

Enrolled
House Bill 3007

Sponsored by Representatives WITT, MERKLEY; Representative
DEVLIN, Senators CASTILLO, COURTNEY

CHAPTER

AN ACT

Relating to business relationships; creating new provisions; amending ORS 459.045, 459.995, 465.012, 646.563, 646.608, 646.638, 646.850, 671.610, 701.100 and 701.102; repealing section 1, chapter 108, Oregon Laws 2001 (Enrolled House Bill 2194), and sections 1 and 2, chapter 380, Oregon Laws 2001 (Enrolled Senate Bill 320); and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. { + (1) The Legislative Assembly finds that mercury is a potent neurotoxin that can cause long-lasting health problems. In order to reduce the amount of mercury entering the environment from the solid waste stream:

- (a) A manufacturer of thermostats that contain mercury:
 - (A) Shall make available a program for the collection of such thermostats to be managed as a universal waste.
 - (B) Shall provide incentives for and sufficient information to purchasers of thermostats to ensure that the mercury contained in the thermostats does not become part of the solid waste stream.
 - (C) Is not liable for improper disposal of thermostats containing mercury by consumers if the manufacturer complies with this paragraph.
- (b) A person may not crush a motor vehicle without first attempting to remove mercury light switches that are mounted on the hood or trunk of the vehicle. The mercury light switches removed from motor vehicles under this paragraph are subject to the universal waste management standards adopted by the Environmental Quality Commission.

(2) For purposes of this section, 'thermostat' means a device commonly used to sense and, through electrical communication with heating, cooling or ventilation equipment, control room temperature. + } SECTION 2. { + Section 3 of this 2001 Act is added to and made a part of ORS chapter 455. + } SECTION 3. { + (1) The Director of the Department of Consumer and Business Services shall, by rule:

- (a) Prohibit the installation of thermostats that contain mercury in commercial and residential buildings. The director may not, under rules developed pursuant to this paragraph, prohibit the installation of thermostats that contain mercury on industrial equipment used for safety controls.
- (b) Establish a uniform notification and process for disposal and delivery of mercury thermostats by persons installing

heating, ventilation or air conditioning systems. Persons installing heating, ventilation or air conditioning systems shall dispose of mercury thermostats according to the process established pursuant to this paragraph.

(2) As used in this section, ‘thermostat’ means a device commonly used to sense and, through electrical communication with heating, cooling or ventilation equipment, control room temperature. + } SECTION 4. { + The Director of the Department of Consumer and Business Services shall make any rules adopted:

- (1) Under section 3 (1)(a) of this 2001 Act effective on and after January 1, 2006; and
- (2) Under section 3 (1)(b) of this 2001 Act effective on and after January 1, 2003. + } SECTION 5. { + (1) A person may not sell or offer for sale a novelty item that contains encapsulated liquid mercury.
- (2) Upon notification to the Department of Environmental Quality by any person that a novelty item for sale in the state contains encapsulated liquid mercury, the department shall notify persons identified as selling the novelty item of the prohibition on the sale of such items.
- (3) The department may impose a penalty as provided in ORS 459.995 if a person continues to sell a novelty item that contains encapsulated liquid mercury after notification of the prohibition on the sale of such items. + } SECTION 6. { + Section 7 of this 2001 Act is added to and made a part of the Oregon Vehicle Code. + } SECTION 7. { + A person commits the offense of providing a vehicle with a mercury light switch if the person sells or offers for sale in this state a vehicle manufactured after January 1, 2006, that contains a mercury light switch mounted on the hood or trunk. + } SECTION 8. ORS 459.995 is amended to read:
459.995. (1) Except as provided in subsection (2) of this section, in addition to any other penalty provided by law:
 - (a) Any person who violates ORS 459.205, 459.270, 459.272, 459.386 to 459.405, 459.705 to 459.790, 459A.005 to 459A.620, 459A.675 to 459A.685 { + or section 5 of this 2001 Act + } or any rule or order of the Environmental Quality Commission pertaining to the disposal, collection, storage or reuse or recycling of solid wastes, as defined by ORS 459.005, or any rule or order pertaining to the disposal, storage or transportation of waste tires, as defined by ORS 459.705, { + or any rule or order pertaining to the sale of novelty items that contain encapsulated liquid mercury, + } shall incur a civil penalty not to exceed \$10,000 a day for each day of the violation.
 - (b) Any person who violates the provisions of ORS 459.420 to 459.426 shall incur a civil penalty not to exceed \$500 for each violation. Each battery that is disposed of improperly

shall be a separate violation. Each day an establishment fails to post the notice required under ORS 459.426 shall be a separate violation.

(c) For each day a city, county or metropolitan service district fails to provide the opportunity to recycle as required under ORS 459A.005, the city, county or metropolitan service district shall incur a civil penalty not to exceed \$500 for each violation.

(2) Any product manufacturer or package manufacturer who violates ORS 459A.650 to 459A.665 or any rule adopted under ORS 459A.650 to 459A.665 shall incur a civil penalty not to exceed \$1,000 per day for each day of the violation. A violation of ORS

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459A.650 to 459A.665 shall not be subject to additional penalties under subsection (1) of this section.

(3) Any civil penalty authorized by subsection (1) or (2) of this section shall be imposed in the manner provided by ORS 468.135.

SECTION 9. ORS 465.012 is amended to read:

465.012. (1) The Department of Environmental Quality shall provide technical assistance to toxics users and conditionally exempt generators. In identifying the users and generators to which the department shall give priority in providing technical assistance, the department shall consider at least the following:

(a) Amounts and toxicity of toxics used and amounts of hazardous waste disposed of, discharged and released;

(b) Potential for current and future toxics use reduction and hazardous waste reduction; and

© The toxics related exposures and risks posed to public health, safety and the environment.

(2) In providing technical assistance, the department shall give priority to assisting toxics users and conditionally exempt generators in developing and implementing an adequate toxics use reduction and hazardous waste reduction plan as established under ORS 465.015. The assistance may include but need not be limited to:

(a) Information clearinghouse activities;

(b) Telephone hotline assistance;

© Toxics use reduction and hazardous waste reduction training workshops;

(d) Establishing a technical publications library;

(e) The development of a system to evaluate the effectiveness of toxics use reduction and hazardous waste reduction measures;

(f) The development of a recognition program to publicly acknowledge toxics users and conditionally exempt generators who develop and implement successful toxics use reduction and hazardous waste reduction plans; and (g) Direct on-site assistance to toxics users and conditionally exempt generators in developing the plans. (3) The department shall:

(a) Coordinate its technical assistance efforts with industry trade associations and local colleges and universities as appropriate.

(b) Follow up with toxics users who receive technical assistance to determine whether the user or generator implemented a toxics use reduction and hazardous waste reduction plan.

{ + © Coordinate and work with local agencies to provide technical assistance to businesses involved in the crushing of motor vehicles concerning the safe removal and proper disposal of mercury light switches from motor vehicles. + } (4) Technical assistance services provided under this section shall not result in inspections or other enforcement actions unless there is reasonable cause to believe there exists a clear and immediate danger to the public health and safety or to the environment. The Environmental Quality Commission may develop rules to carry out the intent of this subsection.

SECTION 10. { + The Department of Environmental Quality shall coordinate with and encourage entities such as associations representing motor vehicle repair shops to offer to the public the replacement and recycling of motor vehicle mercury light switches. The department shall make available to the public information concerning services to replace and recycle motor vehicle mercury light switches. + }

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SECTION 11. ORS 646.608 is amended to read:

646.608. (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.

© 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.
- ® 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. + }

{ - (w) - } { + (z) + } Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.

{ - (x) - } { + (aa) + } Violates ORS 646.850 (1).

{ - (y) - } { + (bb) + } Violates any requirement of ORS 646.661 to 646.686.

{ - (z) - } { + (cc) + } Violates the provisions of ORS 128.801 to 128.898.

{ - (aa) - } { + (dd) + } Violates ORS 646.883 or 646.885.

{ - (bb) - } { + (ee) + } Violates any provision of ORS 646.195.

{ - (cc) - } { + (ff) + } Violates ORS 646.569.

{ - (dd) - } { + (gg) + } Violates the provisions of ORS 646.859.

{ - (ee) - } { + (hh) + } Violates ORS 759.290.

{ - (ff) - } { + (ii) + } Violates ORS 646.872.

{ - (gg) - } { + (jj) + } Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

{ - (hh) - } { + (kk) + } Violates ORS 646.563.

{ - (ii) - } { + (LL) + } Violates ORS 759.690 or any rule adopted pursuant thereto.

{ - (jj) - } { + (mm) + } Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.

{ - (kk) - } { + (nn) + } Violates ORS 646.892 or 646.894.

{ - (LL) - } { + (oo) + } Violates any provision of ORS 646.249 to 646.259.

{ - (mm) - } { + (pp) + } Violates ORS 646.384.

- { - (nn) - } { + (qq) + } Violates ORS 646.871.
- { - (oo) - } { + (rr) + } Violates ORS 822.046.
- { - (pp) - } { + (ss) + } Violates ORS 128.001.
- { - (qq) - } { + (tt) + } Violates ORS 646.649 (2) to (4).
- { - (rr) - } { + (uu) + } Violates ORS 646.877 (2) to (5).
- { - (ss) - } { + (vv) + } Violates ORS 87.686.
- { - (tt) - } { + (ww) + } Violates ORS 646.651.
- { - (uu) - } { + (xx) + } Violates ORS 646.879.

(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) No action or suit shall 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 183.310 to 183.550 declaring the conduct to be unfair or deceptive in trade or commerce.

SECTION 12. { + The amendments to ORS 646.608 by section 11 of this 2001 Act become operative on July 1, 2002. + } SECTION 13. ORS 646.608, as amended by section 11 of this 2001 Act, is amended to read:

646.608. (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.
- © 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.
- ® 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. + }
- { - (z) - } { + (aa) + } Violates the provisions of ORS 803.375, 803.385 or 815.410 to 815.430.
- { - (aa) - } { + (bb) + } Violates ORS 646.850 (1).
- { - (bb) - } { + (cc) + } Violates any requirement of ORS 646.661 to 646.686.
- { - (cc) - } { + (dd) + } Violates the provisions of ORS 128.801 to 128.898.
- { - (dd) - } { + (ee) + } Violates ORS 646.883 or 646.885.
- { - (ee) - } { + (ff) + } Violates any provision of ORS 646.195.
- { - (ff) - } { + (gg) + } Violates ORS 646.569.
- { - (gg) - } { + (hh) + } Violates the provisions of ORS 646.859.
- { - (hh) - } { + (ii) + } Violates ORS 759.290.
- { - (ii) - } { + (jj) + } Violates ORS 646.872.
- { - (jj) - } { + (kk) + } Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.
- { - (kk) - } { + (LL) + } Violates ORS 646.563.
- { - (LL) - } { + (mm) + } Violates ORS 759.690 or any rule adopted pursuant thereto.
- { - (mm) - } { + (nn) + } Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.
- { - (nn) - } { + (oo) + } Violates ORS 646.892 or 646.894.
- { - (oo) - } { + (pp) + } Violates any provision of ORS 646.249 to 646.259.
- { - (pp) - } { + (qq) + } Violates ORS 646.384.
- { - (qq) - } { + (rr) + } Violates ORS 646.871.
- { - (rr) - } { + (ss) + } Violates ORS 822.046.
- { - (ss) - } { + (tt) + } Violates ORS 128.001.
- { - (tt) - } { + (uu) + } Violates ORS 646.649 (2) to (4).
- { - (uu) - } { + (vv) + } Violates ORS 646.877 (2) to (5).
- { - (vv) - } { + (ww) + } Violates ORS 87.686.
- { - (ww) - } { + (xx) + } Violates ORS 646.651.
- { - (xx) - } { + (yy) + } Violates ORS 646.879.

(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) No action or suit shall 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 183.310 to 183.550 declaring the conduct to be unfair or deceptive in trade or commerce.

SECTION 14. { + The amendments to ORS 646.608 by section 13 of this 2001 Act become operative on January 1, 2006. + } SECTION 15. ORS 646.563 is amended to read:

646.563. A person { - is in violation of ORS 646.608 (1)(hh) - } { + engages in an unlawful practice + } if, during a telephone solicitation, the called party states a desire not to be called again and the person making the telephone solicitation makes a subsequent telephone solicitation of the called party at that number.

SECTION 16. ORS 646.638 is amended to read:

646.638. (1) Except as provided in subsection (8) 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 \$200, whichever is greater. The court or the jury, as the case may be, may award punitive damages and the court may provide such equitable relief as it deems 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 or decree in the action, shall mail a copy of such judgment or decree to the Attorney General. Failure to mail a copy of the complaint shall not be a jurisdictional defect, but no judgment shall be entered 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) 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) Any permanent injunction or final judgment or order of the court made under ORS 646.632 or 646.636 shall be 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 such 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, such 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) This section does not apply to any method, act or practice described in ORS 646.608 { - (1)(w) - } { + (1)(z) + }. Actions for violation of laws relating to odometers are provided under ORS 815.410 and 815.415.

SECTION 17. { + The amendments to ORS 646.638 by section 16 of this 2001 Act become operative on July 1, 2002. + } SECTION 18. ORS 646.638, as amended by section 16 of this 2001 Act, is amended to read:

646.638. (1) Except as provided in subsection (8) 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 \$200, whichever is greater. The court or the jury, as the case may be,

may award punitive damages and the court may provide such equitable relief as it deems 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 or decree in the action, shall mail a copy of such judgment or decree to the Attorney General. Failure to mail a copy of the complaint shall not be a jurisdictional defect, but no judgment shall be entered 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) 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) Any permanent injunction or final judgment or order of the court made under ORS 646.632 or 646.636 shall be 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 such 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, such 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) This section does not apply to any method, act or practice described in ORS 646.608 { - (1)(z) - } { + (1)(aa) + }. Actions for violation of laws relating to odometers are provided under ORS 815.410 and 815.415.

SECTION 19. { + The amendments to ORS 646.638 by section 18 of this 2001 Act become operative on January 1, 2006. + } SECTION 20. ORS 646.850 is amended to read:

646.850. (1) Any person offering for sale or selling new or reconditioned telephone handsets or keysets, private branch exchanges or private automatic branch exchanges of not more than a 20-station capacity shall disclose clearly, in writing, when reasonable, before sale all of the following information:

- (a) Whether the equipment uses pulse, tone, pulse-or-tone or other signaling methods.
- (b) Whether the equipment can access tone generated services.
- (c) Whether the equipment is registered with the Federal Communications Commission under applicable federal regulations.
- (d) The person responsible for repair of the equipment.
- (e) Minimum charges, if any, for repairs, handling and shipping.
- (f) The terms of any written warranty offered with the equipment.

(2) A person who violates subsection (1) of this section commits an unlawful practice under ORS 646.608 { - (1)(x) - } . The requirement under subsection (1) of this section is subject to enforcement and penalty as provided under ORS 646.605 to 646.652.

SECTION 21. { + Section 22 of this 2001 Act is added to and made a part of ORS chapter 701.

+ } SECTION 22. { + The Construction Contractors Board shall provide an annual notice to each contractor licensed under this chapter that informs contractors of the rules developed by the Director of the Department of Consumer and Business Services pursuant to section 3 of this 2001 Act prohibiting the installation of thermostats that contain mercury and requiring proper disposal of thermostats that contain mercury. + } SECTION 23. ORS 459.045 is amended to read:

459.045. (1) The Environmental Quality Commission shall adopt reasonable and necessary solid waste management rules governing the:

(a) Accumulation, storage, collection, transportation and disposal of solid wastes to prevent vector production and sustenance, transmission of diseases to humans or animals, air pollution, pollution of surface or ground waters, and hazards to service or disposal workers or to the public.

(b) Location of disposal sites, giving consideration to:

(A) The adaptability of each disposal site to the population served, topography and geology of the area and other characteristics as they affect protection of ground and surface waters and air pollution;

(B) Minimum standards of design, management and operation of disposal sites; and © Salvage operations at disposal sites.

© Construction, loading and operation of vehicles used in performing collection service to prevent the contents of the vehicles from dropping, sifting, leaking or escaping onto public highways.

(d) Definition of other 'wastes' subject to regulation under ORS 459.005 to 459.105, 459.205 to 459.385 and 459.992 (1) and (2).

(e) Closure and post-closure maintenance of land disposal sites.

(2) The commission may by rule:

(a) Exempt a class of land disposal sites other than those receiving domestic solid waste from the requirement to provide financial assurance under ORS 459.272; or (b) Establish criteria that a land disposal site must meet to be exempted from the requirement to provide financial assurance under ORS 459.272.

(3) The commission shall adopt rules on other subjects as necessary to carry out { + : + }

{ + (a) + } ORS 459.005 to 459.105 and 459.205 to 459.385.

{ + (b) ORS 646.608 (1)(y). Rules adopted under this

paragraph shall, to the greatest extent practicable, be consistent with the labeling requirements of other states. + } (4) The commission shall adopt rules which have modified or limited application in different geographic areas of the state when special conditions prevail in specified geographic areas.

Special conditions that shall be considered include, but are not limited to, climatic conditions, zone classification of the area, population characteristics, methods and costs of solid waste management, solid waste management plans and other conditions in

the area. Modifications or limitations shall not be unreasonable, arbitrary or inimical to the policy and purposes of ORS 459.005 to 459.105 and 459.205 to 459.385.

(5) All rules adopted under this section shall be adopted after public hearing and in accordance with ORS 183.310 to 183.550. (6) Unless a rule adopted under this section is adopted pursuant

to the authority granted by ORS 183.335 (5), the commission shall mail copies of the proposed rules to all persons who have requested such copies. The copies shall be mailed at least 30 days prior to the hearing required by subsection (5) of this section.

SECTION 24. ORS 701.100 is amended to read:

701.100. (1) The failure of a contractor to comply with the provisions of this section and ORS 656.021, 657.665, 670.600, 701.035, 701.065 to 701.075, 701.135, 701.240 and 701.250 or to be in conformance with the provisions of ORS chapter 316, 656 or 657 { + or ORS chapter 455 and the rules adopted thereunder + } is a basis for suspension of the contractor's license, revocation of the contractor's license, refusal to issue or reissue a contractor's license, assessment of a civil penalty as set forth in ORS 701.992 or a combination of these sanctions.

(2) Any action against a contractor under this section shall be conducted in conformance with the provisions of ORS 183.413 to 183.497.

(3) When imposing a sanction for a violation of ORS 701.055 (1), if the Construction Contractors Board does not have evidence that a contractor has worked without a license, and no consumer has suffered damages from the work of the contractor, the civil penalty imposed by the Construction Contractors Board shall not exceed \$1,000.

SECTION 25. { + Section 1, chapter 108, Oregon Laws 2001 (Enrolled House Bill 2194) (amending ORS 671.610), and sections 1 (amending ORS 701.102) and 2, chapter 380, Oregon Laws 2001 (Enrolled Senate Bill 320), are repealed. + } SECTION 26. ORS 671.610 is amended to read:

671.610. (1) { + In addition to any civil penalty assessed under ORS 671.720, + } the State Landscape Contractors Board may suspend, revoke or refuse to issue or renew the license of any person { - who - } { + that + }:

- (a) Has obtained or attempted to obtain a license under ORS 671.510 to 671.710 by fraud or material misrepresentation;
- (b) Has made a material misrepresentation about the quality of any material or service the person provides;
- (c) Has performed defective work;
- (d) Has furnished defective materials;
- (e) Has made misleading statements when advertising services or materials;
- (f) Has violated a provision of ORS 671.510 to 671.710;
- (g) Has had the bond or deposit required by ORS 671.690 terminated, canceled or reduced or withdrawn; or
- (h) Has violated a voluntary compliance agreement entered into under ORS 646.605 to 646.652.

{ - (2) The board may suspend or refuse to license any corporation, partnership or individual if any individual who is an owner or officer of the business is or was the owner or officer of a business that: - }

{ + (2) The board may suspend the license of or refuse to license a person if the person, or the owner or holder of a direct or indirect interest in the person, is a business or the

owner or holder of a direct or indirect interest in a business

that: + }

- (a) Owes any amount pursuant to a final order or arbitration award of the board; { - or - }
- (b) Owes any amount pursuant to a court order or civil penalty arising from landscaping or construction business activities in this or any other state of the United States { - . - } { + ;
- (c) Owes any amount to a surety company that has paid money from the surety bond of a landscaping business; or
- (d) Has had a license to operate as a landscaping business revoked by the landscape contractor licensing agency of any state.

(3) The board shall adopt rules defining the ownership or holding of a direct or indirect interest for purposes of subsection (2) of this section.

(4) The board may hold the suspension or refusal of a license under subsection (2) of this section in abeyance if the person is adhering to a board-approved plan for restitution of the amount owed. + }

{ - (3) - } { + (5) + } { - A person - } { + An individual + } who has been a sole proprietor, partner { + , limited liability company member, limited liability partnership member + } or corporate officer of a landscaping business the license of which has been suspended or revoked may be denied a license if the { - person - } { + individual + } knowingly participated in the conduct that led to the suspension or revocation.

{ - (4) - } { + (6) + } A person whose license is revoked or not renewed pursuant to this section { - shall - } { + is + } not { - be - } eligible to apply for a license under ORS 671.510 to 671.710 until two years after the effective date of the revocation or of the nonrenewal.

{ - (5) - } { + (7) + } In addition to the remedies of license denial, suspension, revocation or refusal to renew a license, when it appears to the board that a person has engaged in, or is engaging in, any act, practice or transaction { - which - } { + that + } violates the provisions of this chapter, the board may direct the Attorney General to apply to the court for an injunction restraining the person from violating the provisions of this chapter.

{ - (6)(a) - } { + (8)(a) + } The board may suspend, revoke or refuse to reissue a license to a landscape contractor if the board determines, after notice and opportunity for a hearing, that the contractor was working with another landscape contractor or landscape contractors on the same task and work site where one of the contractors is registered exempt under ORS 671.525 (2)(b) and the total number of landscape contractors working on the task exceeded:

- (A) Two sole proprietors;
- (B) One partnership;
- (C) One corporation; or
- (D) One limited liability company.

(b) The board may assess a civil penalty as provided under ORS 671.720 (4) for a violation of paragraph (a) of this subsection.

SECTION 27. ORS 701.102 is amended to read:

701.102. (1) The Construction Contractors Board may suspend { - a - } { + the + } license of or refuse to license { - any corporation, partnership or individual if any individual who is an owner, shareholder or officer of the business is or was the owner or officer of a business that: - } { + a person if

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the person, or the owner or holder of a direct or indirect interest in the person, is a business or the owner or holder of a direct or indirect interest in a business that: + } (a) Owes any amount pursuant to a final order or arbitration award of the board;

{ - (b) Has an outstanding final judgment of a court that a bond under ORS 701.085 would have been subject to; or - }

{ - © - } { + (b) + } { - Owes any amount pursuant to a court order - } { + Owes any amount under final judgment of a court + } or civil penalty arising from construction business activities in { + Oregon or + } any other state of the United States { - . - } { + ; or © Has had a license to operate as a construction contractor revoked by a construction contractor licensing agency of any state.

(2) The board may hold the suspension or refusal of a license under subsection (1) of this section in abeyance if the person is adhering to a board-approved plan for restitution of the amount owed.

(3) The board shall adopt rules defining the ownership or holding of a direct or indirect interest for purposes of subsection (1) of this section. The rules may not define direct or indirect interest in a manner that includes the interest of an investor who has no right to manage a business, including but not limited to, the interest of:

(a) A person who is solely a minority shareholder in a corporation;

(b) A member of a manager-managed limited liability company; or

© A limited partner in a limited partnership who does not participate in the control of the business of the limited partnership. + }

{ - (2) - } { + (4) + } The board may place a contractor on probation if { + a total of + } three or more claims are filed { - against the contractor - } with the board within a 12-month period { + against the contractor or a former licensed construction company in which the contractor held at least a 10 percent ownership interest, measured as determined by board rule + }. A contractor may not be placed on probation unless the board determines after investigation that it is likely that the contractor has caused harm to the claimants. The board may require a contractor that is placed on probation to develop a corrective action plan, to attend specific classes and to resolve outstanding claims. The board may require a contractor that is placed on probation to take any

education and training described under ORS 701.280 and to pass an examination on subjects relating to business practices and laws affecting construction contractors. The board shall take action to terminate the contractor's license if the contractor is unwilling or unable to comply with the conditions of probation.

SECTION 28. { + Sections 1 to 7, 10, 21 and 22 of this 2001 Act and the amendments to ORS 459.045, 459.995, 465.012, 646.563, 646.850, 671.610 and 701.100 by sections 8, 9, 15, 20, 23, 24 and 26 of this 2001 Act become operative on January 1, 2002. + }

SECTION 29. { + This 2001 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2001 Act takes effect on its passage. + }

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Passed by House May 29, 2001

Repassed by House July 4, 2001

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Chief Clerk of House

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Speaker of House

Passed by Senate July 3, 2001

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President of Senate

Received by Governor:

.....M.,....., 2001

Approved:

.....M.,....., 2001

.....

Governor

Filed in Office of Secretary of State:

.....M.,....., 2001

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Secretary of State

