

# Senate Bill 409

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 **as introduced**.

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

## A BILL FOR AN ACT

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

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

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

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

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

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

12 (c) "Dealer" has the meaning given that term in ORS 646.515.

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

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

24 (3) An Oregon blackberry cooperative or cooperative bargaining association may negoti-  
25 ate with one or more dealers to establish the price at which members of the cooperative or  
26 bargaining association will sell Oregon blackberries to be produced by or under the control  
27 of members of the cooperative or bargaining association. The dealers may negotiate the price  
28 of Oregon blackberries through a committee that sets forth the views of the dealers and  
29 votes on any issues being negotiated as authorized by this section, including the price of  
30 Oregon blackberries.

31 (4) The director shall actively supervise the conduct of a party in establishing the price

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 of Oregon blackberries to be produced and sold to dealers at a future date. The director shall  
 2 supervise the negotiations between the parties, review the prices established by the negoti-  
 3 ations and approve the prices proposed by the parties before the prices take effect. Proposed  
 4 prices and any adjustments to previously approved prices must be approved by the director  
 5 before the prices or adjustments may be implemented.

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

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

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

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

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

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

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

22 62.845. (1) It is the public policy of the State of Oregon to encourage the efficient production  
 23 and distribution of agricultural, seafood and other products derived from natural resources or labor  
 24 resources of this state. Accordingly, a cooperative that operates in compliance with the provisions  
 25 of this chapter and that does not during its fiscal year market products for nonmember patrons in  
 26 an amount greater in value than the products marketed for its members may not be deemed to be  
 27 a conspiracy or combination in restraint of trade, or an illegal monopoly; nor shall the contracts  
 28 of such cooperative authorized by this chapter, whether or not required by the cooperative as a  
 29 condition of membership or of doing business with the cooperative, be construed as an unlawful re-  
 30 straint of trade, or as part of a conspiracy or combination to accomplish an improper or illegal  
 31 purpose or act.

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

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

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

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

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

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

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

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

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

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

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

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

14 646.740. The provisions of ORS 136.617, 646.705 to 646.805 and 646.990 may not be construed to  
15 make **the following** illegal:

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

18 (2) The right of producers, as defined in ORS 646.515, and commercial fishermen to join, belong  
19 to and act through cooperative bargaining associations under ORS 646.515 to 646.545. For the  
20 purpose of this subsection, activities of cooperative bargaining associations and their members that  
21 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  
22 646.545.[:]

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

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

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

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

35 (7) The activities of any metropolitan service district formed under ORS chapter 268 and the  
36 activities of any person subject to regulation by a metropolitan service district formed under ORS  
37 chapter 268 to the extent that those activities are so regulated and are lawful thereunder.[:]

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

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

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

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

