

Unlawful Trade Practices Act (UTPA) in Oregon

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Unlawful Trade Practices Act

- ORS 646.605-ORS 646.656
- **A comprehensive statute that protects consumers from unlawful trade practices.**

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Unlawful Trade Practices Act

- Details actions that are considered unlawful trade practices.
- Specifies who can enforce and obtain remedies for those practices.
- All 50 states have their own similar statute—a line of defense for predatory, deceptive, or bad business practices



History in Common law & rooted in Tenth Amendment to the US Constitution

States have expansive police powers to regulate commerce. *See City of New Orleans v. Dukes*, 427 US 297, 303-04 (1976).

In early America “legislatures empowered a small army of inspectors, measurers, surveyors, viewers, cullers, weighers, provers, and gaugers, as well as mayors, aldermen, justices of the peace, and private citizens, to protect the public against the evils of unregulated commerce and trade. The fear was fraud and deceit—the same motivation for laws regulating weights and measures and outlawing cheating. But there was also a ubiquitous concern for quality, merchantability, and fair dealing.” William Novack, *The People’s Welfare: Law and Regulation in Nineteenth-Century America* (1996).



History

- Model “Printer’s Ink” statute.
- **Federal Trade Commission Act** in 1914.

Oregon’s UTPA was passed in 1971

- Unfair and Deceptive Trade Practices Act—model bill created by the Uniform Law Commission
- Federal Trade Commission Model Act
- National Consumer Law Center’s “Consumer Act”





Contents of the UTPA

ORS 646.605- ORS
646.656

Statutory Table of Contents

- ORS 646.605: Definitions
- 646.607: Unlawful business, trade practices (public enforcement)
- 646.608: Additional unlawful business, trade practices (public & private enforcement, AG rules)
- 646.609: Pyramid clubs
- 646.611: Phone & door-to-door sales
- 646.612: Application of 607 & 608
- 646.618: Investigative demand
- 646.622: Method of serving investigative demand
- 646.626: Effect of failure to obey investigative demand
- 646.634: Enjoining unlawful trade practices
- 646.633: Action by prosecuting attorney prohibited without request of Director of DCBS (state regulated lenders)
- 646.636: Remedial power of court
- 646.638: Civil action by private party
- 646.639: Unlawful collection practices
- 646.641: Civil action for unlawful collection practices
- 646.642: Civil penalties
- 646.633: Free offers
- 646.646: Loss of license or franchise for violation of injunction
- 646.647: Unlawful use of recording group name
- 646.648: Unlawful practice by manufactured dwelling dealer
- 646.652: DA reports to AG
- 646.656: Remedies supplement existing statutory or common law remedies



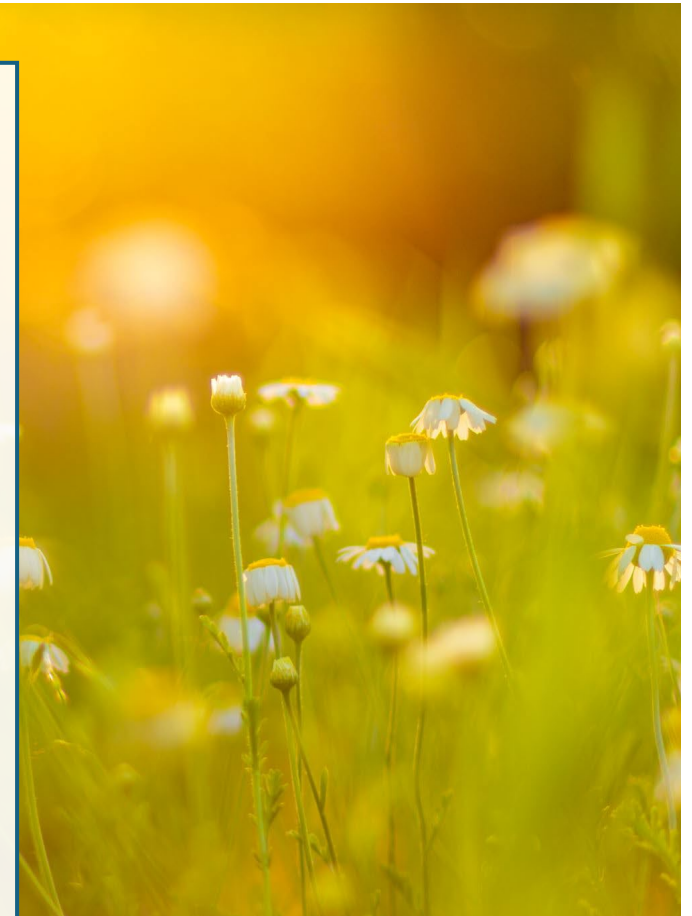
Elements of a claim

- (1) A “person”
- (2) “in the course of the person's business, vocation or occupation”
- (3) Engages in a prohibited act
State ex rel Rosenblum v. Living Essentials, LLC, 371 Or. 23, 37, 529 P.3d 939, 949 (2023)
- Burden of proof is preponderance.
- Willful violation: ordinary negligence standard
- “Ascertainable loss” and “willful” violation are required in any **private** right of action. ORS 646.638.



Who can bring a UTPA claim?

- The UTPA is enforceable by private parties and by public prosecuting attorneys, including the Attorney General and local district attorneys. ORS 646.632 (public enforcement); ORS 646.638 (private civil actions); *Discount Fabrics*, 289 Or. at 384-86, 615 P.2d 1034
- Public officials may bring an action in the name of the state to enjoin violations, seek restitution for individuals deprived of money or property, and seek civil penalties for willful violations of an injunction, voluntary compliance agreement, or the UTPA's listed practices. ORS 646.642; *Discount Fabrics*, 289 Or. at 382 n 6, 615 P.2d 1034.



Public Enforcement Cases

- “Willful” violation is also an element of a public enforcement action IF civil penalties are sought. ORS 646.642.
- In public actions, there is no requirement to show “ascertainable loss” and there is no requirement to demonstrate that the prohibited act was “material” to consumer decision-making.



Key terms

- Example **ORS 646.607**: “A person engages in an unlawful trade practice if in the course of the person’s business, vocation, or occupation the person:
 - (1) employs any **unconscionable tactic** in connection with selling, renting, or disposing of **real estate goods or services**, or collecting or enforcing an obligation.” ORS 646.607(1)
 - ...
 - (3) Violates ORS 401.965 (price gouging during emergencies)
 - ...
 - (8) Violates 646A.093 (requires shippers to clearly disclose shipping and handling)
- Up to (14)



Key terms

- “A person engages in an unlawful trade practice if in the course of the person’s business, vocation, or occupation the person:
- (1) employs any **unconscionable tactic** in connection with selling, renting, or disposing of **real estate goods or services**, or collecting or enforcing an obligation.” ORS 646.607(1)
- **Unconscionable tactics:** include but not limited to “knowingly taking advantage of customer infirmity, ignorance, illiteracy, inability to understand language of agreement,” permitting entry into agreement where customer gets no benefit, permitting entry into transaction with knowledge of no reasonable probability of payment of the financial obligation in full when due, knowingly taking advantage of a customer who is a disabled veteran or servicemember. ORS 646.605(9)
- **Real estate, goods, and services:** Those that are or may be obtained primarily for personal, family or household purposes, or that are or may be obtained for any purposes as a result of a telephone solicitation, and includes loans and extensions of credit, and franchises, distributorships and other similar business opportunities, but does not include insurance. ORS 646.605(6)(a)



Key terms

- Example **ORS 646.608**: “(1) A person engages in an unlawful trade practice if in the course of the person’s business, vocation, or occupation the person:
 - (a) Passes off **real estate, goods or services**, as the real estate, goods or services of another
 - (b) Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of **real estate, goods, or services**,
 - ...
 - (u) Engages in any other unfair or deceptive conduct in trade or commerce*
- Extends to (aaaa)



Conflict of Laws

- ORS 646.607 and ORS 646.608 do not apply to conduct in compliance with the order or rules of, or a statute administered by a federal, state or local governmental agency.



Carve outs

- Real estate, goods, and services, loans & credit:
 - “**does not include insurance**” ORS 646.605
 - **does not cover “conduct covered by ORS chapter 90”** the Residential Landlord Tenant Act ORS 646.605(6)(b)(a)
 - loans and credit “[**do**] **not include transactions involving a pawnbroker**” ORS 646.605(6)(b)(B)



Questions?



Sources:

- ORS 646.605-646.656
- *State ex rel Rosenblum v. Living Essentials, LLC*, 371 Or 23, 529 P3d 939 (2023)
- *State ex rel. Redden v. Discount Fabrics*, 289 Or 375, 382-86, 615 P2d 1034 (1980)
- *City of New Orleans v. Dukes*, 427 US 297, 303-04 (1976)
- William Novack, *The People's Welfare: Law and Regulation in Nineteenth-Century America* (1996)
- Consumer Financial protection Bureau, *Strengthening State-Level Consumer Protections, Promoting Consumer Protection Federalism* (Jan 2025), available at https://files.consumerfinance.gov/f/documents/cfpb_strengthening-state-level-consumer-protections_2025-01.pdf
- *Untrue Advertising*, 36 Yale L J 1155, 1156-57 (1927)

DOJ Media Releases:

- [Oregon Department of Justice Secures Settlement Releasing Hundreds of Homeowners from Deceptive 40-Year Contracts with MV Realty - Oregon Department of Justice : Media](#)
- [Oregon AG Announces Settlement with RV Dealer Camping World - Oregon Department of Justice : Media](#)
- [AG Rosenblum Sues Center for Covid Control - Oregon Department of Justice : Media](#)
- [Attorney General Rosenblum Confronts Price Gouging in the Wake of the 2020 Wildfires - Oregon Department of Justice : Media](#)

