

# Chapter 650

## 1985 REPLACEMENT PART

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**GOODS AND SERVICES****(General Provisions)**

**650.005 Definitions for ORS 650.005 to 650.085.** As used in ORS 650.005 to 650.085, unless the context requires otherwise:

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

(2) "Commissioner" means Corporation Commissioner.

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

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

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

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

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

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

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

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

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

ruption in the operation of the franchised business by the franchisee.

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

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

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

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

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

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

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

**650.020 Liability for damages of franchise seller; amount of recovery; defenses; limitation on action; indemnification of corporation; right of contribution.** (1) Any person who sells a franchise is liable as provided in subsection (3) of this section to the franchisee if the seller:

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

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

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

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

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

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

(6) A corporation which is liable under ORS 650.005 to 650.085 shall have a right of indemnification against any of its principal executive officers, directors and controlling persons whose wilful violation of any provision of ORS 650.005 to 650.085 gave rise to the liability. All persons liable under ORS 650.005 to 650.085 shall have a right of contribution against all other persons similarly liable, based upon each person's proportionate share of the total liability, except:

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

(b) A principal executive officer, director, or controlling person shall not have any right of contribution against the corporation to which the person sustains that relationship. [1973 c.509 §4; 1979 c.284 §185]

#### (Administration)

**650.050 Rulemaking authority.** In accordance with this section and ORS 183.310 to 183.550, the commissioner may from time to time make, amend and rescind such rules as are necessary to carry out the provisions of ORS 650.005 to 650.085. [1973 c.509 §5]

#### **650.055 General duties and powers of commissioner.** The commissioner:

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

(a) Determine whether a person has violated or is about to violate any provision of ORS 650.005 to 650.085 or any rule of the commissioner; or

(b) Aid in the enforcement of ORS 650.005 to 650.085 or in the formulation of rules and forms thereunder;

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

(3) May publish information concerning any violation of ORS 650.005 to 650.085 or any rule of the commissioner. [1973 c.509 §6]

#### **650.060 Investigative powers of commissioner; protection against unreasonable investigation; contempt.**

(1) For the purpose of any investigation or proceeding under ORS 650.005 to 650.085, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner considers relevant or material to the investigation or proceeding.

(2) Any person who is served with a subpoena or is subject to an order to give testimony orally or in writing or to produce books, papers, correspondence, memoranda, agreements or other documents or records as provided in ORS 650.005 to 650.085 may apply to any circuit court in Oregon for protection against abuse or hardship in the manner provided in ORCP 36 C.

(3) Except to the extent judicial relief may have been granted under subsection (2) of this section, if any person disobeys a subpoena issued under subsection (1) of this section, or if any witness refuses to testify or produce evidence before the commissioner on any matter on which the witness may be lawfully interrogated, the circuit court of any county, upon application of the commissioner, shall compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. [1973 c.509 §7; 1977 c.358 §10; 1979 c.284 §186]

#### **650.065 Injunctive relief; appointment of receiver or conservator; conditions of**

**awarding damages and injunctive relief.**

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

(2) The commissioner may include in any suit authorized by subsection (1) of this section a claim for any amount the franchisee could recover under ORS 650:020 or a claim for damages on behalf of other persons injured by any act or practice against which an injunction or restraining order is sought. The court may award appropriate relief to the franchisee or such other persons if the court finds that enforcement of the right of the franchisee or other persons by private civil action or suit, whether by class action or otherwise, would be so burdensome or expensive as to be impractical. [1973 c.509 §8, 1981 c.897 §85]

**650.070 Commissioner as agent for service of process.** Except as provided in ORS 650.080, the commissioner is an agent for the service of any process, notice or demand required to be served in a proceeding under ORS 650.005 to 650.085 for:

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

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

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

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

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

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

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

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

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

**650.085 Other civil or criminal remedies unaffected.** Nothing in ORS 650.005 to 650.085 limits any statutory or common-law rights of a person to bring an action in any court for an act involved in the sale of franchises, or the right of the state to punish a person for a violation of any law. [1973 c.509 §12]

**MOTOR VEHICLE DEALERSHIPS**

**650.120 Definitions for ORS 650.120 to 650.170.** For the purposes of ORS 650.120 to 650.170:

(1) "Dealer" means any person who engages in buying, selling or exchanging new motor vehicles pursuant to a franchise from a manufacturer, distributor or importer.

(2) "Dealership" means the location from which a dealer buys, sells, trades, stores, takes on consignment, or in any other manner deals in new motor vehicles.

(3) "Distributor" means a person who sells or distributes motor vehicles to motor vehicle dealers.

(4) "Franchise" means a contract or agreement under which:

(a) The franchisee is granted the right to sell new motor vehicles manufactured, distributed or imported by the franchisor;

(b) The franchise is an independent business operating as a component of a distribution or marketing system prescribed in substantial part by the franchisor;

(c) The franchisee's business is substantially associated with the trade-mark, trade name, commercial symbol or advertisements designating the franchisor or the products distributed by the franchisor; and

(d) The franchisee's business is substantially reliant on the franchisor for a continued supply of motor vehicles, parts and accessories.

(5) "Franchisee" means a dealer to whom a franchise is granted.

(6) "Franchisor" means a manufacturer, distributor or importer who grants a franchise to a dealer.

(7) "Importer" means a person who transports or arranges for the transportation of any foreign manufactured new motor vehicle into the United States for sale in this state.

(8) "Manufacturer" means a person who manufactures or assembles motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment which when installed form an integral part of the motor vehicle and constitutes a major manufacturing alteration and which completed unit is owned by the manufacturer. [1980 s.s. c.3 §1]

**650.130 Prohibited conduct by manufacturer, distributor or importer.** Notwithstanding the terms of any franchise or other agreement, it shall be unlawful for any manufacturer, distributor or importer to:

(1) Require or attempt to require a dealer to accept delivery of any motor vehicle, part, accessory or any other commodity not voluntarily ordered by the dealer. This subsection shall not apply to recall safety and emissions campaign parts not voluntarily ordered by the dealer or any vehicle features, parts, accessories or other components mandated by federal, state or local law.

(2) Coerce or attempt to coerce a dealer to enter any agreement or sales promotion program by threatening to cancel the franchise of the dealer.

(3) Refuse or fail to deliver, within a reasonable time and in a reasonable quantity, any new motor vehicle, part or accessory covered by the franchise if the vehicle, part or accessory is advertised as being available for delivery or is being delivered to another dealer. This subsection is not violated, however, if a failure to deliver is the result of a cause beyond the control of the manufacturer, distributor or importer.

(4) Prevent or attempt to prevent a dealer from making reasonable changes in the capital structure of a dealership or the means by which the dealership is financed, provided that the dealer meets any reasonable capital requirement of the manufacturer, distributor or importer.

(5) Unreasonably fail to give effect to, or attempt to prevent unreasonably, any sale or

transfer of the ownership or management, or any interest in the ownership or management, of a dealer, dealership or franchise.

(6) Unreasonably fail to give effect to, or attempt to prevent unreasonably, the succession to a dealership by any legal heir or devisee under the will of a dealer or under the laws of descent and distribution of this state or under any written instrument filed with the manufacturer, distributor or importer during the dealer's lifetime. If such instrument is filed, the succession to the dealership shall be governed by the terms of such written instrument.

(7) Unreasonably refuse to compensate the dealer for work or services performed and expenses incurred in accordance with the dealer's delivery, preparation and warranty obligations under the terms of a franchise or agreement. [1980 s.s. c.3 §2]

**650.140 Good cause required for terminating dealer franchise; protest of termination; notice before termination.** (1) Notwithstanding the terms of any franchise or other agreement, it shall be unlawful for any manufacturer, distributor or importer to cancel, terminate or refuse to continue any franchise without showing good cause, provided the dealer protests such termination by filing a complaint in court of competent jurisdiction within the time period specified in subsection (3) of this section.

(2) In determining if good cause exists pursuant to subsection (1) of this section, the court shall consider such factors as:

(a) The amount of business transacted by the dealer as compared to the amount of business available to the dealer.

(b) The investment necessarily made and obligations necessarily incurred by the franchisee in performance of the franchise.

(c) The permanency of the investment.

(d) The adequacy of the franchisee's new motor vehicle sales and service facilities, equipment and parts.

(e) The qualifications of the management, sales and service personnel to provide the consumer with reasonably good service and care of new motor vehicles.

(f) The failure of the franchisee to substantially comply in good faith with those requirements of the franchise that are reasonable.

(3) Notwithstanding the terms of any franchise or other agreement, a franchisor shall give a franchisee 60 days' written notice stating the specific reasons for cancellation, termination or

noncontinuance of a franchise, provided that a franchisor need only give 30 days' written notice concerning the following reasons:

(a) Misrepresentation by the franchisee in applying for the franchise.

(b) Insolvency of the franchisee, or filing of any petition by or against the franchisee, under any bankruptcy or receivership law.

(c) Conviction of a felony, provided that conviction after a plea nolo contendere shall be considered a conviction for purposes of this subsection.

(d) Failure of the dealer to maintain its operation open for business for seven consecutive business days or for eight business days out of any 15-business-day period. [1980 s.s. c.3 §3]

**650.150 Enjoining establishment of additional franchise or relocation of existing dealership in same market area; complaint; determination of good cause; notice before new franchise or relocation.** (1) A dealer may enjoin a manufacturer, distributor or importer from franchising an additional motor vehicle dealership of the same line-make within the dealer's relevant market area for good cause, provided that the dealer files a complaint with a court of competent jurisdiction within the time period specified in subsection (4) of this section. For purposes of this section, an indication of the relevant market area shall be the area of sales and service responsibility designated in the dealer's franchise, but other factors such as actual sales and service area shall be considered.

(2) A dealer may enjoin a manufacturer, distributor or importer from relocating an existing motor vehicle dealership of the same line-make within the dealer's relevant market area for good cause, provided that the dealer files a complaint with a court of competent jurisdiction within the time period specified in subsection (4) of this section. This subsection shall not apply to an existing dealership which is relocating to a site within a three-mile radius of its existing site.

(3) In determining whether good cause exists pursuant to subsections (1) and (2) of this section, the court may consider all factors that the court considers relevant, but in any case shall consider the following factors:

(a) Whether threats or other coercive action, oral or written, were made to or taken against the dealer by the manufacturer, distributor or importer.

(b) Whether the dealer is asked to terminate one franchise in order to keep another franchise.

(c) Whether there will be an unjustifiable adverse effect upon existing dealers because of the grant of the new franchise or the relocation of an existing franchise. For purposes of this paragraph, the court may consider all factors that the court determines relevant, but in any case shall consider the following factors:

(A) The extent, nature and permanency of the investment of the existing motor vehicle dealers and the proposed motor vehicle dealer.

(B) The effect on the retail motor vehicle business in the relevant market area.

(C) The growth or decline in population and in new motor vehicle registrations in the relevant market area.

(d) The effect on consumers in the relevant market area. For purposes of this paragraph, the court may consider all factors that the court determines relevant, but in any case shall consider the following factors in the relevant market area:

(A) The adequacy and convenience of existing motor vehicle sales facilities and service facilities.

(B) The supply of motor vehicle parts and qualified service personnel.

(C) The existence of competition among existing dealers.

(4) A manufacturer, distributor or importer must give an existing dealership at least 60 days' written notice prior to franchising a new dealership of the same line-make or authorizing the relocation of another dealership of the same line-make within the relevant market area of the existing dealership. Notice under this subsection must be given to all dealers of the same line-make within the designated area of sales and service responsibility, or within a 10-mile radius of the site of the proposed new or relocated dealership, whichever is greater. [1980 s.s. c.3 §4; 1985 c.67 §1]

**650.160 Reimbursement of franchise new car dealers for warranty work; claims by dealers.** (1) The manufacturer, distributor or importer shall reimburse franchise new car dealers for warranty work at a rate which would reasonably compensate the dealer for such work. Such compensation for warranty work shall include consideration of the dealer's charges to retail customers for nonwarranty work of like kind, as well as other factors such as, but not limited to, the dealer's cost for wages and fringe benefits. If the dealer's labor rate is reasonable and is posted for customer viewing prominently in the dealership, that rate shall be paid to the dealer unless the dealer's ratio of warranty work

to the total volume of service business is unreasonable.

(2) All claims made by dealers for compensation for delivery, preparation or warranty work shall be paid within 30 days after approval or disapproval by the manufacturer, distributor or importer, and approval shall be made within 30 days after receipt of a claim. The dealer shall be notified in writing of the grounds for the disapproval of any claim. [1980 s.s. c.3 §5]

**650.170 Dealer's remedy.** (1) Any dealer injured, or threatened with injury, by a manufacturer, distributor or importer as a result of a violation of ORS 650.120 to 650.170 may sue

to enjoin such illegal, or threatened illegal conduct.

(2) The court, in an action brought under ORS 650.120 to 650.170, may award damages to a dealer who demonstrates an actual loss of money as a result of illegal conduct by a manufacturer, distributor or importer.

(3) Any action for damages under ORS 650.120 to 650.170 shall be brought within two years of the injury. In any action brought under ORS 650.120 to 650.170, the court may award reasonable attorney fees and costs to the prevailing party. [1980 s.s. c.3 §6]

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