

OREGON UNLAWFUL TRADE PRACTICES -- ORS 646.605 to 646.652

646.605 Definitions for ORS 646.605 to 646.652. As used in ORS 646.605 to 646.652:

- (1) “Appropriate court” means the circuit court of a county:
 - (a) Where one or more of the defendants reside;
 - (b) Where one or more of the defendants maintain a principal place of business;
 - (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 attorney maintains an office.
- (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) “Real estate, goods or services” means those that are or may be obtained primarily for personal, family or household purposes, or that are or may be obtained for any purposes as a result of a telephone solicitation, and includes franchises, distributorships and other similar business opportunities, but does not include insurance. Except as provided in section 2, chapter 658, Oregon Laws 2003, real estate does not cover conduct covered by ORS chapter 90.
- (7) “Telephone solicitation” means a solicitation where a person, in the course of the person’s business, vocation or occupation, uses a telephone or an automatic dialing-announcing device to initiate telephonic contact with a potential customer and the person is not one of the following:
 - (a) A person who is a broker-dealer or salesperson licensed under ORS 59.175, or a mortgage banker or mortgage broker licensed under ORS 86A.106 when the solicitation is for a security qualified for sale pursuant to ORS 59.055.
 - (b) A real estate licensee or a person who is otherwise authorized to engage in professional real estate activity pursuant to ORS chapter 696, when the solicitation involves professional real estate activity.
 - (c) A person licensed or exempt from licensure as a builder pursuant to ORS chapter 701, when the solicitation involves the construction, alteration, repair, improvement or demolition of a structure.
 - (d) A person licensed or otherwise authorized to sell insurance as an insurance producer pursuant to ORS chapter 744, when the solicitation involves insurance.
 - (e) A person soliciting the sale of a newspaper of general circulation, a magazine or membership in a book or record club who complies with ORS 646.611, when the solicitation involves newspapers, magazines or membership in a book or record club.

(f) A person soliciting without the intent to complete and who does not complete the sales presentation during the telephone solicitation and who only completes the sales presentation at a later face-to-face meeting between the solicitor and the prospective purchaser.

(g) A supervised financial institution or parent, subsidiary or affiliate thereof. As used in this paragraph, “supervised financial institution” means any financial institution or trust company, as those terms are defined in ORS 706.008, or any personal property broker, consumer finance lender, commercial finance lender or insurer that is subject to regulation by an official or agency of this state or of the United States.

(h) A person who is authorized to conduct prearrangement or preconstruction funeral or cemetery sales, pursuant to ORS chapter 692, when the solicitation involves prearrangement or preconstruction funeral or cemetery plans.

(i) A person who solicits the services provided by a cable television system licensed or franchised pursuant to state, local or federal law, when the solicitation involves cable television services.

(j) A person or affiliate of a person whose business is regulated by the Public Utility Commission of Oregon.

(k) A person who sells farm products as defined by ORS 576.006 if the solicitation neither intends to nor actually results in a sale that costs the purchaser in excess of \$100.

(L) An issuer or subsidiary of an issuer that has a class of securities that is subject to section 12 of the Securities Exchange Act of 1934 and that is either registered or exempt from registration under paragraph (A), (B), (C), (E), (F), (G) or (H) or subsection (g) of that section.

(m) A person soliciting exclusively the sale of telephone answering services to be provided by that person or that person’s employer when the solicitation involves answering services.

(n) A telecommunications utility with access lines of 15,000 or less or a cooperative telephone association when the solicitation involves regulated goods or services.

(8) “Trade” and “commerce” mean advertising, offering or distributing, whether by sale, rental or otherwise, any real estate, goods or services, and include any trade or commerce directly or indirectly affecting the people of this state.

(9) “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;

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

(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; or

(d) Knowingly takes advantage of a customer who is a disabled veteran, a disabled servicemember or a servicemember in active service, or the spouse of a disabled veteran, disabled servicemember or servicemember in active service. For purposes of this paragraph:

(A) “Disabled veteran” has the meaning given that term in ORS 408.225.

(B) “Disabled servicemember” means a servicemember, as defined in 50 U.S.C. App. 511 as in effect on January 1, 2010, who may be entitled to disability compensation under laws administered by the United States Department of Veterans Affairs.

(C) “Servicemember in active service” means:

(i) A servicemember called into active service under Title 10 or Title 32 of the United States Code as in effect on January 1, 2010; or

(ii) A servicemember on active state duty, as defined in ORS 398.002.

(10) A willful violation occurs when the person committing the violation knew or should have known that the conduct of the person was a violation.

(11) A loan is made “in close connection with the sale of a manufactured dwelling” if:

(a) The lender directly or indirectly controls, is controlled by or is under common control with the seller, unless the relationship is remote and is not a factor in the transaction;

(b) The lender gives a commission, rebate or credit in any form to a seller who refers the borrower to the lender, other than payment of the proceeds of the loan jointly to the seller and the borrower;

(c) The lender is related to the seller by blood or marriage;

(d) The seller directly and materially assists the borrower in obtaining the loan;

(e) The seller prepares documents that are given to the lender and used in connection with the loan; or

(f) The lender supplies documents to the seller used by the borrower in obtaining the loan. [1965 c.490 §2; 1967 c.599 §1; 1971 c.744 §5; 1973 c.235 §1; 1977 c.195 §1; 1989 c.137 §1; 1993 c.508 §40; 1995 c.79 §328; 1997 c.249 §197; 1997 c.631 §514; 1999 c.59 §189; 1999 c.402 §6; 2001 c.917 §4; 2003 c.364 §52; 2003 c.658 §11; 2007 c.71 §198; 2007 c.319 §31; 2009 c.215 §1]

Note: Section 4, chapter 215, Oregon Laws 2009, provides:

Sec. 4. The amendments to ORS 646.605 and 646.608 by sections 1 to 3 of this 2009 Act apply to actions taken before, on or after the effective date of this 2009 Act [January 1, 2010]. [2009 c.215 §4]

646.607 Unlawful business, trade practices. 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 the sale, rental or other disposition of real estate, goods or services, or collection or enforcement of an obligation;

(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 that has been received from the customer that was for the purchase of the undelivered real estate, goods or services and that 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 does not apply to a dispute over the quality of real estate, goods or services delivered to a customer;

(3) Violates ORS 401.965 (2);

(4) Violates a provision of ORS 646A.725 to 646A.750;

(5) Violates ORS 646A.530; or

(6) Employs a collection practice that is unlawful under ORS 646.639. [1977 c.195 §4; 1979 c.505 §1; 2003 c.759 §§9,10; 2007 c.223 §6; 2008 c.19 §16; 2008 c.31 §4; 2009 c.60 §1]

646.608 Additional unlawful business, trade practices; proof; 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 secondhand.
- (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) Manufactures mercury fever thermometers.

(x) Sells or supplies mercury fever thermometers unless the thermometer is required by federal law, or is:

(A) Prescribed by a person licensed under ORS chapter 677; and

(B) Supplied with instructions on the careful handling of the thermometer to avoid breakage and on the proper cleanup of mercury should breakage occur.

(y) Sells a thermostat that contains mercury unless the thermostat is labeled in a manner to inform the purchaser that mercury is present in the thermostat and that the thermostat may not be disposed of until the mercury is removed, reused, recycled or otherwise managed to ensure that the mercury does not become part of the solid waste stream or wastewater. For purposes of this paragraph, "thermostat" means a device commonly used to sense and, through electrical communication with heating, cooling or ventilation equipment, control room temperature.

(z) Sells or offers for sale a motor vehicle manufactured after January 1, 2006, that contains mercury light switches.

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

(bb) Violates ORS 646A.070 (1).

(cc) Violates any requirement of ORS 646A.030 to 646A.040.

(dd) Violates the provisions of ORS 128.801 to 128.898.

(ee) Violates ORS 646.883 or 646.885.

(ff) Violates ORS 646.569.

(gg) Violates the provisions of ORS 646A.142.

(hh) Violates ORS 646A.360.

(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

(jj) Violates ORS 646.563.

(kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.

(mm) Violates ORS 646A.210 or 646A.214.

(nn) Violates any provision of ORS 646A.124 to 646A.134.

(oo) Violates ORS 646A.095.

(pp) Violates ORS 822.046.

(qq) Violates ORS 128.001.

(rr) Violates ORS 646.649 (2) to (4).

- (ss) Violates ORS 646A.090 (2) to (4).
 - (tt) Violates ORS 87.686.
 - (uu) Violates ORS 646.651.
 - (vv) Violates ORS 646A.362.
 - (ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.
 - (xx) Violates ORS 180.440 (1) or 180.486 (1).
 - (yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.
 - (zz) Violates ORS 87.007 (2) or (3).
 - (aaa) Violates ORS 92.405 (1), (2) or (3).
 - (bbb) Engages in an unlawful practice under ORS 646.648.
 - (ccc) Violates ORS 646A.365.
 - (ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.
 - (eee) Sells a gift card in violation of ORS 646A.276.
 - (fff) Violates ORS 646A.102, 646A.106 or 646A.108.
 - (ggg) Violates ORS 646A.430 to 646A.450.
 - (hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.
 - (iii) Violates a provision of ORS 646A.702 to 646A.720.
 - (jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration described in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the subject of the violation.
 - (kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.
 - (LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on January 1, 2010.
 - (mmm) Violates a provision of ORS 646A.480 to 646A.495.
 - (nnn) Violates ORS 646A.082.
 - (ooo) Violates ORS 646.647.
 - (ppp) Violates ORS 646A.115.
 - (qqq) Violates a provision of ORS 646A.405.
- (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) An action or suit may not be brought under subsection (1)(u) of this section unless the Attorney General has first established a rule in accordance with the provisions of ORS chapter 183 declaring the conduct to be unfair or deceptive in trade or commerce.
- (5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees. [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; 1987 c.626 §5; 1989

c.273 §7; 1989 c.451 §4; 1989 c.458 §3; 1989 c.621 §4; 1989 c.622 §7; 1989 c.623 §3; 1989 c.913 §1; 1991 c.532 §25; 1991 c.672 §8; 1993 c.58 §3; 1993 c.283 §10; 1993 c.582 §11; 1993 c.645 §10; 1993 c.700 §2; 1995 c.713 §6; 1995 c.788 §2; 1997 c.132 §6; 1997 c.806 §2; 1999 c.194 §9; 1999 c.400 §4; 1999 c.669 §3; 1999 c.719 §3; 1999 c.875 §3; 2001 c.924 §§11,13; 2001 c.969 §5; 2003 c.133 §§1,2; 2003 c.486 §§2,3; 2003 c.778 §§4,5; 2003 c.801 §§18,19; 2005 c.42 §§1,2; 2005 c.799 §§2,3; 2007 c.304 §2; 2007 c.538 §18; 2007 c.685 §13; 2007 c.772 §4; 2007 c.820 §8; 2007 c.823 §5; 2008 c.19 §§7,8; 2008 c.31 §§5,6; 2009 c.133 §6; 2009 c.150 §1; 2009 c.170 §1; 2009 c.197 §1; 2009 c.215 §3; 2009 c.310 §2; 2009 c.448 §11; 2009 c.604 §23; 2009 c.711 §21; 2009 c.717 §26]

Note: See first note under 646.605.

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 installment payments if payment on an installment 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 employee of a newspaper, periodical, telephone directory or radio or television station in the publication or dissemination of an advertisement, when the publisher, owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement. [1971 c.744 §10; 1977 c.195 §5; 2005 c.577 §1]

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

(2) Any disobedience of any final order of a court under this section shall be punished as a contempt of court. [1971 c.744 §16; 1973 c.235 §4; 1977 c.195 §7; 2005 c.22 §448]

646.630 [Repealed by 1953 c.391 §2]

646.632 Enjoining unlawful trade practices; assurance of voluntary compliance; 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. If an approved assurance of voluntary compliance provides for the payment of an amount of money, as restitution or otherwise, and if the amount is not paid within 90 days of the date the court approves the assurance, or, if the assurance of voluntary compliance requires periodic payments and if any periodic payment is not paid within 30 days of the date specified in the assurance of voluntary compliance for any periodic payment, then the prosecuting attorney may submit that portion of the assurance of voluntary compliance which provides for the payment of money to the court with a certificate stating the unpaid balance in a form which fully complies with the requirements of ORS 18.038 and 18.042. Upon submission of an assurance of voluntary compliance under this subsection, the court shall sign the assurance of voluntary compliance and it shall be entered in the register of the court and the clerk of the court

shall note in the register that it creates a lien. The assurance of voluntary compliance shall thereupon constitute a judgment in favor of the State of Oregon and may be enforced as provided in ORS chapter 18. 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 ensure 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 to the prevailing party in an action 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. [1971 c.744 §11; 1975 c.437 §3; 1981 c.897 §77; 1989 c.745 §1; 1995 c.618 §97; 2003 c.576 §215]

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 ensure cessation of unlawful trade practices. [1971 c.744 §12; 1977 c.195 §8; 2005 c.22 §449]

646.638 Civil action by private party; damages; attorney fees; effect of prior injunction; time for commencing action; counterclaim; class actions. (1) Except as provided in subsections (8) and (9) of this section, any person who suffers any ascertainable loss of money or property, real or personal, as a result of willful 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 statutory damages of \$200, whichever is greater. The court or the jury, as the case may be, may award punitive damages and the court may provide the equitable relief the court considers 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 in the action, shall mail a copy of the judgment to the Attorney General. Failure to mail a copy of the complaint shall not be a jurisdictional defect, but a court may not enter judgment 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) The court may award reasonable attorney fees and costs at trial and on appeal to a prevailing plaintiff in an action under this section. The court may award reasonable attorney fees and costs at trial and on appeal to a prevailing defendant only if the court finds there was no objectively reasonable basis for bringing the action or asserting the ground for appeal.

(4) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (3) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(5) Any permanent injunction or final judgment or order of the court made under ORS 646.632 or 646.636 is 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 the violation.

(6) 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.

(7) Notwithstanding subsection (6) of this section, in any action brought by a seller or lessor against a purchaser or lessee of real estate, goods or services, the purchaser or lessee may assert any counterclaim the purchaser or lessee has arising out of a violation of ORS 646.605 to 646.652.

(8) A class action may be maintained under this section. In any class action under this section:

(a) Statutory damages under subsection (1) of this section may be recovered on behalf of class members only if the plaintiffs in the action establish that the members have

sustained an ascertainable loss of money or property as a result of a reckless or knowing use or employment by the defendant of a method, act or practice declared unlawful by ORS 646.608;

(b) The trier of fact may award punitive damages; and

(c) The court may award appropriate equitable relief.

(9) This section does not apply to any method, act or practice described in ORS 646.608 (1)(aa). 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; 1995 c.696 §35; 2001 c.917 §3; 2001 c.924 §§16,18; 2005 c.42 §§3,4; 2009 c.327 §1; 2009 c.552 §6]

Note: Section 7, chapter 552, Oregon Laws 2009, provides:

Sec. 7. (1) Except as provided in subsection (2) of this section, the repeal of ORCP 32 K by section 1 of this 2009 Act and the amendments to ORS 646.638 by section 6 of this 2009 Act apply to all causes of action, whether arising before, on or after the effective date of this 2009 Act [June 25, 2009].

(2) The repeal of ORCP 32 K by section 1 of this 2009 Act and the amendments to ORS 646.638 by section 6 of this 2009 Act do not apply to a cause of action for which a judgment was entered before the effective date of this 2009 Act. [2009 c.552 §7]

646.639 Unlawful 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.

(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 p.m. and 9 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.

(3) It shall be an unlawful collection practice for a debt collector, by use of any direct or indirect action, conduct or practice, to enforce or attempt to enforce an obligation made void and unenforceable by the provisions of ORS 759.720 (3) to (5). [1977 c.184 §2; 1985 c.799 §1; 1991 c.672 §9; 1991 c.906 §1; 1995 c.696 §50]

646.640 [Repealed by 1953 c.391 §2]

646.641 Civil action for unlawful collection practice; damages; attorney fees; time for commencing action. (1) Any person injured as a result of willful 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 reasonable attorney fees to the prevailing party.

(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; 1995 c.618 §99]

646.642 Civil penalties. (1) Any person who willfully 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 willfully 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. In any action brought by a prosecuting attorney under this section, and in any contempt action brought by a prosecuting attorney pursuant to ORS 646.632 (4), the court may award to the prevailing party, in addition to any other relief provided by law, reasonable attorney fees and costs at trial and on appeal.

(3) In any suit brought under ORS 646.632, if the court finds that a person is willfully using or has willfully 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; 1989 c.745 §2; 1995 c.618 §100]

646.643 Applicability of ORS 646.639. A debt collector who is subject to and in compliance with the requirements of the Fair Debt Collection Practices Act (Public Law 95-109, 15 U.S.C. 1692 et seq.) shall also be considered to be in compliance with the requirements of ORS 646.639. [1991 c.906 §3]

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]

646.647 Unlawful use of recording group name; exceptions. (1) As used in this section:

(a) “Recording group” means a group of vocal or instrumental musicians that has released a commercial sound recording under its name.

(b) “Sound recording” has the meaning given that term in ORS 164.864.

(2) A person may not use or attempt to use the name of a recording group in advertising or presenting a live musical performance or production in which a group other than the recording group performs.

(3) Subsection (2) of this section does not apply if:

(a) The person is the authorized registrant and owner of a service mark for the name of the recording group registered with the United States Patent and Trademark Office;

(b) At least one member of the recording group is a member of the group advertising or presenting a live musical performance or production using the name of the recording group and has a legal right to use the name of the recording group by virtue of use or operation under the name of the recording group without having abandoned the name or affiliation with the group;

(c) The live musical performance or production is identified in all advertising and promotion as a salute or tribute to the recording group and the name used in advertising or presenting a live musical performance or production is not so closely related or similar to that used by the recording group that it would cause the likelihood of confusion or of misunderstanding as to the affiliation, connection or association with the recording group;

(d) The advertising relates to a live musical performance or production that will not take place in this state; or

(e) The live musical performance or production is expressly authorized by the recording group. [2009 c.197 §3]

646.648 Unlawful practice by manufactured dwelling dealer. (1) As used in this section:

(a) “Buyer” means a person who buys or agrees to buy a manufactured dwelling from a manufactured dwelling dealer.

(b) “Cash sale price” means the price for which a manufactured dwelling dealer would sell to a buyer, and the buyer would buy from a dealer, a manufactured dwelling that is covered by a purchase agreement, if the sale were a sale for cash instead of a retail installment sale.

(c) “Manufactured dwelling” has the meaning given that term in ORS 446.003.

(d) “Manufactured dwelling dealer” means a person licensed under ORS 446.691 or 446.696 or a temporary manufactured structure dealer licensee under ORS 446.701.

(e) “Retail installment sale” has the meaning given that term in ORS 83.510.

(2) A manufactured dwelling dealer engages in an unlawful practice when, in a sale of a manufactured dwelling, the dealer does any of the following:

(a) Misrepresents to a buyer that, as a condition of financing, the buyer must purchase:

- (A) Credit life insurance;
- (B) Credit disability insurance;
- (C) Credit unemployment insurance;
- (D) Credit property insurance;
- (E) Health insurance;
- (F) Life insurance; or
- (G) An extended warranty.

(b) In close connection with the sale, misrepresents to a lender:

- (A) The cash sale price;
- (B) The amount of the buyer’s down payment; or
- (C) The buyer’s credit or employment history. [2001 c.917 §1; 2003 c.655 §82]

Note: Sections 2 and 14, chapter 658, Oregon Laws 2003, provide:

Sec. 2. (1) As used in this section, “facility,” “floating home,” “landlord,” “manufactured dwelling” and “tenant” have the meanings given those terms in ORS 90.100.

(2) A facility landlord engages in an unlawful trade practice when the landlord violates ORS 90.680 (6) in a sale of a manufactured dwelling or floating home by a tenant to a prospective purchaser who desires to leave the dwelling or home on the rented space and become a tenant.

(3) Notwithstanding ORS 646.638, only a prosecuting attorney may bring an action under ORS 646.605 to 646.652 for a violation described in this section. [2003 c.658 §2]

Sec. 14. Section 2, chapter 658, Oregon Laws 2003, is repealed January 2, 2012. [2003 c.658 §14; 2007 c.906 §42]

646.649 Late fees on delinquent cable service accounts; amount; disclosure; notice. (1) As used in this section:

(a) “Cable service” means:

- (A) One-way transmission to subscribers of a video programming service;
- (B) Two-way interactive service delivered over a cable system; or
- (C) Any communication with subscribers necessary for the selection and use of video programming or interactive services.

(b) “Cable system” means a facility consisting of closed transmission paths and associated signal operation, reception and control equipment that is designed to provide cable service.

(2)(a) A seller of cable service may assess a late fee on delinquent subscriber accounts held by the seller that have an unpaid balance of \$10 or more.

(b) A late fee assessed under subsections (2), (3) and (4) of this section shall not exceed five percent of the unpaid balance or \$6, whichever is greater.

(3) The seller of cable service shall conspicuously disclose on each statement or invoice the terms under which a late fee may be assessed, including the amount of the fee.

(4) Prior to assessing a late fee under subsections (2), (3) and (4) of this section, the seller shall give written notice to the subscriber. The notice shall conspicuously indicate the amount of the unpaid balance, an address where payment may be made, the date on which the late fee will be imposed and the amount of the late fee. The notice shall be mailed to the subscriber’s last-known billing address as shown in the seller’s records. The notice shall be mailed at least 10 days prior to the date on which the late fee will be assessed. The late fee may not be assessed earlier than 27 days after the due date for the unpaid balance. [1999 c.400 §§2,3]

Note: 646.649 and 646.651 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 646 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

646.650 [Repealed by 1953 c.391 §2]

646.651 Contest and sweepstakes solicitations; required disclosures; prohibited representations. (1) As used in this section:

(a) “Contest” means a procedure for awarding a prize in which the outcome depends at least in part on the skill of the contestant. “Contest” includes any competition in which a person is required to purchase anything, pay anything of value or make a donation in order to participate. “Contest” also includes a competition that is advertised in a way that creates a reasonable impression that a payment of anything of value, purchase of anything or making a donation is a condition of winning a prize or competing for or obtaining information about a prize.

(b) “Sweepstakes” means a procedure for awarding a prize that is based on chance. “Sweepstakes” includes any such procedure in which a person is required to purchase anything, pay anything of value or make a donation as a condition of winning a prize or of receiving or obtaining information about a prize. “Sweepstakes” also includes any such procedure that is advertised in a way that creates a reasonable impression that a payment of anything of value, purchase of anything or making a donation is a condition of winning a prize or receiving or obtaining information about a prize.

(c) “Clearly and conspicuously” means the message is conveyed in a manner that is reasonably apparent to the audience to whom it is directed. In order for a message to be considered clear and conspicuous, it shall, at a minimum:

(A) Not contradict or substantially alter any terms it purports to clarify, explain or otherwise relate to; and

(B) In the case of printed solicitations:

(i) Be in close proximity to the terms it purports to clarify, explain or otherwise relate to; and

(ii) Be of sufficient prominence in terms of placement, font or color contrast as compared with the remainder of the solicitation so as to be reasonably apparent to the audience to whom it is directed.

(2) A person engages in an unlawful practice when, in the course of the person's business, vocation or occupation, the person uses the United States mail to solicit participation in a contest and the person does not clearly and conspicuously disclose in the solicitation:

(a) The maximum number of rounds or levels, if the contest has more than one round or level;

(b) The date the final winner will be determined;

(c) The maximum total cost the final winner will have paid to the sponsor to participate in the contest;

(d) Whether the final winner must purchase or pay anything of value to a person other than the sponsor if purchasing or paying is a condition of eligibility;

(e) If the contest involves multiple rounds of increasing difficulty, an example illustrative of the last determinative round or a statement that subsequent rounds will be more difficult;

(f) If the contest is judged by someone other than the sponsor, the identity of or description of the qualifications of the judges;

(g) The method used in judging; and

(h) The name and address of the sponsor or the sponsor's agent.

(3) A person engages in an unlawful practice when, in the course of the person's business, vocation or occupation, the person uses the United States mail to solicit participation in a sweepstakes and does not clearly and conspicuously disclose in the solicitation:

(a) The odds of winning in Arabic numerals, except that if the odds of winning depend on the number of entries received, a statement to that effect will be deemed sufficient;

(b) The name and address of the sponsor or the sponsor's agent, consistently stated wherever it is used; and

(c) The procedure for entry without purchase.

(4) A person engages in an unlawful practice when, in the course of the person's business, vocation or occupation, the person solicits participation in a contest or sweepstakes:

(a) By using the United States mail to represent that a person has been selected to receive or has won a particular prize, when that is not the case; or

(b) By using the United States mail to represent that a person is a winner, is a finalist, is in first place or is otherwise in a limited group of persons with an enhanced likelihood of winning or receiving a prize, when more than 25 percent of the persons receiving the solicitation have the same chance of winning. [1999 c.875 §2]

Note: See note under 646.649.

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]