

Chapter 650

1979 REPLACEMENT PART

Franchise Transactions

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CROSS REFERENCES

Corporation Commissioner, powers, Ch. 56

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Indemnification, generally applied to corporations, 57.255

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Administrative procedures, state agencies, 183.310 to 183.500

GENERAL PROVISIONS

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

(1) "Area franchise" means a contract or agreement between a franchisor and a subfranchisor whereby the subfranchisor is granted the right, for a valuable consideration, to sell or negotiate the sale of franchises in the name or on behalf of the franchisor.

(2) "Commissioner" means Corporation Commissioner.

(3) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(4) "Franchise" means a contract or agreement, whether oral or written, by which:

(a) A franchisee is granted the right to engage in the business of offering, selling or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor;

(b) The operation of the franchisee's business pursuant to such plan or system is substantially associated with the franchisor's trade-mark, service mark, trade name, logo-type, advertising or other commercial symbol designating the franchisor of such plan or system; and

(c) The franchisee is required to give to the franchisor a valuable consideration for the right to transact business pursuant to the plan or system. Payment for trading stamps in itself is not consideration for the right to transact business pursuant to a plan or system.

(5) "Franchisee" means a person to whom a franchise is sold by a franchisor.

(6) "Franchisor" means a person, including a subfranchisor, who sells a franchise for \$100 or more to a franchisee or subfranchisor.

(7) "Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value.

(8) "Sale" or "sell" includes every contract or agreement of sale of, contract to sell, or disposition of a franchise or interest in a franchise for value, but does not include the renewal or extension of an existing franchise without any material change in the terms thereof if there is no interruption in the oper-

ation of the franchised business by the franchisee.

(9) "Subfranchisor" means a person to whom an area franchise is sold by a franchisor. [1973 c.509 §1]

650.010 Franchise sellers required to maintain books and records; filings with commissioner. Every person who offers to sell a franchise in this state shall maintain a complete set of books, records and accounts of any such sale and the disposition of the proceeds thereof, and shall, at such times as the commissioner may require, file in the office of the commissioner a report, stating the names of each person to whom a franchise has been sold by the person filing the report, the amount of the proceeds derived and the disposition. [1973 c.509 §3]

650.015 When franchise sale or offer for sale is made in this state. (1) A sale or offer to sell a franchise is made in this state when an offer to sell is made in this state, or an offer to buy is accepted in this state, or, if the franchisee is domiciled in this state, the franchised business is or will be operated in this state.

(2) An offer to sell a franchise is made in this state when the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed. An offer to sell is accepted in this state when acceptance is communicated to the offeror in this state. Acceptance is communicated to the offeror in this state when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed.

(3) An offer to sell a franchise is not made in this state merely because:

(a) The publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular and paid circulation outside this state during the past 12 months; or

(b) A radio or television program originating outside this state is received in this state. [1973 c.509 §2]

650.020 Liability for damages of franchise seller; amount of recovery; defenses; limitation on action; indemnification of corporation; right of contribution. (1) Any

person who sells a franchise is liable as provided in subsection (3) of this section to the franchisee if the seller:

(a) Employs any device, scheme or artifice to defraud; or

(b) Makes any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

(2) It shall be an affirmative defense to any action for legal or equitable remedies brought under subsection (1) of this section if the franchisee knew of the untruth or omission.

(3) The franchisee may recover any amounts to which the franchisee would be entitled upon an action for a rescission, reasonable attorney fees at trial and on appeal and court costs.

(4) Every person who directly or indirectly controls a franchisor liable under subsection (1) of this section, every partner, officer or director of the franchisor, every person occupying a similar status or performing similar functions, and every person who participates or materially aids in the sale of a franchise is also liable jointly and severally to the same extent as the franchisor, unless the nonseller did not know, and, in the exercise of reasonable care, could not have known, of the existence of the facts on which the liability is based.

(5) An action may not be commenced under this section more than three years after the sale.

(6) A corporation which is liable under this chapter shall have a right of indemnification against any of its principal executive officers, directors and controlling persons whose wilful violation of any provision of this chapter gave rise to the liability. All persons liable under this chapter shall have a right of contribution against all other persons similarly liable, based upon each person's proportionate share of the total liability, except:

(a) A person wilfully misrepresenting or failing to disclose shall not have any right of contribution against any other person guilty merely of a negligent violation; and

(b) A principal executive officer, director, or controlling person shall not have any right of contribution against the corporation to which the person sustains that relationship.

[1973 c.509 §4; 1979 c.284 §185]

ADMINISTRATION

650.050 Rulemaking authority. In accordance with this section and ORS 183.310 to 183.500, the commissioner may from time to time make, amend and rescind such rules as are necessary to carry out the provisions of this chapter. [1973 c.509 §5]

650.055 General duties and powers of commissioner. The commissioner:

(1) May make such public or private investigations within or outside this state as he considers necessary to:

(a) Determine whether a person has violated or is about to violate any provision of this chapter or any rule of the commissioner; or

(b) Aid in the enforcement of this chapter or in the formulation of rules and forms thereunder;

(2) May require a person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated; and

(3) May publish information concerning any violation of this chapter or any rule of the commissioner. [1973 c.509 §6]

650.060 Investigative powers of commissioner; protection against unreasonable investigation; contempt. (1) For the purpose of any investigation or proceeding under this chapter, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner considers relevant or material to the investigation or proceeding.

(2) Any person who is served with a subpoena or is subject to an order to give testimony orally or in writing or to produce books, papers, correspondence, memoranda, agreements or other documents or records as provided in this chapter may apply to any circuit court in Oregon for protection against abuse or hardship in the manner provided in ORCP 36 C.

(3) Except to the extent judicial relief may have been granted under subsection (2) of this section, if any person disobeys a subpoena issued under subsection (1) of this section, or if any witness refuses to testify or produce

evidence before the commissioner on any matter on which the witness may be lawfully interrogated, the circuit court of any county, upon application of the commissioner, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1973 c.509 §7; 1977 c.358 §10; 1979 c.284 §186]

650.065 Injunctive relief; appointment of receiver or conservator; conditions of awarding damages and injunctive relief. (1) Whenever the commissioner determines that any person has engaged in, or is about to engage in, any act or practice which the commissioner believes would give rise to liability under ORS 650.020, the commissioner may bring suit in the name of the State of Oregon in any circuit court of this state to enjoin the acts or practices. If the commissioner prevails, he shall recover court costs and a reasonable attorney fee to be fixed by the court. Upon a proper showing, the court shall grant a permanent or temporary injunction or restraining order and may appoint a receiver or conservator for the defendant or the defendant's assets. The court shall not require the commissioner to post a bond.

(2) The commissioner may include in any suit authorized by subsection (1) of this section a claim for any amount the franchisee could recover under ORS 650.020 or a claim for damages on behalf of other persons injured by any act or practice against which an injunction or restraining order is sought. The court may award appropriate relief to the franchisee or such other persons if the court finds that enforcement of the right of the franchisee or other persons by private civil action or suit, whether by class action or otherwise, would be so burdensome or expensive as to be impractical. [1973 c.509 §8]

650.070 Commissioner as agent for service of process. Except as provided in ORS 650.080, the commissioner is an agent for the service of any process, notice or demand required to be served in a proceeding under this chapter for:

(1) Every person who sells or offers to sell a franchise in this state; and

(2) Every person, whether a resident or nonresident of this state, who has engaged in conduct that is subject to a proceeding under ORS 650.020. [1973 c.509 §9]

650.075 Manner of executing service of process. The service referred to in ORS 650.070 shall be made by:

(1) Delivery to the commissioner or any employe on duty in any office of the commissioner of one copy of each of the papers required by law to be delivered in connection with the service, together with a fee of \$2;

(2) Transmittal of notice of the service on the commissioner, together with one copy of each of the papers required by law to be delivered in connection with the service, by certified mail to the person being served:

(a) At such person's address, if any, as it appears in the records of the commissioner; and

(b) At any address the use of which the person initiating the proceedings knows or, on the basis of reasonable inquiry, has reason to believe is most likely to result in actual notice to the person to be served; and

(3) Filing with the appropriate court or other body, as part of the return of service, the return mailing receipt and an affidavit of the person initiating the proceedings that there has been compliance with this section and ORS 650.070. [1973 c.509 §10]

650.080 When personal service of process required. The method of service referred to in ORS 650.075 may not be used if personal service can be used. [1973 c.509 §11]

650.085 Other civil or criminal remedies unaffected. Nothing in this chapter limits any statutory or common-law rights of a person to bring an action in any court for an act involved in the sale of franchises, or the right of the state to punish a person for a violation of any law. [1973 c.509 §12]

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, 1979.

Thomas G Clifford
Legislative Counsel