

Chapter 650

1989 EDITION

Franchise Transactions

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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) "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.

(3) "Director" means Director of the Department of Insurance and Finance.

(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 interruption 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; 1987 c.414 §77]

650.010 Franchise sellers required to maintain books and records; filings with director. 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 director may require, file in the office of the director 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 director 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 director. The director:

(1) May make such public or private investigations within or outside this state as the director 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 director; 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 director 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 director. [1973 c.509 §6]

650.060 Investigative powers of director; protection against unreasonable investigation; contempt. (1) For the purpose of any investigation or proceeding under ORS 650.005 to 650.085, the director or any officer designated by the director 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 director 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 director on any matter on which the witness may be lawfully interrogated, the circuit court of any county, upon application of the director, 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 director determines that any person has engaged in, or is about to engage in, any act or practice which the director believes would give rise to liability under ORS 650.020, the director 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 director prevails, the director 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 director to post a bond.

(2) The director 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 Director as agent for service of process. Except as provided in ORS 650.080, the director 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 nonresident of this state, who has engaged in conduct that is subject to a proceeding under ORS 650.020. [1973 c.509 §9]

650.075 Manner of executing service of process; effect of initial service. (1) The service referred to in ORS 650.070 shall be made by:

(a) Serving the director or a clerk on duty at the Department of Insurance and Finance a copy of the process, notice or demand, with any papers required by law to be delivered in connection with the service, or by mailing to the department a copy of the process, notice or demand by certified or registered mail, and a fee of \$2 for each party being served;

(b) Transmittal of notice of the service on the director, 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 director; 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

(c) 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.

(2) After completion of initial service upon the director, no additional documents need be served upon the director to maintain jurisdiction in the same proceeding or to give notice of any motion or provisional process. [1973 c.509 §10, 1987 c.603 §27]

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 contin-

ued 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 ss 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.

(8) Coerce or attempt to coerce a dealer to participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices or display decorations or materials at the expense of the dealer. [1980 ss. c 3 §2; 1989 c 716 §5]

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 ss c.3 §3]

650.145 Compensation due dealer upon termination of franchise. (1) Upon the termination, cancellation, nonrenewal or discontinuance of any franchise, the dealer shall be allowed fair and reasonable compensation by the manufacturer, distributor or importer for the following:

(a) All new current model year motor vehicle inventory purchased from the manufacturer, distributor or importer, which has not been materially altered, substantially damaged or driven for more than 300 miles;

(b) All new motor vehicle inventory not of the current model year which has not been materially altered, substantially damaged or driven for more than 300 miles, provided the noncurrent model vehicles were purchased directly from the manufacturer, distributor or importer within 120 days of the effective date of the termination, cancellation, nonrenewal or discontinuance and were either paid for or drafted on the dealer's financing source;

(c) Supplies and parts inventory purchased from the manufacturer, distributor or importer and listed in the manufacturer's, distributor's or importer's current parts catalog;

(d) Equipment, furnishings and signs purchased from the manufacturer, distributor or importer and required by the manufacturer, distributor or importer which have not been materially altered, or substantially damaged or depreciated over 50 percent of the original value; and

(e) Special tools purchased from the manufacturer, distributor or importer within three years of the date of termination, cancellation, nonrenewal or discontinuance and required by the manufacturer which have not been materially altered, or substantially damaged or depreciated over 50 percent of the original value.

(2) "Fair and reasonable compensation" shall be the amount originally paid by the dealer minus any incentive payments, model close-out allowances or any other programs applicable to the vehicles.

(3) Nothing in this section is intended to modify the manufacturer's, distributor's or importer's contractual right of setoff.

(4) Upon the termination, cancellation, nonrenewal or discontinuance of a franchise, the manufacturer, distributor or importer shall also pay to the dealer a sum equal to the current, fair rental value of the dealer's established place of business for a period of one year from the effective date of termination, cancellation, nonrenewal or discontinuance or the remaining period of any lease, whichever is less.

(5) Subsection (4) of this section shall apply only to the extent that the dealer's established place of business is used for performance of sales and service obligations under the manufacturer's, distributor's or importer's franchise agreement.

(6) In the event that termination is by the dealer, the payment required by subsection (4) of this section is not required.

(7) This section shall not relieve a new motor vehicle dealer, lessor or other owner of an established place of business from the obligation of mitigating damages. [1989 c.716 §2]

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]

650.155 Liability of manufacturer for damages to vehicles before delivery to carrier. (1) Notwithstanding the terms of any franchise, the manufacturer is liable for

any and all damage to new motor vehicles before delivery to a carrier or transporter.

(2) Whenever a new motor vehicle is damaged in transit, the dealer shall:

(a) Notify the manufacturer of the damage within three business days from the date of delivery to the dealer or within any additional time as specified in the franchise; and

(b) Request from the manufacturer authorization to replace the components, parts and accessories damaged or to otherwise repair the damage.

(3) If the manufacturer refuses or fails to authorize repair of any damage within 10 days after receipt of notification under subsection (2) of this section, or within any additional time as specified in the franchise, ownership of the new motor vehicle shall revert to the manufacturer, and the new motor vehicle dealer shall have no obligation, financial or otherwise, with respect to the motor vehicle.

(4) A manufacturer shall disclose in writing to a dealer, at the time of delivery of a new motor vehicle, the nature and extent of any and all damage and post-manufacturing repairs.

(5) If the total value of repairs to a new motor vehicle by the manufacturer's authorized agent and a dealer equals or exceeds the amount specified under subsection (6) of this section, the manufacturer may either repurchase the motor vehicle from the dealer, or provide reasonable and adequate compensation to the dealer to assist in sale or disposition of the new motor vehicle, as long as the dealer has complied with all other contractual agreements with regard to damaged vehicles. If the manufacturer repurchases the motor vehicle, the dealer shall have no obligation, financial or otherwise, with respect to the motor vehicle.

(6) A dealer shall disclose, in writing, to a purchaser of the new motor vehicle prior to entering into a sales contract that the new motor vehicle has been damaged and repaired if the damage to the new motor vehicle exceeds \$300, as calculated at the rate of the dealer's authorized warranty rate for labor and parts. Replacement of glass, tires, bumpers or any comparable nonwelded component is not considered damage and repair for purposes of this section. For purposes of this subsection, "comparable nonwelded component" does not include a fender, hood, trunk lid or door.

(7) For purposes of this section, "manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer, including the retail delivered price suggested by the manufacturer for each accessory or item of op-

tional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer which is not included within the retail price suggested by the manufacturer for the new motor vehicle. [1989 c.716 §3]

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]

650.165 Prohibited franchise conditions. It shall be a violation of ORS 650.120 to 650.170 for a franchisor to require a franchisee to agree to the inclusion of a term or condition in a franchise, or in any lease or agreement ancillary or collateral to a franchise, as a condition to the offer, grant or renewal of such franchise, lease or agreement, that:

(1) Requires the franchisee to waive trial by jury in actions involving the franchisor;

(2) Specifies the jurisdictions, venues or tribunals in which disputes arising with respect to the franchise, lease or agreement shall or shall not be submitted for resolution or otherwise prevents a franchisee from bringing an action in a particular forum otherwise available under the law; or

(3) Requires that disputes between the franchisor and franchisee be submitted to arbitration or to any other binding alternate dispute resolution procedure. However, any such franchise, lease or agreement may authorize the submission of a dispute to arbitration or to binding alternate dispute resolution if the franchisor and franchisee voluntarily agree to submit such dispute to arbitration or binding alternate dispute resolution at the time the dispute arises. [1989 c.716 §4]

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]

MOTOR FUEL FRANCHISES

650.200 Definitions for ORS 650.200 to 650.250. As used in ORS 650.200 to 650.250, unless the context requires otherwise:

(1) "Affiliate" means any person who, other than by means of a franchise, controls, is controlled by or is under common control with any other person.

(2) "Company operated station" means a motor fuel service station operated by a franchisor with employees of the franchisor or by a commission manager of the franchisor for the sale of motor fuel to the general public for ultimate consumption.

(3) "Contract" means any oral or written agreement. For supply purposes, delivery levels during the same month of the previous year shall be prima facie evidence of an agreement to deliver such levels.

(4) "Control" means the direct or indirect ownership of or the right to exercise directing influence over more than 50 percent of the beneficial interest in any person.

(5)(a) "Franchise" means any contract:

(A) Between a refiner and a motor fuel distributor;

(B) Between a refiner and a motor fuel retailer;

(C) Between a motor fuel distributor and another motor fuel distributor; or

(D) Between a motor fuel distributor and a motor fuel retailer,

under which a refiner or motor fuel distributor authorizes or permits a motor fuel retailer or motor fuel distributor to use, in connection with the sale, consignment or distribution of motor fuel, a trade-mark which is owned or controlled by such refiner or motor fuel distributor or by a refiner which supplies motor fuel to the motor fuel

distributor which authorizes or permits such use.

(b) "Franchise" includes:

(A) Any contract under which a motor fuel retailer or motor fuel distributor is authorized or permitted to occupy leased marketing premises, to be employed in connection with the sale, consignment or distribution of motor fuel under a trade-mark which is owned or controlled by such refiner or motor fuel distributor or by a refiner which supplies motor fuel to the motor fuel distributor which authorizes or permits such occupancy;

(B) Any contract pertaining to the supply of motor fuel which is to be sold, consigned or distributed under a trade-mark owned or controlled by a refiner or motor fuel distributor or under a contract which has existed continuously since May 15, 1973, and pursuant to which, on May 15, 1973, motor fuel was sold, consigned or distributed under a trade-mark owned and controlled on such date by a refiner or motor fuel distributor; and

(C) The unexpired portion of, any franchise, as defined in this paragraph, which is transferred or assigned as authorized by the provisions of such franchise or by any applicable provisions of law which permits such transfer or assignment without regard to any provision of the franchise.

(6) "Franchise relationship" means the respective motor fuel marketing or distribution obligations and responsibilities of a franchisor and a franchisee which result from the marketing of motor fuel under a franchise.

(7) "Franchisee" means a motor fuel retailer or motor fuel distributor who is authorized or permitted under a franchise to use a trade-mark in connection with the sale, consignment or distribution of motor fuel.

(8) "Franchisor" means a refiner or motor fuel distributor who, under a franchise, authorizes or permits a retailer or motor fuel distributor to use a trade-mark in connection with the sale, consignment or distribution of motor fuel.

(9) "Leased marketing premises" means marketing premises owned, leased or in any way controlled by a franchisor and which the franchisee is authorized or permitted, under the franchise, to employ in connection with the sale, consignment or distribution of motor fuel.

(10) "Marketing premises" means in the case of any franchise, premises which, under such franchise, are to be employed by the franchisee in connection with the sale, consignment or distribution of motor fuel:

(11) "Motor fuel" means gasoline and diesel fuel of a type distributed for use as a fuel in self-propelled vehicles designed primarily for use on public streets, roads and highways.

(12) "Motor fuel distributor" means any person, including any affiliate of such person, who:

(a) Purchases motor fuel for sale, consignment or distribution to another; or

(b) Receives motor fuel on consignment for distribution to the distributor's own motor fuel accounts or to accounts of the distributor's supplier, but shall not include a person who is an employee of, or merely serves as a common carrier providing transportation service for, such supplier or who receives motor fuel on consignment for sale to the general public for ultimate consumption.

(13) "Motor fuel retailer" means any person who purchases motor fuel for sale to the general public for ultimate consumption.

(14) "Refiner" means any person engaged in the refining of crude oil to produce motor fuel, and includes any affiliate of such person. [1987 c 917 §1]

650.205 Prohibited conduct by franchisor. Notwithstanding the terms of any franchise, a franchisor shall not:

(1) Require any franchisee to meet unreasonable mandatory minimum sales volume requirements for fuel or other products;

(2) Alter the franchise premises during the effective term of the franchise without the consent of the franchisee. This subsection does not apply to alterations required by law;

(3) Interfere with any franchisee's right to assistance of counsel on any matter or to join or be active in any trade association;

(4) Set or compel, directly or indirectly, the retail price at which the franchisee sells motor fuel or other products; and

(5)(a) With respect to credit cards issued by the franchisor, chargeback any credit card invoice to a motor fuel franchisee unless the franchisor provides the cardholder's last-known address, the reason for chargeback, a refund or credit for any credit card handling fee collected on the transaction by the franchisor from the franchisee, and the original invoice of the credit card charge or the legal equivalent if the franchisor has previously received the invoice or a copy thereof. The cardholder's address need not be provided if the chargeback is based on any alleged unlawful, fraudulent or deceptive act of the franchisee or an employee of the franchisee, or if the cardholder claims no legal responsibility for payment of the charge

because it involved the unauthorized use of a credit card.

(b) The terms and conditions governing a motor fuel franchisee's acceptance of a franchisor issued credit card, including the reasons for which a chargeback may be made, shall be established in writing and a copy thereof provided to the franchisee. The franchisor or its agent shall provide at least 30 days' prior written notice to a franchisee before implementing any change to previously disclosed terms and conditions if such change may increase the franchisee's cost of accepting the franchisor issued credit card or if such change adds to or amends the reasons for which a chargeback may occur.

(c) No credit card invoice for a franchisor issued credit card shall be charged back after 90-days from the date a charge invoice was submitted to the franchisor, except that a chargeback may be made beyond the 90-day period if the cardholder or franchisor alleges fraudulent or other unlawful actions by the franchisee or an employee thereof in making the sale, or if the cardholder refuses payment to the franchisor pursuant to rights granted under §170 of the Federal Truth-in-Lending Act (15 U.S.C. 1666i), or any rule issued under §5 of the Federal Trade Commission Act (15 U.S.C. 46), unless the cardholder's refusal to pay is the fault of the franchisor. [1987 c.917 §5]

650.210 Rights and prohibitions governing relationship between franchisor and franchisee. Without limiting the other provisions of ORS 650.200 to 650.250, the following specific rights and prohibitions shall govern the relationship between the franchisor and the franchisee. It shall be unlawful and a violation of ORS 650.200 to 650.250 for any franchisor to:

(1) Require a franchisee to purchase or lease goods or services of a franchisor or from approved sources of supply unless and to the extent that the franchisor satisfies the burden of proving that such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds, and do not substantially affect competition. This subsection does not apply to the initial inventory of the franchise. A determination of whether such restrictive purchasing agreements are reasonably necessary for a lawful purpose justified on business grounds and do not substantially affect competition shall be guided by the decisions of the courts of the United States in interpreting and applying the antitrust laws of the United States.

(2) Sell, rent or offer to sell or rent to a franchisee any product, service or property

at a price not set in good faith as defined in ORS 72.1030 (1)(b).

(3) Require a franchisee to assent to a release, assignment, novation or waiver which would relieve any person from liability imposed by ORS 650.200 to 650.250.

(4) Refuse to renew a franchise without fairly compensating the franchisee for the fair market value at the time of expiration of the franchise of the franchisee's resalable inventory, supplies, equipment and furnishings purchased from the franchisor, not including personalized materials that have no value to the franchisor and inventory, supplies, equipment and furnishings not reasonably required in the conduct of the franchise business. A franchisor may offset against amounts owed to a franchisee under this subsection any amounts owed by such franchisee to the franchisor.

(5) Impose on a franchisee by contract, rule or regulation, whether written or oral, any standard of conduct unless the person so doing can sustain the burden of proving the standard of conduct to be reasonable. [1987 c.917 §9]

650.215 Prohibited conduct in offer, sale or purchase of franchise. It is unlawful for any person in connection with the offer, sale or purchase of any franchise directly or indirectly:

(1) To sell or offer to sell a franchise in this state by means of any written or oral communication which includes an untrue statement of a material fact.

(2) To employ any device, scheme or artifice to defraud.

(3) To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person. [1987 c.917 §10]

650.220 Consent of franchisor to sale, assignment or transfer of franchise; conditions for trial franchise. (1) Notwithstanding the terms of any franchise, a franchisor shall not prohibit or unreasonably withhold its consent to any sale, assignment or other transfer of the franchise by a franchisee to a qualified third party.

(2) If the franchisor consents to the proposed sale, assignment or other transfer and the proposed third party has not previously been a party to a franchise with the franchisor, the franchisor at its option may require the third party to accept in lieu of the assigned franchise a trial franchise as defined in The Petroleum Marketing Practices Act, (15 U.S.C. 2803), on the terms and conditions then generally being extended by the franchisor to similarly situated franchisees. Entry into the trial franchise

shall terminate the franchise proposed to be sold, assigned or transferred. [1987 c 917 §2]

650.225 Death of franchisee; when franchisor required to enter into new franchise with designee of franchisee; notice; qualifications; possession of franchise premises. (1) Following the death of a motor fuel retailer franchisee and notwithstanding the terms of the franchise, the franchisor, in the case of leased marketing premises, shall enter into a new franchise with the designee of the motor fuel retailer franchisee on the terms and conditions then generally being extended by the franchisor to similarly situated motor fuel retailers if:

(a) Prior to the death of a motor fuel retailer franchisee, the motor fuel retailer franchisee notifies the franchisor in writing of the designee, who shall be the surviving spouse, adult child, or adult stepchild of the motor fuel retailer franchisee or in the absence of a designation, the motor fuel retailer franchisee's surviving spouse, if any;

(b) At the time of the motor fuel retailer franchisee's death, the designee meets the qualifications then being required by the franchisor for its motor fuel retailer franchisees; and

(c) Within 10 days following the motor fuel retailer franchisee's death, the designee enters into a new franchise with the franchisor on the terms and conditions then generally being extended by the franchisor to similarly situated motor fuel retailer franchisees, except that for the part of the term of the new lease equal to the unexpired portion of decedent franchisee's prior lease, the rent shall be the same as under the prior lease.

(2) Until the designee enters into a new franchise as provided in subsection (1) of this section, the franchisor shall be entitled to possess and to operate the marketing premises for the franchisor's own account. [1987 c 917 §3]

650.230 Transfer of franchise to corporation in which franchisee has controlling interest; conditions. Notwithstanding the terms of any franchise, no franchisor may prohibit or prevent the sale, assignment or other transfer of a franchise to a corporation in which the franchisee has and maintains a controlling interest if the franchisee offers in writing personally to guarantee the performance of the obligations under the franchise. In the event of a sale, assignment or transfer under this section, the franchisor may require the corporation to assume in writing all of the franchisee's obligations to the franchisor under the fran-

chise and may require the franchisee to maintain a controlling interest in the corporation and actively operate the marketing premises during the time that the franchise with the corporation continues. [1987 c 917 §4]

650.235 Franchisor prohibited from requiring operation of service station in excess of 16 hours per day; exceptions. (1) A franchisor, as a condition for renewal of a franchisee lease or a supply agreement, shall not require a franchisee to operate a service station for the sale of motor fuel to the public for ultimate consumption in excess of 16 hours per day.

(2) This section shall not apply:

(a) If specific hours of business or operation are required under the franchisor's prime lease or license from any governmental entity, airport, parking, marine or port authority, shopping center or any private investor not affiliated with or controlled by the franchisor;

(b) If the service station is located within one-fourth mile of access to any limited access highway of the federal highway system;

(c) To hours of operation exceeding 16 hours per day that have been agreed upon by the franchisor and the franchisee; or

(d) If the franchisor uniformly requires a 24-hour operation by all of its franchisees. [1987 c.917 §7]

650.240 When transfer of motor fuel a sale in commerce. For purposes of ORS 646.040, the transfer of motor fuel from a franchisor to a company operated station or a franchisee shall be a sale in commerce. [1987 c 917 §6]

650.245 Principle of good faith. Without limiting the other provisions of ORS 650.200 to 650.250, the principle of good faith shall govern the relationship and dealings of the parties with each other. [1987 c 917 §8]

650.250 Injunctive relief or damages; attorney fees and costs; limitation on commencement of action. Any person who is injured in the person's business or property by reason of a violation of ORS 650.250 to 650.250 may sue therefor in any court having jurisdiction in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, for injunctive relief or to recover the damages sustained by the person, and may be awarded attorney fees together with the costs of the suit. Any action brought pursuant to this section shall be commenced within four years after the cause of action accrued. [1987 c.917 §11]