition of the case.

[1973 c.374 §18]

618.470 [Repealed by 1973 c 293 §55]

618.480 [Repealed by 1973 c 293 §55]

618.490 [Repealed by 1973 c.293 §55]

618.500 [Repealed by 1973 c 293 §55]

SECURITY SEAL ENFORCEMENT

618.501 Definitions for ORS 618.501 to 618.551. As used in ORS 618.501 to 618.551, unless the context requires otherwise:

(1) "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 a security seal violation; or

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

(2) "Person" has the meaning for that term provided in ORS 174.100.

(3) "Prosecuting attorney" means the Attorney General or the district attorney of any county in which a security seal violation is alleged to have been committed.

(4) "Security seal" means a lead-and-wire seal or similar nonreusable closure, attached to a weighing or measuring instrument or device for protection against undetectable access, removal, adjustment or unauthorized use.

(5) "Security seal violation" means the use, in violation of this chapter or any rule promulgated pursuant thereto, of any liquid or gaseous metering instrument or device to which a security seal is required to be affixed, when the security seal has been broken or removed.

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

[1973 c 294 §2]

618.506 Enjoining security seal violations; notice to defendant; voluntary compliance; temporary order; attorney fees and costs. (1) Whenever the prosecuting attorney has probable cause to believe that a person is committing or has committed a security seal violation, he may bring suit in the name of the State of Oregon in the appropriate court to restrain such person from committing the alleged violation.

(2) Before filing a suit under subsection (1) of this section, the prosecuting attorney shall in writing notify the person charged of the alleged security seal violation and the relief to be sought. Such notice shall be served in the manner set forth in ORS 618.526 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 violation. 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. Violation of an assurance of voluntary compliance which has been approved by and filed with the court constitutes a contempt of court. The notice of the prosecuting attorney under this subsection is not a public record until the expiration of 10 days from the service of the notice.

(3) Notwithstanding subsection (2) of this section, if the prosecuting attorney alleges that he has reason to believe that the delay caused by complying with the provisions of subsection (2) 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.

(4) 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.

(5) The court may award reasonable attorney fees to the prevailing party in a suit brought under this section. If the defendant prevails in such a 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 subsection (3) of this section, did not have reasonable grounds to proceed under that subsection, 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.

[1973 c 294 §3]

618.510 [Repealed by 1973 c 293 §55]

618.511 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 a security seal violation, or as may be necessary to insure cessation of such violations, pursuant to ORS 618.506.

[1973 c.294 §4]

618.516 Civil action by private party; damages; attorney fees and costs; effect of prior injunction; time for commencing action. (1) Any person who purchases or leases goods or services and thereby suffers any ascertainable loss of money or property, real or personal, as a result of a wilful security seal violation 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 considers 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 618.506 or 618.511 is prima facie evidence, in an action brought under this section, that the respondent committed a security seal violation, 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 security seal violation. However, whenever any complaint is filed by a prosecuting attorney to prevent, restrain or

punish security seal violations, 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 the proceeding shall be suspended during the pendency thereof.

[1973 c 294 §5]

618.520 [Repealed by 1973 c 293 §55]

618.521 Investigative demand; petition to modify. (1) When it appears to the prosecuting attorney that a person has committed or is committing a security seal violation, 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 violation. The investigative demand shall require such person, under oath or otherwise, to appear and testify 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 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.

[1973 c 294 §6]

618.526 Method of serving investigative demand. Service of any investigative demand under ORS 618.521 shall be made personally within this state. If personal service cannot be made, substituted service therefor may be made in the following manner:

(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.

[1973 c.294 §7]

618.530 [Repealed by 1973 c 293 §55]

618.531 Effect of failure to obey investigative demand. (1) If any person after being served with an investigative demand under ORS 618.526, fails 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 conduct of any activity that is involved in the alleged or suspected violation; or

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

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

[1973 c 294 §8]

618.536 Civil penalties. (1) Any person who wilfully violates the terms of an injunction issued under ORS 618.506 shall forfeit and pay to the state a civil penalty of not more than \$1,000 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 by an assurance of voluntary compliance submitted under ORS 618.506 agrees not to commit a security seal violation and thereafter wilfully violates such assurance shall forfeit and pay to the state a civil penalty of not more than \$1,000 per violation. The prosecuting attorney may apply to an appropriate court for recovery of such civil penalty.

(3) In any suit brought under ORS 618.506, if the court finds that a person is wilfully committing or has wilfully committed a security seal violation, the prosecuting attorney, upon petition to the court, may recover, on behalf of the state, a civil penalty not exceeding \$500 per violation.

[1973 c 294 §9]

618.540 [Repealed by 1973 c 293 §55]

618.541 Loss of license by person violating injunction. Upon petition by the prosecuting attorney, the court may, in its discretion, order suspension or forfeiture of the license for any liquid or gaseous metering instrument or device operated in violation of the terms of any injunction issued under ORS 618.506.

[1973 c.294 §10]

618.546 Reports by district attorney 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 618.506 to 618.541, including the final disposition of the matter, and shall file with the Attorney General copies of all assurances of voluntary compliance accepted under ORS 618.506.

[1973 c 294 §11]

618.550 [Repealed by 1973 c.293 §55]

618.551 Remedies supplementary to existing statutory or common law remedies. The remedies provided in ORS 618.506 to 618.541 are in addition to all other remedies, civil or criminal, existing at common law or under the laws of this state.

[1973 c 294 §12]

618.610 [Repealed by 1973 c 293 §55]

618.620 [Repealed by 1973 c 293 §55]

618.630 [Amended by 1955 c.97 §1; repealed by 1973 c 293 §55]

618.640 [Repealed by 1973 c.293 §55]

618.710 [Amended by 1953 c 373 §8, repealed by 1973 c 293 §55]

618.720 [Amended by 1953 c 373 §8, repealed by 1973 c 293 §55]

618.730 [Amended by 1953 c 373 §8, 1961 c.643 §2, 1967 c.122 §1; 1969 c.88 §1, repealed by 1973 c 293 §55]

618.732 [1967 c.122 §3, repealed by 1973 c 293 §55]

618.735 [1961 c.643 §5; 1969 c 88 §2; repealed by 1973 c 293 §55]

618.740 [Amended by 1967 c 122 §2, repealed by 1973 c 293 §55]

618.750 [Amended by 1961 c 643 §3, renumbered 618 065]

618.760 [1953 c 373 §6; repealed by 1973 c 293 §55]

618.770 [Repealed by 1973 c 293 §55]

618.780 [Repealed by 1973 c 293 §55]

618.790 [Repealed by 1973 c 293 §55]

618.800 [Repealed by 1973 c 293 §55]

618.810 [Repealed by 1973 c 293 §55]

PENALTIES

618.990 [Repealed by 1973 c 293 §55]

618.991 Penalties. (1) Violation of ORS 618.086, 618.096, 618.121, 618.201 or 618.356 is punishable as follows:

(a) If the violator is an individual, by imprisonment for not more than six months, or a fine not to exceed \$500, or both.

(b) If the violator is a person other than an individual, by a fine of not more than \$2,500.

(2) For the purposes of this section, each day of violation of ORS 618.086, 618.096, 618.121, 618.201 or 618.356 is a separate offense and the penalties provided in subsec-

tion (1) of this section apply to each such offense.

[1973 c 293 §54]

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, 1977.

Thomas G. Clifford
Legislative Counsel

