TITLE 50

TRADE REGULATIONS AND PRACTICES

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Chapter 646

1985 REPLACEMENT PART

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PRICE DISCRIMINATION IN COMMERCE AND FOOD COMMERCE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

646.050 Establishing prima facie case of discrimination; justification of discrimination. Upon proof being made, in any suit or other proceeding in which any violation of ORS 646.010 to 646.180 is at issue, that there has been discrimination in price, or in services or facilities furnished, or in payment for services or facilities rendered or to be rendered, the burden of rebutting the prima facie case thus made by showing

justification is upon the person charged with the violation; but this section does not prevent a seller rebutting the prima facie case so made by showing that the lower price of the seller, 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 §3; repealed by 1975 c.255 §17]

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

646.110 [Repealed by 1975 c.255 §17]

646.120 [Repealed by 1975 c.255 §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; recovering treble damages; limitation on commencement of actions. (1) 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 sustained by the plaintiff, and the costs of suit and a reasonable attorney fee at trial and on appeal.

(2) Actions brought under this section shall be commenced within four years from the date of the injury. [Amended by 1981 c.897 §75; 1983 c.467 §2]

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 the plaintiff 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 the plaintiff 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 ORCP 65 or by deposition. 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 ORS 646.990 (1). [Amended by 1979 c.284 §184; 1981 c.898 §52]

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 §27]

646.220 [Repealed by 1971 c.744 §27]

646.230 [Repealed by 1971 c.744 §27]

646.260 [Repealed by 1975 c.255 §17]

646.270 [Repealed by 1975 c.255 §17]

646.280 [Repealed by 1975 c.255 §17]

646.290 [Repealed by 1975 c.255 §17]

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

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

ENFORCEMENT OF EXPRESS WARRANTIES ON NEW MOTOR VEHICLES

646.315 Definitions for ORS 646.315 to 646.375. As used in ORS 646.315 to 646.375:

(1) "Consumer" means:

(a) The purchaser, other than for purposes of resale, of a new motor vehicle normally used for personal, family or household purposes;

(b) Any person to whom a new motor vehicle used for personal, family or household purposes is transferred for the same purposes during the duration of an express warranty applicable to such motor vehicle; and

(c) Any other person entitled by the terms of such warranty to enforce the obligations of the warranty.

(2) "Motor vehicle" means a passenger motor vehicle as defined in ORS 801.360 that is sold in this state, other than a motorcycle. [1983 c.469 §1; 1985 c.16 §468]

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

646.325 Availability of remedy. The remedy under the provisions of ORS 646.315 to 646.375 is available to a consumer if:

(1) A new motor vehicle does not conform to applicable manufacturer's express warranties; and

(2) The consumer reports each nonconformity to the manufacturer, its agent or its authorized dealer, for the purpose of repair or correction, during the period of one year following the date of original delivery of the motor vehicle to the consumer or during the period ending on the date on which the mileage on the motor vehicle reaches 12,000 miles, whichever period ends earlier. [1983 c.469 §2]

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

646.335 Consumer's remedies; manufacturer's affirmative defenses. (1) If the manufacturer or its agents or authorized dealers are unable to conform the motor vehicle to any applicable manufacturer's express warranty by repairing or correcting any defect or condition that substantially impairs the use and market value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall:

(a) Replace the motor vehicle with a new motor vehicle; or

(b) Accept return of the vehicle from the consumer and refund to the consumer the full purchase price including taxes, license and registration fees and any similar collateral charges excluding interest, less a reasonable allowance for the consumer's use of the vehicle.

(2) Refunds shall be made to the consumer and lienholder, if any, as their interests may appear. A reasonable allowance for use is that amount directly attributable to use by the consumer prior to the first report of the nonconformity to the manufacturer, agent or dealer and during any subsequent period when the vehicle is not out of service by reason of repair.

(3) It shall be an affirmative defense to any claim under ORS 646.315 to 646.375:

(a) That an alleged nonconformity does not substantially impair such use and market value; or

(b) That a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of the motor vehicle by the consumer. [1983 c.469 §3]

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

646.345 Presumption of reasonable attempt to conform; extension of time for repairs; notice to manufacturer. (1) It shall be presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable manufacturer's express warranties if, during the period of one year following the date of original delivery of the motor vehicle to a consumer or during the period ending on the date on which the mileage on the motor vehicle reaches 12,000 miles, whichever period ends earlier:

(a) The same nonconformity has been subject to repair or correction four or more times by the manufacturer or its agent or authorized dealer, but such nonconformity continues to exist; or

(b) The vehicle is out of service by reason of repair or correction for a cumulative total of 30 or more business days.

(2) A repair or correction for purposes of subsection (1) of this section includes a repair that must take place after the expiration of the earlier of either period.

(3) The period ending on the date on which the mileage on the motor vehicle reaches 12,000 miles, the one-year period and the 30-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike, fire, flood or other natural disaster.

(4) In no event shall the presumption described in subsection (1) of this section apply against a manufacturer unless the manufacturer has received prior direct written notification from or on behalf of the consumer and has had an opportunity to cure the defect alleged. [1983 c.469 §4]

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

646.355 Use of informal dispute settlement procedure as condition for remedy; binding effect on manufacturer. If the manufacturer has established or participates in an informal dispute settlement procedure that substantially complies with the provisions of Title 16, Code of Federal Regulations, Part 703, as from time to time amended, and causes the consumer to be notified of the procedure, ORS 646.335 concerning refunds or replacement shall not apply to any consumer who has not first resorted to the procedure. A decision resulting from arbitration pursuant to the informal dispute settlement procedure shall be binding on the manufacturer. [1983 c.469 §5]

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

646.365 Limitation on commencement of action. Any action brought under ORS 646.315 to 646.375 shall be commenced within one year following whichever period ends earlier:

(1) The period ending on the date on which the mileage on the motor vehicle reaches 12,000 miles; or

(2) The period of one year following the date of the original delivery of the motor vehicle to the consumer. [1983 c.469 §6]

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

646.375 Remedies supplementary to existing statutory or common law remedies; election of remedies. Nothing in ORS 646.315 to 646.375 is intended in any way to limit the rights or remedies that are otherwise available to a consumer under any other law. However, if the consumer elects to pursue any other remedy in state or federal court, the remedy available under ORS 646.315 to 646.375 shall not be available insofar as it would result in recovery in excess of the recovery authorized by ORS 646.335 without proof of fault resulting in damages in excess of such recovery. [1983 c.469 §7]

Note: Section 8, chapter 469, Oregon Laws 1983, provides:

This Act applies to motor vehicles sold on or after January 1, 1984.

646.410 [Repealed by 1975 c 255 §17]

REPURCHASE OF FARM IMPLEMENTS BY SUPPLIER FROM RETAILER

646.415 Definitions for ORS 646.415 to 646.455. For the purposes of ORS 646.415 to 646.455:

(1) "Current model" means a model listed in the wholesaler's, manufacturer's or distributor's current sales manual or any supplements to the manual.

(2) "Current net price" means the price listed in the wholesaler's, manufacturer's or distributor's price list or catalog in effect at the time the contract is canceled or discontinued, less any applicable trade, volume or cash discounts.

(3) "Farm implements" means:

(a) Any vehicle designed or adapted and used exclusively for agricultural operations and only incidentally operated or used upon the highways; and

(b) All other consumer products for agricultural purposes supplied by the supplier to the

retailer pursuant to a written contract, written sales agreement or written security agreement.

(4) "Inventory" means farm implements, machinery, attachments and repair parts.

(5) "Net cost" means the price the retailer actually paid for the merchandise to the wholesaler, manufacturer or distributor.

(6) "Retailer" means any person engaged in the business of retailing farm implements, machinery, attachments or repair parts within the State of Oregon, but does not include retailers of lawn and garden equipment who are not primarily engaged in retailing farm implements.

(7) "Supplier" means the wholesaler, manufacturer, manufacturer's representative or distributor of farm implements, machinery, attachments or spare parts. [1983 c.551 §1]

646.420 [Repealed by 1975 c.255 §17]

646.425 Payment or credit for unused farm implements and parts upon termination of contract between supplier and retailer; statutory remedy supplemental to contract remedies. (1) This section applies to a retailer and a supplier who enter into a written contract, written sales agreement or written security agreement whereby the retailer agrees to maintain as a part of the contract a stock of parts of complete or whole machines or attachments sold, manufactured or distributed by the supplier. If the contract, sales agreement or security agreement is terminated, canceled or discontinued, unless the retailer elects to keep the stock under a contractual right to do so, the supplier shall pay the retailer for the farm implements, machinery, attachments and repair parts, or credit their cost to the retailer's account if the retailer has outstanding any sums owing the supplier. The payment or credit shall be as follows:

(a) The payment or the credit for the unused complete farm implements, machinery and attachments in new condition shall be in a sum equal to 100 percent of the net cost of all such complete farm implements, machinery and attachments that are current models and that have been purchased by the retailer from the supplier within the 24 months immediately preceding notification by either party of intent to cancel or discontinue the contract. The payment or credit shall include the transportation charges to the retailer and from the retailer to the supplier, if the charges have been paid by the retailer or invoiced to the retailer's account by the supplier.

(b) The payment or credit for repair parts described in this paragraph shall be a sum equal to 85 percent of the current net prices on the repair parts, including superseded parts, listed in current price lists or catalogs in use by the supplier on the date of cancellation or discontinuance of the contract, and including the transportation charges from the retailer to the destination designated by the supplier which have been paid by the retailer, or invoiced to a retailer's account by the supplier. This paragraph applies to parts which had previously been purchased by the retailer from the supplier and are held by the retailer on the date of the cancellation or discontinuance of the contract or thereafter are received by the retailer from the supplier. The supplier shall pay the retailer or credit to the retailer's account a sum equal to five percent of the current net price of all parts returned for the handling, packing and loading of the parts, unless the supplier elects to catalog or list the inventory and perform packing and loading of the parts itself.

(2) Upon the payment or allowance of credit to the retailer's account of the sum under subsection (1) of this section, the title to the farm implements, farm machinery, attachments or repair parts shall pass to the supplier making the payment or allowing the credit and the supplier shall be entitled to the possession of the farm implements, machinery, attachments or repair parts. However, this section shall not in any way affect any security interest which the supplier may have in the inventory of the retailer.

(3) The provisions of this section shall apply to any annual part return adjustment agreement made between a retailer and a supplier.

(4) The provisions of this section shall be supplemental to any agreement between the retailer and the supplier covering the return of farm implements, machinery, attachments and repair parts. The retailer may elect to pursue either the retailer's contract remedy or the remedy provided under this section. An election by the retailer to pursue the contract remedy shall not bar the retailer's right to the remedy provided under this section as to those farm implements, machinery, attachments and repair parts not affected by the contract remedy. This section does not affect the right of a supplier to charge back to the retailer's account amounts previously paid or credited as a discount incident to the retailer's purchase of goods. In addition, any repurchase under this section shall not be subject to the provisions of ORS 76.1010 to 76.1110. [1983 c.551 §2]

646.430 [Repealed by 1975 c.255 §17]

646.435 Repurchase of inventory by supplier; effect of new contract. (1) A sup-

plier shall repurchase the inventory of a retailer, as if the supplier had terminated the contract, as follows:

(a) Upon the death of a retailer whose business is owned as a tenancy by the entirety, at the option of the spouse or the heir or heirs of the retailer.

(b) Upon the death of a stockholder of a corporation operating as a retailer, at the option of the heir or heirs of the stockholder and upon the consent of the board of directors.

(2) The surviving spouse or the heir or heirs may exercise the option under this section not later than one year from the date of the death of the retailer or the stockholder.

(3) Nothing in ORS 646.415 to 646.455 requires the repurchase of inventory by the supplier:

(a) If the supplier and the corporation acting as a retailer enter into a new contract to operate the retail dealership.

(b) If the supplier and the surviving spouse or the heir or heirs of the retailer enter into a new contract to operate the retail dealership. [1983 c.551 §3]

646.440 [Repealed by 1975 c 255 §17]

646.445 Civil action for supplier's failure to pay. If a supplier described in ORS 646.425 (1), upon the cancellation of a contract by either a retailer or the supplier, fails to make payment as required by ORS 646.425 or 646.435, the supplier shall be liable in a civil action to be brought by the retailer or by the retailer's spouse, heir or heirs for the payments required under ORS 646.425. [1983 c 551 §4]

646.450 [Repealed by 1975 c 255 §17]

646.455 Exemptions from repurchase requirement. ORS 646.415 to 646.445 shall not require any of the following:

(1) The repurchase from a retailer of a repair part if the retailer previously has failed to return the repair part to the supplier after being offered a reasonable opportunity to return the repair part at a price not less than 100 percent of the net price of the repair part as listed in the then current price list or catalog.

(2) The repurchase from a retailer of repair parts which have a limited storage life or are otherwise subject to deterioration, including but not limited to rubber items, gaskets, batteries, repair parts in broken or damaged packages, single repair parts priced as a set of two or more items and repair parts which because of their condition are not resalable as new parts without new packaging or reconditioning.

(3) The repurchase from a retailer of any inventory that was acquired by the retailer from any source other than the supplier. [1983 c.551 §5]

646.460 [Repealed by 1975 c.255 §17]

646.510 [Repealed by 1953 c.391 §2]

PRODUCERS' COOPERATIVE BARGAINING ASSOCIATIONS

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

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

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

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

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

(4) "Producer" means a person engaged in the business of producing agricultural commodities. [1963 c.514 §1]

646.520 [Repealed by 1953 c.391 §2]

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

646.530 [Repealed by 1953 c.391 §2]

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

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

(2) Discriminate against a producer with respect to price or other terms of purchase of raw

agricultural commodities, by reason of the producer's membership in or contract with cooperative bargaining associations; or

(3) Pay or loan money, or give any other thing of value to a producer as an inducement or reward for refusing to or ceasing to belong to a cooperative bargaining association. [1963 c.514 §3; 1969 c 165 §1]

646.540 [Repealed by 1953 c.391 §2]

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

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

(3) Notwithstanding the provisions of ORS 46.060 to 46.080, the district court shall not have jurisdiction in any action for damages for violation of ORS 646.535. [1963 c 514 §§4, 5; 1981 c 897 §76]

646.550 [Repealed by 1953 c.391 §2]

646.560 [Repealed by 1953 c 391 §2]

646.570 [Repealed by 1953 c 391 §2]

646.580 [Repealed by 1953 c.391 §2]

646.590 [Repealed by 1953 c 391 §2]

646.600 [Repealed by 1953 c.391 §2]

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 advertising, offering or distributing, whether by sale, rental or otherwise, any real estate, goods or services, and includes 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 inspection, study, or copying of any such material, and taking 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 an office.

(7) "Real estate, goods or services" means those which are or may be obtained primarily for personal, family or household purposes, and includes franchises, distributorships and other similar business opportunities, but does not include insurance. Real estate does not cover conduct covered by ORS 91.700 to 91.895.

(8) "Unconscionable tactics" include, but are not limited to, actions by which a person:

(a) Knowingly takes advantage of a customer's physical infirmity, ignorance, illiteracy or inability to understand the language of the agreement; or

(b) Knowingly permits a customer to enter into a transaction from which the customer will derive no material benefit; or

(c) Permits a customer to enter into a transaction with knowledge that there is no reasonable probability of payment of the attendant financial obligation in full by the customer when due.

(9) A wilful violation occurs when the person committing the violation knew or should have known that the conduct of the person was a violation. [1965 c.490 §2; 1967 c.599 §1; 1971 c.744 §5, 1973 c.235 §1; 1977 c 195 §1]

646.607 Unconscionable tactic or failure to deliver, or to refund payment for undelivered, real estate, goods or services as unlawful practice. A person engages in an unlawful practice when in the course of the person's business, vocation or occupation the person:

(1) Employs any unconscionable tactic in connection with sale, rental or other disposition

of real estate, goods or services, or collection or enforcement of an obligation; or

(2) Fails to deliver all or any portion of real estate, goods or services as promised, and upon request of the customer, fails to refund any money which has been received from the customer which was for the purchase of the undelivered real estate, goods or services and which is not retained by the seller pursuant to any right, claim or defense asserted in good faith. This subsection does not create a warranty obligation and shall not apply to a dispute over the quality of real estate, goods or services delivered to a customer. [1977 c 195 §4, 1979 c 505 §1]

646.608 Unlawful business, trade practices; proof; Attorney General's rules. (1) A person engages in an unlawful practice when in the course of the person's business, vocation or occupation the person does any of the following:

(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 the person 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 a customer or another by false or misleading representations of fact.

(i) Advertises real estate, goods or services with intent not to provide 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 credit availability 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 real estate, goods or services to be used for model or demonstration purposes or in exchange for submitting names of potential customers.

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

(n) Solicits potential customers by telephone or door to door as a seller unless the person provides the information required under ORS 646.611.

(o) In a sale, rental or other disposition 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 customer in consideration of the customer giving to the person the names of prospective purchasers, lessees, or borrowers, or otherwise aiding the person in making a sale, lease, or loan to another person, if earning the rebate, discount or other value is contingent upon occurrence of an event subsequent to the time the customer 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.

(s) Makes false or misleading representations of fact concerning the offering price of, or the person's cost for real estate, goods or services.

(t) Concurrent with tender or delivery of any real estate, goods or services fails to disclose any known material defect or material nonconformity.

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

(v) Violates any of the provisions relating to auction sales, auctioneers or auction marts under ORS 698.640, whether in a commercial or noncommercial situation.

(w) Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

(x) Violates ORS 646.850 (1).

(y) Violates any requirement of ORS 646.661 to 646.686.

(z) Violates ORS 128.821, 128.836, 128.856 to 128.866 or 128.881.

(2) A representation under subsection (1) of this section or ORS 646.607 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 (u) of subsection (1) of this section unless the Attorney General has first established a rule in accordance with the provisions of ORS 183.310 to 183.550 declaring the conduct to be unfair or deceptive in trade or commerce. [1971 c.744 §7 (enacted in lieu of 646.615), 1973 c 235 §2; 1973 c 513 §1; 1975 c.437 §1; 1977 c.195 §2; 1979 c 503 §4; 1983 c.404 §5, 1985 c.251 §10a; 1985 c 538 §3; 1985 c.694 §8, 1985 c 729 §22]

646.609 "Pyramid club" and "investment" defined. As used in ORS 646.608 (1)(r), "pyramid club" means a sales device whereby a person, upon condition that the person 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. "Pyramid club" also includes any such sales device which does not involve the sale or distribution of any real estate, goods or services, including but not limited to a chain letter scheme. 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 opportunities and services. It does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale. For the purpose of ORS 646.608 (1)(r), any person who organizes or induces or attempts to induce membership in a pyramid club is acting in the course of the person's business, vocation or occupation. [1973 c.513 §3; 1981 c.379 §1]

646.610 [Repealed by 1953 c.391 §2]

646.611 Information required to be given by telephone or door to door seller to potential customer. A person who solicits potential customers by telephone or door to door as a seller is in violation of ORS 646.608 (1)(n) unless the person:

(1) Within 30 seconds after beginning the conversation:

(a) Provides identification of both the person and whom the person represents;

(b) Explains the purpose of the person's call;

(c) Provides a description in commonly understood terms of the goods or services offered for sale; and

(d) Inquires whether the person being solicited is interested in listening to a sales presentation and immediately discontinues the solicitation if the person being solicited gives a negative response; and

(2) During the course of the solicitation, states the total cost of the goods or services offered for sale and the number, timing and amount of instalment payments if payment on an instalment basis is available to the person being solicited. [1979 c 503 §6]

646.612 Application of ORS 646.607 and 646.608. ORS 646.607 and 646.608 do 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 §10, 1977 c.195 §5]

646.615 [1965 c.490 §3; 1967 c.144 §1; 1967 c.599 §2; repealed by 1971 c.744 §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 646.607 or 646.608, the prosecuting attorney 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 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 §14, 1973 c.235 §3, 1977 c.195 §6]

646.620 [Repealed by 1953 c 391 §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 §15, 1975 c.437 §2]

646.625 [1965 c.490 §1; repealed by 1971 c.744 §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 conduct of any aspect of the 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 §16; 1973 c.235 §4; 1977 c.195 §7]

646.630 [Repealed by 1953 c.391 §2]

646.632 Enjoining unlawful trade practices; notice to defendant; voluntary compliance; rejection of unsatisfactory assurance; temporary order; attorney fees. (1) A prosecuting attorney who has probable cause to believe that a person is engaging in, has engaged in, or is about to engage in an unlawful trade practice 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 the prosecuting attorney 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 at trial and on appeal 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 at trial and on appeal 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 §11; 1975 c.437 §3; 1981 c 897 §77]

646.635 [1965 c.490 §§4, 5; 1967 c.599 §3; repealed by 1971 c.744 §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 the person was deprived by means of any practice declared to be unlawful in ORS 646.607 or 646.608, or as may be necessary to insure cessation of unlawful trade practices. [1971 c.744 §12; 1977 c.195 §8]

646.638 Civil action by private party; damages; attorney fees; effect of prior injunction; time for commencing action; counterclaim. (1) Except as provided in subsection (7) of this section, any person who suffers any ascertainable loss of money or property, real or personal, as a result of 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 party bringing the action 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. Failure to mail a copy of the complaint shall not be a jurisdictional defect, but no judgment shall be entered for the plaintiff until proof of mailing is filed with the court. Proof of mailing may be by affidavit or by return receipt of mailing.

(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 at trial and on appeal and costs. If the defendant prevails, the court may award reasonable attorney fees at trial and on appeal and costs if it finds the action to be frivolous.

(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, 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 the purchaser or lessee has arising out of a violation of ORS 646.605 to 646.652.

(7) This section does not apply to any method, act or practice described in ORS 646.608 (1)(w). Actions for violation of laws relating to odometers are provided under ORS 815.410 and 815.415. [1971 c.744 §13; 1973 c.235 §5; 1975 c 437 §4; 1977 c 195 §9; 1981 c.897 §78; 1985 c.251 §10b]

646.639 Unlawful debt collection practices. (1) As used in subsection (2) of this section:

(a) "Consumer" means a natural person who purchases or acquires property, services or credit for personal, family or household purposes.

(b) "Consumer transaction" means a transaction between a consumer and a person who sells, leases or provides property, services or credit to consumers.

(c) "Commercial creditor" means a person who in the ordinary course of business engages in consumer transactions.

(d) "Credit" means the right granted by a creditor to a consumer to defer payment of a debt, to incur a debt and defer its payment, or to purchase or acquire property or services and defer payment therefor.

(e) "Debt" means any obligation or alleged obligation arising out of a consumer transaction.

(f) "Debtor" means a consumer who owes or allegedly owes an obligation arising out of a consumer transaction.

(g) "Debt collector" means any person who by any direct or indirect action, conduct or practice, enforces or attempts to enforce an obligation that is owed or due to any commercial creditor, or alleged to be owed or due to any commercial creditor, by a consumer as a result of a consumer transaction. Notwithstanding any other provision in ORS 646.641 and this section, "debt collector" shall not be construed to include any person who is attempting to collect from the maker of any check, draft or order for the payment of money which has been dishonored.

(h) "Person" means an individual, corporation, trust, partnership, incorporated or unincorporated association or any other legal entity.

(2) It shall be an unlawful collection practice for a debt collector, while collecting or attempting to collect a debt to do any of the following:

(a) Use or threaten the use of force or violence to cause physical harm to a debtor or to the debtor's family or property.

(b) Threaten arrest or criminal prosecution.

(c) Threaten the seizure, attachment or sale of a debtor's property when such action can only be taken pursuant to court order without disclosing that prior court proceedings are required.

(d) Use profane, obscene or abusive language in communicating with a debtor or the debtor's family.

(e) Communicate with the debtor or any member of the debtor's family repeatedly or continuously or at times known to be inconvenient to that person with intent to harass or annoy the debtor or any member of the debtor's family.

(f) Communicate or threaten to communicate with a debtor's employer concerning the nature or existence of the debt.

(g) Communicate without the debtor's permission or threaten to communicate with the debtor at the debtor's place of employment if the place is other than the debtor's residence, except that the debt collector may:

(A) Write to the debtor at the debtor's place of employment if no home address is reasonably available and if the envelope does not reveal that the communication is from a debt collector other than a provider of the goods, services or credit from which the debt arose.

(B) Telephone a debtor's place of employment without informing any other person of the nature of the call or identifying the caller as a debt collector but only if the debt collector in good faith has made an unsuccessful attempt to telephone the debtor at the debtor's residence during the day or during the evening between the hours of 6:00 p.m. and 9:00 p.m. The debt collector may not contact the debtor at the debtor's place of employment more frequently than once each business week and may not telephone the debtor at the debtor's place of employment if the debtor notifies the debt collector not to telephone at the debtor's place of employment or if the debt collector knows or has reason to know that the debtor's employer prohibits the debtor from receiving such communication. For the purposes of this subparagraph, any language in any instrument creating the debt which purports to authorize telephone calls at the debtor's place of employment shall not be considered as giving permission to the debt collector to call the debtor at the debtor's place of employment.

(h) Communicate with the debtor in writing without clearly identifying the name of the debt

collector, the name of the person, if any, for whom the debt collector is attempting to collect the debt and the debt collector's business address, on all initial communications. In subsequent communications involving multiple accounts, the debt collector may eliminate the name of the person, if any, for whom the debt collector is attempting to collect the debt, and the term "various" may be substituted in its place.

(i) Communicate with the debtor orally without disclosing to the debtor within 30 seconds the name of the individual making the contact and the true purpose thereof.

(j) Cause any expense to the debtor in the form of long distance telephone calls, telegram fees or other charges incurred by a medium of communication, by concealing the true purpose of the debt collector's communication.

(k) Attempt to or threaten to enforce a right or remedy with knowledge or reason to know that the right or remedy does not exist, or threaten to take any action which the debt collector in the regular course of business does not take.

(L) Use any form of communication which simulates legal or judicial process or which gives the appearance of being authorized, issued or approved by a governmental agency, governmental official or an attorney at law when it is not in fact so approved or authorized.

(m) Represent that an existing debt may be increased by the addition of attorney fees, investigation fees or any other fees or charges when such fees or charges may not legally be added to the existing debt.

(n) Collect or attempt to collect any interest or any other charges or fees in excess of the actual debt unless they are expressly authorized by the agreement creating the debt or expressly allowed by law.

(o) Threaten to assign or sell the debtor's account with an attending misrepresentation or implication that the debtor would lose any defense to the debt or would be subjected to harsh, vindictive or abusive collection tactics. [1977 c.184 §2; 1985 c.799 §1]

646.640 [Repealed by 1953 c.391 §2]

646.641 Damage action for unlawful debt collection practice; attorney fees recoverable; limitation on commencement of action. (1) Any person injured as a result of wilful use or employment by another person of an unlawful collection practice may bring an action in an appropriate court to enjoin the practice or to recover actual damages or $200, whichever is greater. The court or the jury may award punitive damages, and the court may provide such equitable relief as it deems necessary or proper.

(2) In any action brought by a person under this section, the court may award, in addition to the relief provided, reasonable attorney fees at trial and on appeal and costs. If the defendant prevails, the court may award reasonable attorney fees at trial and on appeal and costs if it finds the action to be frivolous.

(3) Actions brought under this section shall be commenced within one year from the date of the injury. [1977 c.184 §3; 1981 c.897 §79]

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 646.607 or 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 §17; 1975 c.437 §5; 1977 c.195 §10]

646.645 [1965 c.490 §6; repealed by 1971 c.744 §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 §18]

646.650 [Repealed by 1953 c 391 §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 §19]

646.655 [1967 c.599 §5; repealed by 1971 c.744 §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 §21a]

646.660 [Repealed by 1953 c.391 §2]

HEALTH SPAS

646.661 Definitions for ORS 646.661 to 646.691. As used in this ORS 646.608 and 646.661 to 646.691, unless the context requires otherwise:

(1) "Business day" means any day except a Sunday or a legal holiday.

(2) "Buyer" means a person who purchases health spa services.

(3) "Conspicuous" has the meaning given that term in ORS 71.2010 (10).

(4) "Health spa" means any person engaged, as a primary purpose, in the sale of instruction, training, assistance or use of facilities which are purported to assist patrons in physical exercise, weight control or figure development. The term also includes any person engaged primarily in the sale of the right or privilege to use tanning booths, exercise equipment or facilities, such as a sauna, whirlpool bath, weight-lifting room, massage, steam room, or other exercising machine or device. "Health spa" does not include any facility owned and operated by the State of Oregon or any of its political subdivisions.

(5) "Health spa services" means services, privileges or rights offered for sale by a health spa.

(6) "Person" has the meaning given that term in ORS 646.605 (4). [1985 c.694 §1]

646.666 Price list for health spa services. (1) Each health spa shall prepare and provide to each prospective buyer a written list of prices of all forms or plans of health spa services offered for sale by the health spa.

(2) A health spa may not sell any form or plan of health spa services not included in the list. [1985 c.694 §2]

646.670 [Repealed by 1953 c.391 §2]

646.671 Contracts; contents. A contract for the sale of health spa services must be in writing and a copy must be given to the buyer at the time the buyer signs the contract. The contract must contain all of the following:

(1) Identification of the person providing the health spa services.

(2) A description of the health spa services to be provided, or acknowledgement in a conspicuous form that the buyer has received a written description of the health spa services to be provided. If any of the health spa services are to be delivered at a planned facility, at a facility under construction or through substantial improvement to an existing facility, the description must include a date for the completion of the facility, construction or improvement.

(3) A complete statement of the rules of the health spa or an acknowledgement in a conspicuous form that the buyer has received a copy of the rules.

(4) A statement of the duration of the obligation of the health spa to provide health spa services to the buyer. The duration shall not exceed three years from the date of the contract.

(5) A provision for cancellation of the contract:

(a) If the buyer dies or becomes physically unable to use a substantial portion of those health spa services used by the buyer from the date of the contract until the time of disability. The contract may require that disability be confirmed by an examination of a physician agreeable to the buyer and the health spa.

(b) If the health spa goes out of business.

(c) If the health spa moves its facility closest to the residence of the buyer on the date of the contract to a location more than five additional miles from that residence.

(d) If a facility, construction or improvement is not completed by the date represented in the contract.

(e) If the health spa materially changes the health spa services promised as a part of the initial contract.

(6) A provision for a refund upon cancellation in an amount computed by dividing the contract price by the number of weeks in the contract term and multiplying the result by the number of weeks remaining in the contract term.

(7) A provision under a conspicuous caption in capital letters and boldface type stating:

BUYER'S RIGHT TO CANCEL

If you wish to cancel this contract, without penalty, you may cancel it by delivering or mailing a written notice to the health spa. The notice must say that you do not wish to be bound by the

contract and must be delivered or mailed before midnight of the third business day after you sign this contract. The notice must be mailed to: _____(insert name and mailing address of health spa). If you cancel within the three days, the health spa will return to you within 15 days all amounts you have paid.

[1985 c.694 §3]

646.676 Contracts and rules; delivery to buyer. Upon request, a health spa must deliver to a prospective buyer copies of the contract required by ORS 646.671, and the rules of the health spa if not stated in the contract, and must allow the prospective buyer to retain the copies so provided. [1985 c.694 §5]

646.680 [Repealed by 1953 c.391 §2]

646.681 Moneys paid prior to facility opening; disposition; priority of claim; refund. (1) All moneys paid to a health spa by a buyer prior to the opening of the facility shall promptly be deposited by the health spa in a trust account, maintained by the health spa for the purpose of holding such moneys for the buyer, in a bank, savings and loan association, mutual savings bank or licensed escrow agent located in Oregon.

(2) The health spa shall within seven days of the first deposit notify the office of the Attorney General, in writing, of the name, address and location of the depository and any subsequent change thereof.

(3) The health spa shall provide the buyer with a written receipt for the moneys and shall provide written notice of the name, address and location of the depository and any subsequent change thereof.

(4) If prior to the opening of the facility the status of the health spa is transferred to another, any sums in the trust account affected by such transfer shall simultaneously be transferred to an equivalent trust account of the successor, and the successor shall promptly notify the buyer and the office of the Attorney General of the transfer and of the name, address and location of the new depository.

(5) The buyer's claim to any moneys under this section is prior to that of any creditor of the health spa, including a trustee in bankruptcy or receiver, even if such moneys are commingled.

(6) After the health spa receives a notice of cancellation of the agreement or if the health spa fails to open a facility at the stated date of completion the health spa shall within 10 days give a full refund to the buyer, including the buyer's pro rata share of any interest earned thereon.

(7) All sums received by a health spa in excess of the health spa's normal monthly dues shall be placed in escrow subject to the terms and provisions stated in this section in the event that the health spa is not fully operational or in the event that the health spa is promising future construction or improvements. [1985 c.694 §4]

646.686 Waiver of provisions of ORS 646.661 to 646.691; request prohibited; unenforceable. A health spa shall not request a buyer to waive any provision of ORS 646.608 and 646.661 to 646.691. Any waiver by a buyer of any provision of ORS 646.608 and 646.661 to 646.691 is contrary to public policy and is void and unenforceable. [1985 c.694 §6]

646.690 [Repealed by 1953 c.391 §2]

646.691 Remedies and obligations supplementary to existing remedies. The remedies and obligations provided in ORS 646.608 and 646.661 to 646.691 are in addition to any other remedies and obligations, civil or criminal, existing at common law or under the laws of this state. [1985 c.694 §7]

646.700 [Repealed by 1953 c.391 §2]

ANTITRUST LAW

646.705 Definitions for ORS 136.617 and 646.705 to 646.805. (1) 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.

(2) As used in ORS 646.775, "natural persons" shall not include proprietorships or partnerships. [1975 c.255 §2; 1979 c.790 §1]

646.710 [Repealed by 1953 c.391 §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 §3]

646.720 [Repealed by 1953 c.391 §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 §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 §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 or the activities of any person conducted or carried out in accordance with any agreement or procedure approved as provided in 49 U.S.C. 5b or 5c;

(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 Supervisor of the Banking Section or Supervisor of the Savings and Loan, Credit Union and Consumer Finance Section under ORS chapters 706 to 726 and are lawful thereunder;

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

(7) The activities of any metropolitan service district formed under ORS chapter 268 and the activities of any person subject to regulation by a metropolitan service district formed under ORS chapter 268 to the extent that those activities are so regulated and are lawful thereunder; or

(8) The activities of any person conducted or carried out in accordance with the terms and conditions of a certificate issued pursuant to 15 U.S.C. §§4001 to 4021. [1975 c.255 §6; 1977 c.545 §1; 1979 c 531 §7; 1983 c.200 §19; 1985 c.762 §185]

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, the Attorney General may execute in writing and cause to be served an investigative demand upon any person who is believed to have documentary material or information relevant to the alleged or suspected violation. The investigative demand shall require such person to produce relevant documentary material for examination and copying or reproduction, to answer in writing written interrogatories, to give oral testimony concerning documentary material or information, or to furnish any combination of such material, answers or testimony under penalty of perjury, at such reasonable time and place as may be stated in the investigative demand.

(2) At any time before the return day 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.

(3) The investigative demand shall state the nature of the conduct constituting the alleged antitrust violation under investigation and the provisions of law believed to be applicable thereto. [1975 c.255 §13; 1977 c.729 §1]

646.760 Civil penalties; attorney fees; 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 at trial and on appeal.

(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 §8; 1981 c.897 §80]

646.770 Equitable remedies; attorney fees. 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 at trial and on appeal. [1975 c.255 §9; 1981 c.897 §81]

646.775 Civil action by Attorney General for individual resident injured by violation of antitrust law; attorney fees. (1)(a) The Attorney General may bring a civil action in the name of the State of Oregon, as parens patriae on behalf of natural persons residing in the state, in any circuit court in which venue is proper under ORS 646.790, to secure equitable and monetary relief as provided in this section for injury sustained by such natural persons to their property by reason of a violation of ORS 646.725 or 646.730.

(b) The court shall exclude from the amount of monetary relief awarded in an action pursuant to paragraph (a) of this subsection any amount of monetary relief (A) which duplicates amounts which have been awarded for the same injury, or (B) which is properly allocable to (i) natural persons who have excluded their claims pursuant to paragraph (b) of subsection (2) of this section, and (ii) any business entity.

(c) The court shall award the state as monetary relief threefold the total damages sustained, as described in paragraph (b) of this subsection, and the costs of suit, and a reasonable attorney fee at trial and on appeal. The amount of such attorney fee, if any, shall be determined by the court. The court may, in its discretion, award a reasonable attorney fee at trial and on appeal to a prevailing defendant upon a finding that the Attorney General acted in bad faith, vexatiously, wantonly or for oppressive reasons.

(2)(a) In any action pursuant to paragraph (a) of subsection (1) of this section, the Attorney General shall, at such times, in such manner, and with such content as the court may direct, cause notice thereof to be given by publication. If the court finds that notice given solely by publication would deny due process of law to any person or persons, the court may direct further notice to such person or persons according to the circumstances of the case.

(b) Any person on whose behalf an action is brought pursuant to paragraph (a) of subsection (1) of this section may elect to exclude from adjudication the portion of the claim for monetary relief attributable to the person by filing notice of such election with the court within such time as specified in the notice given pursuant to paragraph (a) of this subsection.

(c) The final judgment in an action pursuant to paragraph (a) of subsection (1) of this section shall be res judicata as to any claim under this section by any person on behalf of whom such action was brought and who fails to give the notice specified in paragraph (b) of this subsection within the period specified in the notice given pursuant to paragraph (a) of this subsection.

(3) An action pursuant to paragraph (a) of subsection (1) of this section shall not be dismissed or compromised without the approval of the court, and the notice of any proposed dismissal or compromise shall be given in such manner as the court directs.

(4) In any action pursuant to paragraph (a) of subsection (1) of this section in which there has been a determination that a defendant agreed to fix prices in violation of ORS 646.725, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation and pro rata allocation of illegal overcharges, or by such other reasonable system of estimating

aggregate damages as the court in its discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, persons on whose behalf the suit was brought.

(5)(a) Monetary relief recovered in an action pursuant to paragraph (a) of subsection (1) of this section shall be distributed in such manner as the court in its discretion may authorize, subject to the requirement that any distribution procedure adopted afford each person on whose behalf the suit was brought a reasonable opportunity to secure their appropriate portion of the net monetary relief.

(b) The Attorney General shall deposit that portion of the monetary relief awarded by the court as costs of suit and a reasonable attorney fee in the Antitrust Revolving Account established pursuant to ORS 180.095.

(c) To the extent that the monetary relief awarded by the court is not exhausted by distribution pursuant to paragraphs (a) and (b) of this subsection, the remaining funds shall be deemed a civil penalty by the court and assessed as such for the benefit of the state pursuant to ORS 646.760.

(6) The powers granted in this section are in addition to and not in derogation of the common law powers of the Attorney General to act as parens patriae, or the powers of the Attorney General to sue as a representative party on behalf of a class pursuant to ORS 13.210 to 13.410 (1977 Replacement Part). [1979 c 790 §3; 1981 c.897 §82]

646.780 Recovery of treble damages; exception; action under federal law as bar. (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 at trial and on appeal, 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 at trial and on appeal, if it brings an action pursuant to ORS 646.760 or commences a prosecution under ORS 646.815 and 646.990 (2).

(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 at trial and on appeal.

(2) 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 §10; 1981 c.897 §83; 1983 c.467 §1; 1985 c 251 §27]

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 §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 §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 the defendant 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 §11]

646.810 [Repealed by 1971 c.744 §27]

646.815 Criminal prosecutions; effect of prior action seeking civil penalties. (1) Exclusive jurisdiction for criminal prosecution 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 §16 (2), (3)]

646.820 [Repealed by 1971 c.744 §27]

646.821 Taking testimony for investigative demand. The oral testimony of any person taken pursuant to a demand served under ORS 646.750 shall be taken in the county in which such person resides, is found or transacts business, or in such other place as may be agreed upon. [1977 c.729 §3]

646.823 Attendance of Attorney General at grand jury proceedings. Notwithstanding ORS 132.090 (1) the Attorney General may attend grand jury proceedings, advise it in relation to its duties, subpena and examine witnesses and prepare such indictments or presentments as it requires in investigations of violations of ORS 646.725 or 646.730. [1977 c.729 §7]

646.826 Counsel for persons testifying; grounds for refusing to answer questions; compelling testimony; exclusion of spectators. (1) Any person compelled to appear under a demand for oral testimony pursuant to ORS 646.750 may be accompanied, represented and advised by counsel with respect to any questions asked of such person. Such advice may be given in confidence.

(2) Such person may refuse to answer any question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person shall not otherwise refuse to answer any question.

(3) If such person refuses to answer any question on grounds of the privilege against self-incrimination, the testimony of the person may be compelled by the same procedure as provided in ORS 136.617.

(4) The antitrust investigator or investigators conducting the examination shall exclude from the place where examination is held all other persons except the person being examined, the counsel of the person, the officer before whom the testimony is to be taken and any stenographer taking the testimony. [1977 c.729 §4]

646.830 [Repealed by 1971 c.744 §27]

646.831 Fees and mileage for persons testifying. Any person appearing for oral examination pursuant to a demand served under ORS 646.750 shall be entitled to the same fees and mileage which are paid to witnesses in the circuit courts. [1977 c.729 §5]

646.836 Confidential status of investigative material; use of information in other proceedings. While in the possession of the Attorney General any documentary material, answers to interrogatories and transcripts of oral testimony shall be held in confidence and not disclosed to any person except the person providing such material or answers, the representative or attorney of the person and persons employed by the Attorney General. Any such material or answers may, however, be used in any case or proceeding before a court or administrative agency or disclosed to any committee or subcommittee of the Legislative Assembly in such manner and for such purposes as the Attorney General deems appropriate. [1977 c 729 §6]

646.840 [Repealed by 1971 c.744 §27]

MISCELLANEOUS

646.850 Sale of telephonic equipment; disclosure requirements; enforcement; penalty. (1) Any person offering for sale or

selling new or reconditioned telephone handsets or keysets, private branch exchanges or private automatic branch exchanges of not more than a 20-station capacity shall disclose clearly, in writing, when reasonable, before sale all of the following information:

(a) Whether the equipment uses pulse, tone, pulse-or-tone or other signaling methods.

(b) Whether the equipment can access tone generated services.

(c) Whether the equipment is registered with the Federal Communications Commission under applicable federal regulations.

(d) The person responsible for repair of the equipment.

(e) Minimum charges, if any, for repairs, handling and shipping.

(f) The terms of any written warranty offered with the equipment.

(2) A person who violates subsection (1) of this section commits an unlawful practice under ORS 646.608 (1)(x). The requirement under subsection (1) of this section is subject to enforcement and penalty as provided under ORS 646.605 to 646.652. [1985 c 538 §1(1), (3)]

646.855 Exceptions to disclosure requirements. (1) The requirement of disclosure under ORS 646.850 does not apply:

(a) To any medium of advertising that accepts advertising in good faith without knowledge that the advertising violates any requirement under ORS 646.850.

(b) To the sale or the offering for sale of radio equipment used for land, marine or air mobile service or any like service, regardless of whether such equipment is capable of interconnection by manual or automatic means to a telephone line.

(c) To equipment not intended for connection to the telephone network or to used equipment located on the customer's premises.

(2) The requirement of disclosure under ORS 646.850 (1)(d), (e) and (f) does not apply if the seller satisfies applicable requirements under the federal Magnuson-Moss Warranty Act (15 U.S.C. §§ 2301 to 2312), except that the seller must provide the purchaser a copy of the warranty at the time of sale. [1985 c.538 §§1 (2), 2]

646.860 [1969 c.395 §1; 1985 c 251 §2; renumbered 815.410]

646.870 Delivery of unrequested hazardous substances prohibited. No person shall deliver, or cause to be delivered, any hazardous substance, as defined in ORS 453.005 (7), to any residential premises without the prior consent of any occupant of such premises. [1973 c.456 §2]

646.875 [1981 c.807 §1; 1985 c.751 §1 (1), (2) and (3); renumbered 646.930]

646.880 [1977 c.429 §10; renumbered 646.935]

646.890 Sale of rights by distributor to exhibit motion picture without first giving exhibitor opportunity to view motion picture prohibited; attorney fees. (1) As used in this section:

(a) "Distributor" means any person engaged in the business of distributing or supplying motion pictures to exhibitors by rental, sales, license or any other agreement to sell rights to exhibit a motion picture.

(b) "Exhibitor" means any person engaged in the business of operating one or more theaters in which motion pictures are exhibited to the public for a charge.

(c) "Market" means any geographical area in this state for which a distributor solicits exhibitors to compete, by bidding or other negotiations, for the rights to exhibit a motion picture.

(2) No distributor shall sell rights to exhibit a motion picture in this state unless each exhibitor solicited by the distributor for an offer to exhibit the motion picture is first allowed a reasonable opportunity to view the motion picture within the state. Any waiver of this subsection is void and unenforceable.

(3) Nothing in this section applies to any form of solicitation of offers for, negotiation concerning or sale of rights to exhibit a motion picture:

(a) That has been exhibited in this state before October 3, 1979.

(b) In a market where the motion picture has been exhibited for one week or more.

(c) That is 60 minutes or less in length.

(4) An exhibitor may enforce this section by bringing an action in the appropriate court of this state. In enforcing this section a court may:

(a) Issue an injunction to prohibit violation of this section; and

(b) Award an exhibitor any actual damages arising from violation of this section.

(5) In any suit under subsection (4) of this section, the court shall award reasonable attorney fees at trial and on appeal to the prevailing party. [1979 c.254 §1; 1981 c.897 §84]

VEHICLE FUELS

646.905 Definitions for ORS 646.910 to 646.920. As used in ORS 646.910 to 646.920:

(1) "Alcohol" means a volatile flammable liquid having the general formula $C_nH(2n+1)OH$ used or sold for the purpose of blending or mixing with gasoline for use in propelling motor vehicles, and commonly or commercially known or sold as an alcohol, and includes ethanol or methanol.

(2) "Co-solvent" means an alcohol other than methanol which is blended with either methanol or ethanol or both to minimize phase separation in gasoline.

(3) "Ethanol" means ethyl alcohol, a flammable liquid having the formula C_2H_5OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

(4) "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded.

(5) "Methanol" means methyl alcohol, a flammable liquid having the formula CH_3OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.

(6) "Motor vehicles" means all vehicles, vessels, watercraft, engines, machines or mechanical contrivances that are propelled by internal combustion engines or motors.

(7) "Retail dealer" means any person who owns, operates, controls or supervises an establishment at which gasoline is sold or offered for sale to the public.

(8) "Wholesale dealer" means any person engaged in the sale of gasoline if the seller knows or has reasonable cause to believe the buyer intends to resell the gasoline in the same or an altered form to another. [1985 c.468 §1]

646.910 Sale of gasoline blended with alcohol prohibited unless mixture meets federal specifications or requirements. No wholesale or retail dealer may sell or offer to sell any gasoline blended or mixed with alcohol unless the blend or mixture meets the specifications or registration requirements established by the United States Environmental Protection Agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. section 7545 and 40 C.F.R. Part 79. [1985 c.468 §2 (1)]

646.915 Retail sale; disclosure required; signs. (1) A retail dealer of gasoline who knowingly sells or offers for sale gasoline that is blended with ethanol, methanol, co-solvent or a combination thereof in quantities greater than one percent by volume, must disclose:

(a) That the gasoline contains ethanol, methanol or co-solvent; and

(b) The percentage to the nearest one-half of one percent of ethanol, methanol or co-solvent contained in the gasoline.

(2) The disclosure required by this section shall be made by affixing two signs, one to each side of each pump that dispenses gasoline blended with ethanol, methanol or co-solvent. The following apply to the signs required by this subsection:

(a) Each sign shall be at least one and three-fourths inches in height and two and three-fourths inches in width and shall have printed on the top in block letters at least one-fourth inch in height and one-sixteenth inch in stroke the words "contains alcohol."

(b) If the gasoline contains ethanol, the signs shall have printed below the words "contains alcohol" the word "ethanol" and the percentage disclosure required by subsection (1) of this section. The word "ethanol" and the numerals shall be in block letters not less than three-sixteenths of an inch in height and one-sixteenth of an inch in stroke.

(c) If the gasoline contains methanol and co-solvent, the signs shall have printed below the words "contains alcohol" the words "methanol" and "co-solvent" and the percentage disclosure required by subsection (1) of this section. The words "methanol" and "co-solvent" and the numerals shall be in block letters not less than three-sixteenths of an inch in height and one-sixteenth of an inch in stroke. [1985 c.468 §3 (1), (2)]

646.920 Wholesale dealer; notice of contents required. Before or at the time of transfer of possession of gasoline from a wholesale dealer to a retail dealer, the wholesale dealer must give the retail dealer written notice of the contents of the gasoline if the gasoline contains more than one percent by volume of ethanol, methanol, co-solvent or a combination thereof. Notice required by this section shall be contained in or affixed to a manifest, invoice or other instrument or document of sale of title and shall specify in capital letters the percentage by volume to the nearest one-half of one percent of any ethanol, methanol or co-solvent. [1985 c.468 §4 (1)]

646.925 Enforcement. The State Department of Agriculture shall enforce the provisions of ORS 646.910 to 646.920 and is authorized to make any rules necessary to carry out the provisions of ORS 646.910 to 646.920 in accordance with the applicable provisions of ORS 183.310 to 183.550. [1985 c.468 §5]

646.930 Motor vehicle fuel prices; requirements for display. (1) A person who operates a service station, business or other place

for the purpose of retailing and delivering gasoline, diesel or other fuel into the tanks of motor vehicles may display on a sign visible from the street the lowest cash prices charged for the sale of all grades of gasoline, diesel or other fuel.

(2) The following apply to a sign displaying prices under this section:

(a) The price per unit of measurement and the unit of measurement for a particular kind of fuel must be the same on the sign as on any dispensing device used for delivering that kind of fuel into the tanks of motor vehicles.

(b) If a cash price displayed on a sign is available only under some conditions, the sign and the dispensing device must clearly state the conditions.

(c) If a price displayed on a sign is available only in a certain area of the service station or business, the area where the price displayed is available must be clearly identified.

(3) A person who displays a cash price that is available only under some conditions may not require, as a condition of buying fuel at the displayed price, that the buyer fill the fuel tank of the buyer's vehicle. [Formerly 646.875]

646.935 Diesel fuel sales; price discrimination. (1) No person operating a service station selling to the public at retail diesel fuel, where delivery is regularly made into a receptacle on a vehicle from which receptacle the fuel is supplied to propel the vehicle, shall refuse to sell and deliver any quantity of such fuel to any vehicle during regular business hours, upon demand and tender of the posted price plus any applicable tax for such fuel delivered, subject to a rationing policy established by state or federal statute or regulation.

(2) A price differential or method of delivery designed to discriminate against or discourage purchases by vehicles of small fuel capacity is prohibited. However, a reasonable discount or differential based upon quantity of delivery shall not be considered discriminatory. [Formerly 646.880]

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, 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 646.725 or 646.730 is a Class A misdemeanor.

(3) Violation of ORS 646.910 is punishable by a fine not to exceed $50.

(4) Violation of ORS 646.915 is punishable by a fine not to exceed $50.

(5) Violation of ORS 646.920 is punishable by a fine not to exceed $50.

(6) A person violating ORS 646.930 commits a Class C misdemeanor. [Amended by 1953 c.391 §2; 1967 c.144 §2; 1967 c.599 §4; subsection (8) enacted as 1969 c.395 §2; 1971 c 744 §24; 1975 c.255 §15; subsection (3) enacted as 1975 c.255 §16 (1); 1985 c.251 §28; subsection (3) enacted as 1985 c.468 §2 (2); subsection (4) enacted as 1985 c.468 §3 (3); subsection (5) enacted as 1985 c.468 §4 (2); subsection (6) enacted as c.751 §1 (4)]

646.992 Penalty for unlawful delivery of hazardous substances. Violation of ORS 646.870 is a Class A misdemeanor. [1973 c.456 §3]