

## APPENDIX A OREGON FRANCHISE ACT

**650.005 Definitions for ORS 650.005 to 650.100.** As used in ORS 650.005 to 650.100, 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 Consumer and Business Services.

(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 trademark, 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; 1993 c.744 §16]

**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 of the Department of Consumer and Business Services 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

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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; defenses; amount of recovery; attorney fees; joint and several liability; 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. Except as provided in subsection (4) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(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) 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.

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

(7) A corporation which is liable under ORS 650.005 to 650.100 shall have a right of indemnification against any of its principal executive officers, directors and controlling persons whose willful violation of any provision of ORS 650.005 to 650.100 gave rise to the liability. All persons liable under ORS 650.005 to 650.100 shall have a right of

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contribution against all other persons similarly liable, based upon each person's proportionate share of the total liability, except:

(a) A person willfully 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; 1995 c.696 §40]

(Administration)

**650.050 Rules.** In accordance with this section and ORS chapter 183, the Director of the Department of Consumer and Business Services may from time to time make, amend and rescind such rules as are necessary to carry out the provisions of ORS 650.005 to 650.100. [1973 c.509 §5]

**650.055 General duties and powers of director.** The Director of the Department of Consumer and Business Services may:

(1) Undertake the investigations, including investigations outside this state, that the director considers necessary to:

(a) Determine whether a person:

(A) Has failed to comply with ORS 650.010;

(B) Has engaged in, is engaging in or is about to engage in an act or practice that would give rise to liability under ORS 650.020; or

(C) Has violated, is violating or is about to violate a rule of the director adopted under ORS 650.050.

(b) Aid in the enforcement of ORS 650.005 to 650.100 or in the formulation of rules and forms that carry out ORS 650.005 to 650.100.

(2) Require a person to file a statement in writing, under oath or otherwise, concerning the matter being investigated.

(3) When the director has reason to believe that a person has failed to comply with ORS 650.010, issue an order to comply.

(4) When the director has reason to believe that a person has engaged in, is engaging in or is about to engage in an act or practice that would give rise to liability under ORS 650.020, issue an order to cease and desist from the act or practice.

(5) When the director has reason to believe that a person has violated, is violating or is about to violate a rule of the director adopted under ORS 650.050, issue an order to cease and desist from the violation.

(6) Publish information concerning any:

(a) Failure to comply with ORS 650.010;

(b) Act or practice that gives rise to liability under ORS 650.020;

(c) Violation of a rule of the director adopted under ORS 650.050; or

(d) Person who:

(A) Fails to comply with ORS 650.010;

(B) Commits an act or practice that gives rise to liability under ORS 650.020; or

(C) Violates a rule of the director adopted under ORS 650.050. [1973 c.509 §6; 2005 c.339 §1]

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**650.057 Orders issued under ORS 650.055.** (1) The Director of the Department of Consumer and Business Services shall serve an order under ORS 650.055 on the person named in the order.

(2) An order issued under ORS 650.055 becomes effective upon service on the person named in the order.

(3) ORS 183.413 to 183.470 apply to orders issued under ORS 650.055.

(4) Notwithstanding subsection (3) of this section, a person may not obtain a hearing on the order unless the person requests the hearing within 20 days of service of the order.

(5) A person who does not request a contested case hearing may not obtain judicial review of the order.

(6) The director may vacate or modify an order issued under ORS 650.055 at any time. A modified order is effective upon service on the person named in the order. [2005 c.339 §3]

**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 650.100, the Director of the Department of Consumer and Business Services 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 650.100 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; attorney fees; appointment of receiver or conservator; conditions of awarding damages and injunctive relief.** (1) Whenever the Director of the Department of Consumer and Business Services 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. 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. The court may award reasonable attorney fees to the director if the director prevails in an action under this

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section. The court may award reasonable attorney fees to a defendant who prevails in an action under this section if the court determines that the director had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(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; 1995 c.696 §41]

**650.070 Director as agent for service of process.** Except as provided in ORS 650.080, the Director of the Department of Consumer and Business Services is an agent for the service of any process, notice or demand required to be served in a proceeding under ORS 650.005 to 650.100 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 of the Department of Consumer and Business Services or a clerk on duty at the Department of Consumer and Business Services 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]

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**650.085 Other civil or criminal remedies unaffected.** Nothing in ORS 650.005 to 650.100 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]

**650.095 Civil penalties.** (1) In addition to any other liability or penalty provided by law, the Director of the Department of Consumer and Business Services may impose a civil penalty on a person for violation of a rule adopted under ORS 650.050 or an order issued under ORS 650.055.

(2)(a) The director shall impose a civil penalty under this section in the manner provided in ORS 183.745.

(b)(A) The civil penalty may not exceed \$10,000 for each violation.

(B) In the case of a continuing violation:

(i) Each day that the violation continues is a separate violation.

(ii) The civil penalty may not exceed \$50,000. [2005 c.339 §4]

**650.100 Disposition of civil penalties.** All penalties recovered under ORS 650.095 shall be paid into the State Treasury and credited to the General Fund and are available for general government expenses. [2005 c.339 §5]