

A-Engrossed
Senate Bill 409

Ordered by the Senate February 25
Including Senate Amendments dated February 25

Sponsored by Senator GIROD; Senator SCHRADER, Representatives BEYER, GILLIAM

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Creates antitrust immunity for Oregon blackberry cooperatives and other participants negotiating price of blackberries under state regulatory program actively supervised by Director of Agriculture.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to blackberries; creating new provisions; amending ORS 62.845, 646.535 and 646.740; and
3 declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2009 Act is added to and made a part of ORS chapter 62.**

6 **SECTION 2. (1) As used in this section:**

7 (a) "Blackberry" means a bramble of the genus *Rubus* identified by State Department of
8 Agriculture rule as a blackberry.

9 (b) "Blackberry regulatory program" means the state regulatory program described in
10 subsection (2) of this section that is actively supervised by the Director of Agriculture and
11 that authorizes parties to engage in certain collective bargaining and negotiations to estab-
12 lish the price of blackberries to be produced and sold to dealers in the future.

13 (c) "Dealer" means:

14 (A) A dealer as defined in ORS 646.515; or

15 (B) A licensed food processor that is a cooperative.

16 (d) "Parties" or "party" means producers, cooperative bargaining associations, cooper-
17 atives or dealers that are participants in the blackberry regulatory program.

18 (2) It is the intent of this section and ORS 646.535 (2) and 646.740 (10) to displace compe-
19 tition with a regulatory program in the Oregon blackberry industry to a limited degree. The
20 regulatory program is intended to grant immunity from federal and state antitrust laws to
21 Oregon blackberry producers and dealers for the limited purpose of allowing the producers
22 and the dealers to bargain collectively and to arrive at a negotiated price for the sale of
23 Oregon blackberries by the producers to the dealers. The activities of any party that comply
24 with this section may not be considered to be in restraint of trade, a conspiracy or combi-
25 nation or any other unlawful activity in violation of any provision of ORS 646.705 to 646.826
26 or federal antitrust laws.

27 (3) An Oregon blackberry cooperative or cooperative bargaining association may negoti-

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 ate with one or more dealers to establish the price at which members of the cooperative or
2 bargaining association will sell Oregon blackberries to be produced by or under the control
3 of members of the cooperative or bargaining association. The dealers may negotiate the price
4 of Oregon blackberries through a committee that sets forth the views of the dealers and
5 votes on any issues being negotiated as authorized by this section, including the price of
6 Oregon blackberries. However, a person that is both a member of an Oregon blackberry co-
7 operative or cooperative bargaining association and a member of a dealer described in sub-
8 section (1)(c)(B) of this section may not participate in negotiations under this section.

9 (4) The director shall actively supervise the conduct of a party in establishing the price
10 of Oregon blackberries to be produced and sold to dealers at a future date. The director shall
11 supervise the negotiations between the parties, review the prices established by the negoti-
12 ations and approve the prices proposed by the parties before the prices take effect. Proposed
13 prices and any adjustments to previously approved prices must be approved by the director
14 before the prices or adjustments may be implemented.

15 (5) The director may compel the parties to take whatever action the director considers
16 necessary to:

17 (a) Ensure that the parties are engaging in conduct that is authorized under this section;

18 (b) Ensure that the policies of this state are being fulfilled under the blackberry regula-
19 tory program; and

20 (c) Enjoin conduct by any of the parties that is not authorized by the director or conduct
21 that the director finds does not advance the interests of this state in carrying out the
22 blackberry regulatory program.

23 (6) The director may designate employees of the State Department of Agriculture to
24 carry out the responsibility of actively supervising the conduct of the parties, including
25 serving as intermediaries between prospective parties.

26 (7) The director may adopt rules to carry out the director's authority under this section.
27 The director by rule shall set and collect fees from the parties who are participants in the
28 blackberry regulatory program. The fees shall be deposited in the Department of Agriculture
29 Account established under ORS 561.150.

30 **SECTION 3.** ORS 62.845 is amended to read:

31 62.845. (1) It is the public policy of the State of Oregon to encourage the efficient production
32 and distribution of agricultural, seafood and other products derived from natural resources or labor
33 resources of this state. Accordingly, a cooperative that operates in compliance with the provisions
34 of this chapter and that does not during its fiscal year market products for nonmember patrons in
35 an amount greater in value than the products marketed for its members may not be deemed to be
36 a conspiracy or combination in restraint of trade, or an illegal monopoly; nor shall the contracts
37 of such cooperative authorized by this chapter, whether or not required by the cooperative as a
38 condition of membership or of doing business with the cooperative, be construed as an unlawful re-
39 straint of trade, or as part of a conspiracy or combination to accomplish an improper or illegal
40 purpose or act.

41 (2) A negotiating committee of dealers, as defined in ORS 646.515 (3), that operates in compli-
42 ance with the provisions of **section 2 of this 2009 Act** or ORS 62.848 or 62.849 may not be deemed
43 to be engaged in unlawful restraint of trade or to be participants in a conspiracy or combination to
44 accomplish an improper or illegal purpose or act when the negotiating committee negotiates with
45 a cooperative:

1 (a) The price for which the members of the cooperative will sell agricultural products to be
2 produced by the members;

3 (b) The season starting price for which the members of the cooperative will sell seafood to be
4 harvested by the members;

5 (c) The price to be paid for the services of producing agricultural products by the members or
6 under the control of the members; or

7 (d) The season starting price for the services of harvesting seafood products by the members or
8 under control of the members.

9 **SECTION 4.** ORS 646.535 is amended to read:

10 646.535. (1) A dealer may not knowingly engage in the following unfair trade practices:

11 (a) Interfere with, restrain, coerce or boycott a producer in the exercise of the rights guaranteed
12 pursuant to ORS 646.525;

13 (b) Discriminate against a producer with respect to price or other terms of purchase of raw
14 agricultural commodities or Oregon seafood commodities, by reason of the producer's membership
15 in or contract with cooperative bargaining associations; or

16 (c) Pay or loan money, or give any other thing of value to a producer as an inducement or re-
17 ward for refusing to or ceasing to belong to a cooperative bargaining association.

18 (2) A **blackberry dealer**, perennial ryegrass seed, annual ryegrass seed or tall fescue seed
19 dealer or [an] Oregon seafood commodity dealer who participates in negotiating committee activities
20 described in **section 2 of this 2009 Act** or ORS 62.848 or 62.849 does not violate subsection (1) of
21 this section.

22 **SECTION 5.** ORS 646.740 is amended to read:

23 646.740. The provisions of ORS 136.617, 646.705 to 646.805 and 646.990 may not be construed to
24 make **the following** illegal:

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

27 (2) The right of producers, as defined in ORS 646.515, and commercial fishermen to join, belong
28 to and act through cooperative bargaining associations under ORS 646.515 to 646.545. For the
29 purpose of this subsection, activities of cooperative bargaining associations and their members that
30 are lawful under 15 U.S.C. 521 and 522 or 7 U.S.C. 291 and 292 are lawful under ORS 646.515 to
31 646.545.[;]

32 (3) The activities of any person subject to regulation by the Public Utility Commission under
33 ORS chapters 756 to 759 to the extent that such activities are so regulated and are lawful there-
34 under or the activities of any person conducted or carried out in accordance with any agreement
35 or procedure approved as provided in 49 U.S.C. 5b or 5c.[;]

36 (4) The activities of any person subject to regulation by the Director of the Department of
37 Consumer and Business Services under ORS chapters 731 to 750 to the extent that such activities
38 are so regulated and are lawful thereunder.[;]

39 (5) The activities of any state or national banking institution or savings and loan association,
40 and of any other lending institution, to the extent that such activities are regulated by the Director
41 of the Department of Consumer and Business Services under ORS chapters 706 to 725 and are lawful
42 thereunder.[;]

43 (6) Any other activity specifically authorized under state law or local ordinance.[;]

44 (7) The activities of any metropolitan service district formed under ORS chapter 268 and the
45 activities of any person subject to regulation by a metropolitan service district formed under ORS

1 chapter 268 to the extent that those activities are so regulated and are lawful thereunder.[]

2 (8) The activities of any person conducted or carried out in accordance with the terms and
3 conditions of a certificate issued pursuant to 15 U.S.C. 4001 to 4021.[]

4 (9) The activities of a health care provider authorized by and in accordance with ORS 442.700
5 to 442.760 to the extent the activities are regulated and lawful under ORS 442.700 to 442.760.[]

6 (10) The negotiating activities of a dealer in agricultural commodities that are carried out and
7 supervised under **section 2 of this 2009 Act or** ORS 62.848.[] *or*

8 (11) The negotiating activities of a dealer in Oregon seafood commodities that are carried out
9 and supervised under ORS 62.849.

10 **SECTION 6. This 2009 Act being necessary for the immediate preservation of the public**
11 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
12 **on its passage.**

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