

dress and location of the depository and any subsequent change thereof.

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

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

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

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

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

646.690 [Repealed by 1953 c.391 §2]

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

646.700 [Repealed by 1953 c.391 §2]

### ANTITRUST LAW

**646.705 Definitions for ORS 136.617 and 646.705 to 646.805.** (1) As used in ORS 136.617 and 646.705 to 646.805, "trade or commerce" means trade or commerce within the state; or between the state and any state, territory, or foreign nation.

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

646.710 [Repealed by 1953 c.391 §2]

**646.715 Declaration of purpose.** (1) The Legislative Assembly deems it to be necessary and the purpose of ORS 136.617, 646.705 to 646.805 and 646.990 is to encourage free and open competition in the interest of the general welfare and economy of the state, by preventing monopolistic and unfair practices, combination and conspiracies in restraint of trade and commerce, and for that purpose to provide means to enjoin such practices and provide remedies for those injured by them.

(2) Without limiting the scope of ORS 136.617, 646.705 to 646.805 and 646.990, it is the legislative purpose that it apply to intrastate trade or commerce, and to interstate trade or commerce which is primarily of an intrastate nature and over which federal jurisdiction, for whatever reason, has not been exercised by the Federal Trade Commission or the United States Department of Justice. The decisions of federal courts in construction of federal law relating to the same subject shall be persuasive authority in the construction of ORS 136.617, 646.705 to 646.805 and 646.990.

(3) The repeal by section 17, chapter 255, Oregon Laws 1975, of the statutes listed therein shall not be deemed to make lawful any conduct or act prohibited thereby which is made unlawful by ORS 646.725 and 646.730. [1975 c.255 §3]

646.720 [Repealed by 1953 c.391 §2]

**646.725 Prohibited acts.** Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is declared to be illegal. [1975 c.255 §4]

**646.730 Monopolies prohibited.** Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of trade or commerce, shall be in violation of ORS 136.617, 646.705 to 646.805 and 646.990. [1975 c.255 §5]

✓ **646.740 Permitted activities.** No provisions of ORS 136.617, 646.705 to 646.805 and 646.990 shall be construed to make illegal:

(1) The activities of any labor organization or individual working men and women permitted by ORS chapters 661 to 663;

(2) The right of producers of agricultural commodities to join, belong to and act through cooperative bargaining associations under ORS 646.515 to 646.545;

(3) The activities of any person subject to regulation by the Public Utility Commission under ORS chapters 756 to 773 and sections 1 to 70 of this 1987 Act to the extent that such activities are so regulated and are lawful thereunder or the activities of any

person conducted or carried out in accordance with any agreement or procedure approved as provided in 49 U.S.C. 5b or 5c;

(4) The activities of any person subject to regulation by the Director of the Department of Insurance and Finance under ORS chapters 731 to 751 to the extent that such activities are so regulated and are lawful thereunder;

(5) The activities of any state or national banking institution or savings and loan association, and of any other lending institution, to the extent that such activities are regulated by the Director of the Department of Insurance and Finance under ORS chapters 706 to 726 and are lawful thereunder;

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

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

(8) The activities of any person conducted or carried out in accordance with the terms and conditions of a certificate issued pursuant to 15 U.S.C. §§4001 to 4021. [1975 c.255 §6; 1977 c.545 §1; 1979 c.531 §7; 1983 c.200 §19; 1985 c.762 §185; 1987 c.373 §29; 1987 c.447 §136]

**646.750 Investigative demand by Attorney General; petition to modify.** (1) When it appears to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by ORS 646.725 or 646.730, the Attorney General may execute in writing and cause to be served an investigative demand upon any person who is believed to have documentary material or information relevant to the alleged or suspected violation. The investigative demand shall require such person to produce relevant documentary material for examination and copying or reproduction, to answer in writing written interrogatories, to give oral testimony concerning documentary material or information, or to furnish any combination of such material, answers or testimony under penalty of perjury, at such reasonable time and place as may be stated in the investigative demand.

(2) At any time before the return day specified in the investigative demand, or within 20 days after the demand has been served whichever time is shorter, a petition to extend the return date, or to modify or set aside the demand, stating good cause, may be filed in the appropriate court.

(3) The investigative demand shall state the nature of the conduct constituting the

alleged antitrust violation under investigation and the provisions of law believed to be applicable thereto. [1975 c.255 §13; 1977 c.729 §1]

**646.760 Civil penalties; attorney fees; mitigation.** (1) The Attorney General may prosecute an action for appropriate injunctive relief and civil penalties in the name of the state for any violation of ORS 646.725 or 646.730. The court may assess for the benefit of the state a civil penalty of not more than \$100,000 for each violation of ORS 136.617, 646.705 to 646.805 and 646.990. Any act or series of acts by one or more individual persons (officers, agents or partners) on behalf of a corporation or other business entity may be found to constitute a violation or violations by such individual person or persons as well as by the corporation or other business entity, and separate penalties may be imposed against each of such individual defendants and corporate or other business entity defendants for such a violation. If the state prevails it shall also recover its necessary reasonable investigative costs and reasonable experts' fees and a reasonable attorney fee at trial and on appeal.

(2) The complaint may also seek and the court may order, in an appropriate case, the forfeiture of any corporate franchise, professional or business license, right to do business or to use an assumed business name, where the court finds the use by any defendant of such franchise, license or right has been material to a violation of ORS 646.725 or 646.730.

(3) The court shall take into consideration in mitigation of any penalty assessed under this section, any fine or penalty imposed against the defendant by a United States court in a final judgment under sections 1 to 45 of Title 15 of the United States Code, which the court finds to be based on the same or substantially the same acts of defendant. [1975 c.255 §8; 1981 c.897 §80]

**646.770 Equitable remedies; attorney fees.** Any person including the state or any municipal corporation or political subdivision threatened with injury in its business or property by a violation of ORS 646.725 or 646.730 may prosecute a suit for equitable relief, and in addition to such relief shall recover the costs of suit, including necessary reasonable investigative costs and reasonable experts' fees, and a reasonable attorney fee at trial and on appeal. [1975 c.255 §9; 1981 c.897 §81]

**646.775 Civil action by Attorney General for individual resident injured by violation of antitrust law; attorney fees.** (1)(a) The Attorney General may bring a civil action in the name of the State of Oregon, as *parens patriae* on behalf of natural per-