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STATE OF OREGON
Legislative Counsel Committee

To: State Agencies
From: Legislative Counsel's Office
Date: July 14, 2004
Subject: Proposed Legislation for 2005 Session

Attached you will find the "Final Draft Copy" of your proposed legislation.

At this time you need to send the original and five copies of the draft to the Department of Administrative Services, ATTN: SUSAN BILLMAN. Also include a revised Fiscal Impact Statement and Form #333 (Request for Fee Increase/Establishment/ Decrease), if appropriate.

Notification of final filing decisions and pre-session filing will be coordinated through the Department of Administrative Services.

DEADLINE FOR PRESESSION FILING
5:00 PM, WEDNESDAY, DECEMBER 16, 2004

D R A F T

SUMMARY

Authorizes Director of Department of Consumer and Business Services to issue cease and desist order and to impose civil penalty for improper conduct in franchise transactions.

A BILL FOR AN ACT

Relating to enforcement powers of the Director of the Department of Consumer and Business Services in franchise transactions; creating new provisions; and amending ORS 650.055.

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

SECTION 1. ORS 650.055 is amended to read:

650.055. The Director of the Department of Consumer and Business Services may:

(1) [*May make such public or private investigations within or outside this state as*] **Undertake the investigations, including investigations outside this state, that** the director considers necessary to:

(a) Determine whether a person: [*has violated or is about to violate any provision of ORS 650.005 to 650.085 or any rule of the director; or*]

(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 650.085 or in the formulation of rules and forms [*thereunder;*] **that carry out ORS 650.005 to 650.085.**

(2) [*May*] Require a person to file a statement in writing, under oath or otherwise, [*as the director determines, as to all the facts and circumstances*]

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 concerning the matter [to be] **being** investigated.[: and]

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

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

8 (5) When the director has reason to believe that a person has vio-
9 lated, is violating or is about to violate a rule of the director adopted
10 under ORS 650.050, issue an order to cease and desist from the vio-
11 lation.

12 [(3)] (6) [May] Publish information concerning any:

13 (a) Failure to comply with ORS 650.010;

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

15 (c) Violation of [ORS 650.005 to 650.085 or any] a rule of the director
16 adopted under ORS 650.050; or

17 (d) Person who:

18 (A) Fails to comply with ORS 650.010;

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

21 (C) Violates a rule of the director adopted under ORS 650.050.

22 SECTION 2. Sections 3 to 5 of this 2005 Act are added to and made
23 a part of ORS 650.005 to 650.085.

24 SECTION 3. (1) The Director of the Department of Consumer and
25 Business Services shall serve an order under ORS 650.055 on the person
26 named in the order.

27 (2) An order issued under ORS 650.055 becomes effective upon ser-
28 vice on the person named in the order.

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

30 (4) Notwithstanding subsection (3) of this section, a person may not
31 obtain a hearing on the order unless the person requests the hearing

1 within 20 days of service of the order.

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

4 (6) The director may vacate or modify an order issued under ORS
5 650.055 at any time. A modified order is effective upon service on the
6 person named in the order.

7 **SECTION 4.** (1) In addition to any other liability or penalty provided
8 by law, the Director of the Department of Consumer and Business
9 Services may impose a civil penalty on a person for violation of a rule
10 adopted under ORS 650.050 or an order issued under ORS 650.055.

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

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

14 (B) In the case of a continuing violation:

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

16 (ii) The civil penalty may not exceed \$50,000.

17 **SECTION 5.** All penalties recovered under section 4 of this 2005 Act
18 shall be paid into the State Treasury and credited to the General Fund
19 and are available for general government expenses.

20 **SECTION 6.** (1) The amendments to ORS 650.055 by section 1 of this
21 2005 Act apply to an act, practice or violation occurring before, on or
22 after the effective date of this 2005 Act.

23 (2) Section 3 of this 2005 Act applies to orders issued on or after the
24 effective date of this 2005 Act.

25 (3) Section 4 of this 2005 Act applies to a violation occurring on or
26 after the effective date of this 2005 Act.

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