

OREGON LEGISLATIVE Senate Bill 262

76th OREGON LEGISLATIVE ASSEMBLY--2011 Regular Session

NOTE: Matter within { + braces and plus signs + } in an amended section is new. Matter within { - braces and minus signs - } is existing law to be omitted. New sections are within { + braces and plus signs + } .

LC 1593

Senate Bill 262

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Business and Transportation for Lindy Minten)

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.

Replaces brand inspection for equines with equine ownership certificate. Requires owner to obtain equine ownership certificate for equine that is present in state for more than 30 consecutive days. Makes failure to obtain certificate subject to maximum fine of \$500 per equine for first occurrence and \$1,000 per equine for second or subsequent occurrence. Establishes requirements for recording transfer of ownership of equine. Requires providing equine with food, water and opportunity to rest after each eight hours of transport time. Makes violations subject to maximum fine of \$500 per equine for first occurrence and \$1,000 per equine for second or subsequent occurrence. Establishes duties of livestock carrier transporting equines. Establishes prohibitions for livestock carrier transporting equines. Requires that equine ownership certificate or equivalent document issued by another state accompany equine transported by livestock carrier. Makes violations subject to maximum fine of \$500 per equine for first occurrence or \$1,000 per equine for second or subsequent occurrence. Establishes equine trader permit system.

Requires State Department of Agriculture to establish registry of equine rescue facilities. Identifies certain failures to disclose or misleading or deceptive statements by persons not registered as equine rescue facility to be unfair trade practice. Establishes requirements for livestock auction market sale of equines. Repeals temporary horse sales license provisions.

A BILL FOR AN ACT

Relating to equines; creating new provisions; and amending ORS 561.144, 599.205, 599.510, 599.620, 604.005, 604.015, 604.066 and 646.608.

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

SECTION 1. { + As used in sections 2 to 12 of this 2011 Act:

(1) 'Equine' means a horse, pony, donkey, mule or hinny or any hybrid of those animals.

(2) 'Equine carrier' means a person that transports equine by motor vehicle for compensation as a contract carrier.

(3) 'Equine trader' means the holder of an equine trader permit issued under section 7 of this 2011 Act.

(4) 'Trailer' has the meaning given that term in ORS 801.560. + }

SECTION 2. { + (1) The owner of an equine that is present in this state for more than 30 consecutive days must apply to the State Department of Agriculture for an equine ownership certificate for the equine. If an equine that has been registered with the department is sold to a buyer in this state, the buyer must apply for a new ownership certificate for the equine no later than 30 days after purchasing the equine.

(2) An application for an equine ownership certificate must be in a form acceptable to the department and accompanied by an inspection and certificate fee established by department rule, not to exceed \$100. The application information must include the following:

(a) The name and address of the applicant. If the applicant is an equine trader, the application must also include the equine trader permit number of the applicant.

(b) The name and address of each person to be listed as an owner of the equine.

(c) Whether the equine is currently registered in this state or another state. If the equine is currently registered in this state or another state, the application must include a copy of the registration information. If the equine is not registered in any state and was acquired by the applicant, the application shall indicate the source from which the equine was acquired.

(d) Whether the equine is registered with any breed association. If the equine is registered with a breed association, the application must include a copy of the

association registration information.

(e) The species of equine.

(f) The name of the equine.

(g) The age or date of birth of the equine.

(h) The gender of the equine and whether the equine has been rendered sterile.

(i) The color of the equine and a description of any markings.

(j) The place or places at which the equine will be regularly kept.

(k) Any other information the department considers necessary or convenient for processing a certificate or maintaining a certificate registry.

(3) An equine ownership certificate issued by the department is valid for the life of the equine unless the equine is sold. The department shall maintain a registry of all active equine ownership certificates issued by the department. + }

SECTION 3. { + A person that is transporting an equine shall ensure that the equine is not transported more than eight hours between rest breaks. A rest break for an equine must include removal from any vehicle for at least six hours, appropriate food and potable water. + }

SECTION 4. { + (1) An equine carrier may not transport an equine in a trailer that has more than one level or tier.

(2) An equine carrier who transports an equine in a trailer shall ensure that:

(a) The trailer:

(A) Is designed, constructed and maintained in a manner that at all times protects the health and well-being of any equine being transported;

(B) Segregates any aggressive equine from the other equines being transported;

(C) Has sufficient interior height to allow each equine to stand with its head extended to fullest normal postural height; and

(D) Is equipped with doors of sufficient width and height to provide for the safe loading and unloading of any equine.

(b) Each equine is loaded in the trailer in such a manner that:

(A) The equine has enough floor space to prevent any crowding likely to cause injury or discomfort to the equine; and

(B) Any aggressive equine cannot come into contact with any other equine being transported.

(c) During the transportation:

(A) The motor vehicle pulling the trailer is driven in a manner reasonably calculated to avoid causing injury to the equines;

(B) The physical condition and segregation of the equines is checked at least once every six hours;

(C) Except as provided in subparagraph (D) of this paragraph, if an equine is in obvious physical distress, veterinary

assistance is obtained for the equine as soon as practicable;
(D) If an equine becomes nonambulatory, the equine is provided with veterinary assistance or humanely euthanized as soon as practicable; and

(E) Any equine that has been in the trailer for eight consecutive hours is unloaded and provided with appropriate food, potable water and the opportunity to rest for at least six consecutive hours.

(3) A person may not use an electric prod on an equine while the equine is being loaded, transported or unloaded. + }

SECTION 5. { + (1) An equine carrier may not:

(a) Engage in equine transportation that originates within this state unless the person presenting the equine for transport has been issued an equine ownership certificate issued under section 2 of this 2011 Act or presents a document establishing that the equine has been in this state for less than 30 consecutive days.

(b) Fail to possess the equine ownership certificate for the transported equine or documents establishing that the transported equine was in this state for less than 30 days consecutive prior to the date the equine carrier took possession of the equine.

(c) Fail to present any documents provided to the equine carrier under paragraph (a) of this subsection to the consignee upon the equine reaching the intended destination.

(d) Refuse to present an equine ownership certificate or other document described in paragraph (a) of this subsection to a person authorized by law to inspect an equine ownership certificate or refuse to allow the inspection of a transported equine by a person authorized by law to inspect the equine.

(2) For purposes of subsection (1) of this section, a valid ownership certificate, brand inspection certificate or similar document issued by another state for an equine is prima facie evidence that an equine has been in this state for less than 30 consecutive days. This subsection does not prohibit the use of other forms of documentation to establish that an equine has been in this state for less than 30 consecutive days. + }

SECTION 6. { + (1) Except as provided in any rules adopted under section 11 of this 2011 Act, a person selling an equine in this state shall complete, date and sign an equine transfer form. The State Department of Agriculture shall specify the information required to be included on the transfer form. Except as provided in sections 7 and 15 of this 2011 Act or in rules adopted under section 11 of this 2011 Act, the seller shall give the transfer form, the equine ownership certificate for the equine and a notarized bill of sale to the buyer.

(2) Unless the sale is subject to section 7 of this 2011 Act or rules adopted under section 11 of this 2011 Act, or unless the equine is transported to a place outside of this state for keeping, no later than 30 days after the transfer of ownership

the buyer shall complete the buyer information portion of the equine transfer form and file the form and equine ownership certificate with the department. The department shall record the transfer of ownership for the equine and issue the buyer a new equine ownership certificate.

(3) Notwithstanding section 2 of this 2011 Act, the department:

(a) Except as provided in paragraph (b) of this subsection, shall charge the buyer a fee of \$10 to record the transfer of ownership and issue the new equine ownership certificate.

(b) Shall record the transfer of ownership and issue a new equine ownership certificate without charge if the buyer or seller of the equine is a federal agency or is listed on the registry of equine rescue facilities maintained by the department under section 10 of this 2011 Act.

(4) A buyer may not resell an equine prior to the department recording the transfer of ownership and issuing a new equine ownership certificate for the equine. This subsection does not apply to an equine bought or sold by an equine trader.

(5) The owner of an equine shall notify the department if:

(a) The equine dies of natural causes or is euthanized.

(b) The equine is being transported out of state.

(c) The equine is being sold to an out-of-state buyer. + }

SECTION 7. { + (1) The State Department of Agriculture shall issue an equine trader permit to an applicant who pays a fee of \$100 and who complies with the requirements of this section. The permit is valid for one year from the date of issuance.

(2) Applications for the issuance or renewal of an equine trader permit must contain the following information:

(a) The full name of the applicant.

(b) The applicant's business and residence addresses.

(c) The date and place of the applicant's birth.

(d) Information concerning any equine trading permits currently or previously held by the applicant in other states and the status of those permits.

(e) Information concerning any misdemeanor or felony convictions within seven years before the date of the application, including any convictions subsequently set aside or resulting in restoration of civil rights.

(f) Information concerning any misdemeanor or felony convictions for an offense described in ORS 167.315 to 167.333 or for an equivalent offense of another jurisdiction.

(g) Any other information required by the department.

(3) Except as provided in any rules adopted under section 11 of this 2011 Act, an equine trader who purchases an equine in this state shall obtain from the seller a notarized bill of sale, an equine ownership certificate for the equine and a copy of an equine transfer form with the seller information completed. The equine trader shall provide the seller with a receipt for the

equine and documents. An equine trader is not required to file the transfer form with the department before reselling the equine. If the equine is purchased from a seller outside this state, instead of submitting an equine ownership certificate for the equine the equine seller may submit an equivalent document issued by another state.

(4) If the equine trader resells the equine, the equine trader shall enter the name and permit number of the equine trader and the date of sale on the transfer form. The equine trader shall provide the buyer with a notarized bill of sale and an equine ownership certificate or the equivalent from another state for the equine. Unless the equine trader knows that the equine is being sold to be transported out of state, the equine trader shall also provide the buyer with the transfer form for the equine. Unless the equine is transported to a place outside of this state for keeping, a person buying an equine from an equine trader shall file the transfer form and the equine ownership certificate or equivalent with the department no later than 30 days after the date of sale entered on the transfer form by the equine trader. If the equine trader knows that the equine is being sold to be transported out of state, the equine trader shall retain the transfer form and deliver the form to the department as provided under section 8 of this 2011 Act. + }

SECTION 8. { + (1) An equine trader shall maintain inventory records of all equines sold by the equine trader. The records must include the date sold, information contained on the equine ownership certificate or an equivalent document issued by another state and the name and address of the buyer. The equine trader shall file monthly reports with the State Department of Agriculture stating the number of equines sold by the equine trader during the month. At the time of filing a report under this section, the equine trader shall send the department any equine transfer forms retained by the equine trader under section 7 of this 2011 Act.

(2) The department may enter the business premises of an equine trader during reasonable hours to inspect equines on the premises and inspect the inventory and other business records of the equine trader. + }

SECTION 9. { + (1) The State Department of Agriculture may deny, refuse to renew, suspend or revoke an equine trader permit because of:

(a) Violation of a provision of section 7 or 8 of this 2011 Act or a department rule for the administration or enforcement of section 7 or 8 of this 2011 Act.

(b) Violation of a provision of ORS 646.605 to 646.652.

(c) Revocation within the preceding five years of an equine trader permit issued by another state.

(d) Suspension within the preceding five years of an equine trader permit issued by another state, if the suspension is based on activity that is substantially related to the fitness and ability of the person to hold an equine trader permit in this state.

(e) Conviction within the preceding seven years of a misdemeanor or felony directly related to the equine trade occupation, if the offense demonstrates unfitness for a permit.

(2) A person whose equine trader permit is revoked by the department is disqualified from applying for a new permit for a period specified by the department, not to be less than five years. + }

SECTION 10. { + (1) The State Department of Agriculture shall establish and maintain a registry of equine rescue facilities, and a public list of registered equine rescue facilities, at department offices. The public list must also be made available on a department website.

(2) To be registered under this section, an equine rescue facility must:

(a) Be incorporated as a nonprofit corporation in this state.

(b) Meet minimum standards prescribed by the department for:

(A) The physical condition of the facility; and

(B) Equine care and treatment at the facility.

(3) The term of registration is one year from the initial date of registration, renewable annually.

(4) For initial registration or annual renewal of registration, a person representing the equine rescue facility shall file with the department:

(a) A letter from a licensed veterinarian, dated no later than 15 days before the filing date, certifying that the facility meets the standards prescribed by the department for the physical condition of the facility and for the care and treatment of equines at the facility; and

(b) Documents demonstrating the facility's current status as a nonprofit corporation in good standing in this state.

(5) The registry must include the documents filed for registration or renewal of registration under this section or a link to an equine rescue facility website displaying the documents.

(6) The department may not charge a fee for registering and renewing the registration of equine rescue facilities under this section.

(7) Subject to ORS chapter 183, the department may remove an equine rescue facility from the registry if:

(a) The facility violates a provision of ORS 646.605 to 646.652;

(b) An owner, manager or employee of the facility is convicted of an offense described in ORS 167.315 to 167.333 or for an

equivalent offense of another jurisdiction that demonstrates the facility is unfit for registry; or

(c) The physical facilities or the equine care and treatment provided by the facility fail to meet the minimum standards adopted by the department under this section.

(8) The department may adopt rules to implement this section. + }

SECTION 11. { + (1) An equine rescue facility registered under section 10 of this 2011 Act shall maintain inventory records for all equines that the facility sells or places for adoption. The records must include the date that the equine is sold or placed for adoption and the name and address of the buyer or the person adopting the equine. The facility shall file monthly reports with the State Department of Agriculture describing any sales or placements of equines by the facility.

(2) The department may adopt rules to regulate the selling, buying and recording of ownership information for wild equines, equines obtained from an equine rescue facility or other equines for which the department finds that seller or buyer compliance with section 6 or 7 of this 2011 Act is not practicable.

(3) The department may enter the business premises of a registered equine rescue facility during reasonable hours for the purpose of inspecting the inventory records described in this section or for the purpose of verifying that physical facilities and equine care and treatment meet the minimum standards of the department described in section 10 (2) of this 2011 Act. + }

SECTION 12. { + (1) A person that purports to receive an equine for rescue purposes or that solicits funding from a public or private source for equine rescue purposes must make a clear and conspicuous disclosure that the person is not approved by the state as an equine rescue facility unless the person is listed on the State Department of Agriculture registry described in section 10 of this 2011 Act as an equine rescue facility.

(2) A person that is subject to the disclosure requirement in subsection (1) of this section may not make any false or deceptive statement or other representation indicating that the person is recognized or approved as an equine rescue facility by the state or by any organization or facility that is listed on the department registry described in section 10 of this 2011 Act as an equine rescue facility. + }

SECTION 13. { + (1) Violation of section 2 of this 2011 Act is an unclassified violation subject to:

(a) For a first occurrence, a maximum fine of \$500 for each equine for which the owner fails to obtain an equine ownership certificate.

(b) For a second or subsequent occurrence, a maximum fine of \$1,000 for each equine for which the owner fails to obtain an equine ownership certificate.

(2) Violation of section 3 of this 2011 Act is an unclassified violation subject to a maximum fine:

(a) For a first occurrence, of \$500 for each equine not provided with the required appropriate food, potable water or opportunity to rest.

(b) For a second or subsequent occurrence, of \$1,000 for each equine not provided with the required appropriate food, potable water or opportunity to rest.

(3) Violation of a provision of section 4 or 5 of this 2011 Act is an unclassified violation subject to:

(a) For a first occurrence, a maximum fine of \$500 for each equine being transported in violation of section 4 or 5 of this 2011 Act.

(b) For a second or subsequent occurrence, a maximum fine of \$1,000 for each equine being transported in violation of section 4 or 5 of this 2011 Act.

(4) Violation of section 7 of this 2011 Act is an unclassified violation subject to:

(a) For a first offense, a maximum fine of \$500.

(b) For a second or subsequent offense, a maximum fine of \$1,000. + }

SECTION 14. { + Section 15 of this 2011 Act is added to and made a part of ORS chapter 599. + }

SECTION 15. { + (1) A person who delivers an equine to a livestock auction market shall present the equine ownership certificate described in section 2 of this 2011 Act or an equivalent document issued by another state for the equine to the person in responsible charge of the livestock auction market. The owner selling the equine must provide the operator of the livestock auction market with an equine transfer form with the seller information completed.

(2) The operator of the livestock auction market shall provide a buyer with a bill of sale and the equine ownership certificate or the equivalent from another state for the equine. Unless the operator of the livestock auction market knows that the equine is being sold to be transported out of state, the operator shall also provide the buyer with the equine transfer form for the equine. If the operator knows that the equine is being sold to be transported out of state, the operator shall retain the transfer form and deliver the form to the State Department of Agriculture with the monthly report described in subsection (3) of this section.

(3) A livestock auction market must maintain inventory records of all equine sold by the livestock auction market. The records shall include the date sold, information contained on the equine ownership certificate or an equivalent document issued by another

state and the name and address of the buyer. The livestock auction market shall file monthly reports with the department stating the number of equines sold by the livestock auction market during the month. At the time of filing a report under this section, the livestock auction market shall send the department any equine transfer forms retained by the equine trader under subsection (2) of this section.

(4) A licensed livestock auction market is not required to obtain an equine trader permit under section 7 of this 2011 Act. + }

SECTION 16. ORS 561.144 is amended to read:

561.144. (1) The State Treasurer shall establish a Department of Agriculture Service Fund, which shall be a trust fund separate and distinct from the General Fund. The State Department of Agriculture shall deposit all license and service fees paid to it under the provisions of the statutes identified in subsection (3) of this section in the Department of Agriculture Service Fund. The State Treasurer is the custodian of this trust fund, which shall be deposited by the treasurer in such depositories as are authorized to receive deposits of the General Fund, and which may be invested by the treasurer in the same manner as authorized by ORS 293.701 to 293.820.

(2) Interest received on deposits credited to the Department of Agriculture Service Fund shall accrue to and become a part of the Department of Agriculture Service Fund.

(3) The license and service fees subject to this section are those described in ORS 561.400, 561.740, 570.710, 571.057, 571.063, 571.145, 571.305, 583.004, 583.046, 583.445, 583.510, 583.610, 585.050, 586.270, 586.580, 586.650, 596.030, 596.100, 596.311, 599.235, 599.269, 599.406, 599.610, 601.040, 602.090, 603.025, 603.075, 616.706, 618.115, 618.136, 619.031, 621.072, 621.166, 621.266, 621.297, 621.335, 621.730, 622.080, 625.180, 628.240, 632.211, 632.425, 632.600, 632.720, 632.730, 632.741, 632.940, 632.945, 633.015, 633.029, 633.318, 633.362, 633.461, 633.471, 633.680, 633.700, 633.720, 634.016, 634.116, 634.122, 634.126, 634.132, 634.136, 634.212 and 635.030 { + and sections 2 and 7 of this 2011 Act + }.

SECTION 17. ORS 599.205 is amended to read:

599.205. As used in this chapter, unless the context otherwise requires:

(1) 'Dairy cattle' includes the recognized breeds of bovine animals used primarily for the production of milk, such as, but not limited to, Jersey, Guernsey, Brown Swiss, Ayrshire, Milking Shorthorn, Holstein and Red Polled, whether or not such animals are purebred or grade, and crosses of such breeds, including crosses of such breeds with beef type animals.

(2) 'Department' means the State Department of Agriculture of the State of Oregon.

(3) 'Director' means the director of the department.

{ + (4) 'Equine' means a horse, pony, donkey, mule or hinny or any hybrid of those animals. + }

{ - (4) - } { + (5) + } 'Licensee' means any person who operates a livestock auction market, either as owner or lessee, and who holds a license to conduct such market issued by the department pursuant to the provisions of this chapter.

{ - (5) - } { + (6) + } 'Livestock' includes { - horses, mules, asses, - } { + equines, + } cattle, sheep, swine, goats and poultry, including turkeys, of any age or sex.

{ - (6) - } { + (7) + } 'Livestock auction market' means a place of business to which the public may consign livestock for sale by auction open to public bidding or sold on a commission basis, but, specifically, it does not include breed or livestock associations operating subject to and in compliance with the provisions of the Oregon Nonprofit Corporation Act, ORS chapter 65, Future Farmer and 4-H groups, auction sales conducted in conjunction with county, state or private fairs or auction sales conducted by or for a person at which livestock of such person's ownership are sold on premises of the person.

{ - (7) - } { + (8) + } 'Meat dealer' means a person licensed to slaughter meat food animals pursuant to the applicable provisions of this section and ORS chapter 603.

SECTION 18. ORS 599.510 is amended to read:

599.510. { - No person shall - } { + A person may not + } enter or offer or attempt to enter into any agreement or arrangement with another person for the purpose of preventing competitive bidding upon any { - horses, mules, - } { + equines, + } cattle, sheep, swine or other livestock shipped to a wholesale or central stockyards market for sale.

SECTION 19. ORS 604.015 is amended to read:

604.015. (1) The State Department of Agriculture may appoint and designate employees as brand inspectors to administer and enforce the brand inspection activities of the department under ORS 561.144, 577.512, 599.205, 599.269, 599.273, 599.610, 603.015, 603.034, 603.075 to 603.095, 603.992, 604.005 to 604.071, 604.640, 604.650 and 604.992 { + and the equine ownership certificate laws in sections 2 to 12, 13 and 15 of this 2011 Act + }. In addition, the department may authorize and direct brand inspectors to administer and enforce other laws under the jurisdiction of the department.

(2) In making appointments under subsection (1) of this section, the department may appoint as part-time brand inspectors persons in the unclassified service of the personnel relations system who possess the necessary experience, knowledge and qualifications and pay them on any reasonable and fair basis. However, at any time the average monthly compensation received by

such a person during a six-month period equals or exceeds the minimum wage or starting step of the pay range or schedule established for brand inspectors, then the person and the position are subject to the State Personnel Relations Law. If such person in the opinion of the department has satisfactorily carried out the duties as a brand inspector, and if it is in the best interests of the department, the person shall be given regular merit system status and shall be entitled to be hired by the department upon successfully passing a noncompetitive examination for this classification.

(3) In making appointments under subsection (1) of this section, the department may appoint as brand inspectors persons subject to the State Personnel Relations Law. At any time in any area where the workload decreases or other facts or conditions require only the part-time services of a person in a classified position, the department may declare the position to be unclassified.

(4) By written agreement, the department may designate employees of another state agency, or of a county or city government, as brand inspectors to administer and enforce the department's brand inspection activities or other laws under the jurisdiction of the department in the same manner and to the same extent as brand inspectors appointed under subsection (1) of this section. While carrying out the authority delegated under this subsection, brand inspectors shall comply with the provisions of ORS 561.144, 577.512, 599.205, 599.269, 599.273, 599.610, 603.015, 603.034, 603.075 to 603.095, 603.992, 604.005 to 604.071, 604.640, 604.650 and 604.992 { + and sections 2 to 12, 13 and 15 of this 2011 Act + }, and the administrative rules promulgated thereunder, collect any brand inspection fees due the department and forthwith pay the same to the department, continue to act under the supervision of their employing agencies, continue to carry out their regular duties for their employing agencies, and receive or have their employing agencies receive any agreed compensation from the department for carrying out the authority delegated under this subsection. The department may terminate any designation under this subsection without hearing or notice, notwithstanding any laws to the contrary.

(5) The department may appoint and designate employees as livestock police officers or investigative officers to administer and enforce the department's authority under ORS 561.144, 577.512, 599.205, 599.269, 599.273, 599.610, 603.015, 603.034, 603.075 to 603.095, 603.992, 604.005 to 604.071, 604.640, 604.650 and 604.992 { + and sections 2 to 12, 13 and 15 of this 2011 Act + }, including supervision of brand inspectors. In addition, the department may authorize and direct livestock police officers or investigative officers to administer and enforce other laws under the jurisdiction of the department. Brand inspectors,

livestock police officers and investigative officers are empowered to carry out the activities of peace officers and police officers, as set forth in ORS chapter 133. They may be furnished uniforms, identification badges, emergency vehicles and other equipment appropriate to carrying out investigative and law enforcement activities.

SECTION 20. ORS 599.620 is amended to read:

599.620. Except as provided by ORS 599.245, the provisions of this chapter shall not apply to a person licensed pursuant to ORS 599.610. In lieu thereof, the State Department of Agriculture shall promulgate regulations relating to the time, place, manner and method of the temporary sale of horses as authorized by ORS 599.610. In the enforcement of such provisions or the promulgation of regulations thereunder, the department shall take into consideration the following factors:

(1) The measures necessary to establish and maintain the same standards and purposes as are contained in the laws and regulations relating to livestock auction markets and stockyards licensed under and subject to the provisions of this chapter and ORS chapter 596 and yet at the same time to provide a practical and reasonable procedure to permit the holding of such temporary sale of horses.

(2) Those measures necessary to control or eradicate contagious or infectious diseases of horses.

(3) The employment of a veterinarian by the licensee as provided by ORS 599.335.

(4) The economic consequences to the citizens of this state which may result from the spread of all diseases of horses.

(5) The extent to which certain diseases of horses are endemic or epidemic through neighboring states, the United States or this state.

(6) The extent to which livestock other than horses which are infected with or are carriers of the diseases may be adversely affected by reason thereof.

(7) The laws and regulations of the United States and other states.

(8) The laws relating to brands, as provided by this chapter.

{ + (9) The laws relating to equine ownership certificates and equine transfer forms as provided in sections 2 and 6 of this 2011 Act. + }

SECTION 21. ORS 604.005 is amended to read:

604.005. As used in this chapter, unless the context requires otherwise:

(1) 'Brand' means a distinctive design, mark or other means of identification applied to a designated location of the hide, wool or skin of livestock, by methods prescribed by administrative rule of the State Department of Agriculture promulgated pursuant to ORS chapter 183.

- (2) 'Brand inspection' means the department's:
- (a) Examination of the brands, tags, breed, flesh marks including dewlaps and wattles, earmarks, coloring, sex, age or other distinguishing characteristics of livestock;
 - (b) Examination of documents and other evidence of ownership or right to possession of livestock; and
 - (c) Issuance or refusal to issue a brand inspection certificate.
- (3) 'Brand inspection certificate' means a document issued by the department that is valid for eight days, unless otherwise specified therein, and that includes:
- (a) The date and place of issuance;
 - (b) The quantity of livestock inspected and a description of the distinguishing characteristics of hides or of livestock examined, including brands, tags, breed and sex;
 - (c) The name and address of the person to whom issued and the name and address of the owner;
 - (d) If the livestock are to be transported, the destination;
 - (e) A statement of any limitation on the use of the certificate, or on its period of validity; and
 - (f) A signed certification of the department's brand inspector that the brand inspector has examined the described hides or livestock and documents associated therewith and that to the best of the inspector's knowledge the hides or livestock are owned or in the lawful possession of the person presenting the hides or livestock for brand inspection.
- (4) 'Custom slaughtering establishment' shall have the meaning set forth in ORS 603.010.
- (5) 'Department' means the State Department of Agriculture.
- (6) 'Document of title' shall have the meaning set forth in ORS 71.2010.
- (7) 'Equidae' means a horse, { - mule or ass - } { + pony, donkey, mule or hinny or any hybrid of those animals + }.
- (8) 'Livestock' means cattle, Equidae, sheep and any other animals designated by the administrative rule of the department.
- (9) 'Livestock auction market' shall have the meaning set forth in ORS 599.205.
- (10) 'Livestock carrier' means the person who transports livestock { + other than Equidae + } by rail, motor vehicle, boat, aircraft or on the hoof, either as a common carrier who is available to the public to perform this service for compensation, as a contract carrier who enters into agreements with specific individuals to perform this service for compensation, or as a private carrier who performs this service without compensation as an owner, lessee or bailee of livestock.
- (11) 'Slaughterhouse' shall have the meaning set forth in ORS 603.010.

SECTION 22. ORS 604.066 is amended to read:

604.066. (1) Except as provided in subsection (2) of this section, the State Department of Agriculture shall charge and collect a brand inspection fee { - in accordance with the following: - }

{ - (a) \$30 for a lifetime brand inspection for Equidae; - }

{ - (b) \$10 per head for a brand inspection for Equidae, if the brand inspection certificate utilized is valid for more than eight days but less than a lifetime; or - }

{ - (c) - } { + of + } \$10 per head for a brand inspection

{ - on livestock other than Equidae, - } if the brand inspection certificate utilized is valid for more than eight days.

(2) In accordance with the provisions of ORS chapter 183, the department shall establish a brand inspection fee on cattle and cattle hides for which a brand inspection certificate is valid for eight days. The fee shall be not less than 85 cents and not more than \$1 per head of cattle and not more than \$2 per hide.

(3) Except as provided in this subsection or subsection (4) of this section, the person requesting or requiring brand inspection to be performed shall pay the State Department of Agriculture a brand inspection fee and the assessments authorized under ORS 577.512. Livestock auction markets, slaughterhouses and custom slaughtering establishments at which brand inspection is performed shall collect the fees and assessments and forward them to the department. The person requesting or requiring brand inspection for cattle delivered to a livestock auction market is not required to pay a brand inspection fee on cattle whose value is \$10 or less. The person requesting or requiring brand inspection is not required to pay a brand inspection fee on cattle not more than 90 days of age that are to be transported with their mothers to a range or pastureland outside of this state.

(4) The person requesting or requiring brand inspection is not required to pay a brand inspection fee or pay assessments when Oregon cattle are being transported from any place in this state to any place outside of this state and then returned to this state, if the movement is continuous without unloading enroute, is done in the usual course of ranch operations and is not related to a change of ownership.

(5) Except as provided in ORS 577.512, the department shall deposit all fees paid to it under this chapter in the State Treasury to the credit of the Department of Agriculture Service Fund, and such fees are continuously appropriated to the department for administering and enforcing this chapter. The provisions of ORS 561.144 apply to such fees.

SECTION 23. 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.

(c) 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.

(r) 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.

(aa) Violates the provisions of ORS 803.375, 803.385 or 815.410

to 815.430.

(bb) Violates ORS 646A.070 (1).

(cc) Violates any requirement of ORS 646A.030 to 646A.040.

(dd) Violates the provisions of ORS 128.801 to 128.898.

(ee) Violates ORS 646.883 or 646.885.

(ff) Violates ORS 646.569.

(gg) Violates the provisions of ORS 646A.142.

(hh) Violates ORS 646A.360.

(ii) Violates ORS 646.553 or 646.557 or any rule adopted pursuant thereto.

(jj) Violates ORS 646.563.

(kk) Violates ORS 759.690 or any rule adopted pursuant thereto.

(LL) Violates the provisions of ORS 759.705, 759.710 and 759.720 or any rule adopted pursuant thereto.

(mm) Violates ORS 646A.210 or 646A.214.

(nn) Violates any provision of ORS 646A.124 to 646A.134.

(oo) Violates ORS 646A.095.

(pp) Violates ORS 822.046.

(qq) Violates ORS 128.001.

(rr) Violates ORS 646.649 (2) to (4).

(ss) Violates ORS 646A.090 (2) to (4).

(tt) Violates ORS 87.686.

(uu) Violates ORS 646.651.

(vv) Violates ORS 646A.362.

(ww) Violates ORS 646A.052 or any rule adopted under ORS 646A.052 or 646A.054.

(xx) Violates ORS 180.440 (1) or 180.486 (1).

(yy) Commits the offense of acting as a vehicle dealer without a certificate under ORS 822.005.

(zz) Violates ORS 87.007 (2) or (3).

(aaa) Violates ORS 92.405 (1), (2) or (3).

(bbb) Engages in an unlawful practice under ORS 646.648.

(ccc) Violates ORS 646A.365.

(ddd) Violates ORS 98.854 or 98.858 or a rule adopted under ORS 98.864.

(eee) Sells a gift card in violation of ORS 646A.276.

(fff) Violates ORS 646A.102, 646A.106 or 646A.108.

(ggg) Violates ORS 646A.430 to 646A.450.

(hhh) Violates a provision of ORS 744.318 to 744.384, 744.991 and 744.992.

(iii) Violates a provision of ORS 646A.702 to 646A.720.

(jjj) Violates ORS 646A.530 30 or more days after a recall notice, warning or declaration described in ORS 646A.530 is issued for the children's product, as defined in ORS 646A.525, that is the subject of the violation.

(kkk) Violates a provision of ORS 697.612, 697.642, 697.652, 697.662, 697.682, 697.692 or 697.707.

(LLL) Violates the consumer protection provisions of the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as in effect on January 1, 2010.

(mmm) Violates a provision of ORS 646A.480 to 646A.495.

(nnn) Violates ORS 646A.082.

(ooo) Violates ORS 646.647.

(ppp) Violates ORS 646A.115.

(qqq) Violates a provision of ORS 646A.405.

{ + (rrr) Violates section 12 of this 2011 Act. + }

(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) An action or suit may not 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 chapter 183 declaring the conduct to be unfair or deceptive in trade or commerce.

(5) Notwithstanding any other provision of ORS 646.605 to 646.652, if an action or suit is brought under subsection (1)(xx) of this section by a person other than a prosecuting attorney, relief is limited to an injunction and the prevailing party may be awarded reasonable attorney fees.

SECTION 24. { + (1) Section 2 (1) of this 2011 Act becomes operative January 1, 2015.

(2) The State Department of Agriculture shall make equine ownership certificates available for issuance to applicants no later than July 1, 2012. Notwithstanding section 2 of this 2011 Act, except as provided in this subsection, the inspection and registration fee that must accompany an equine ownership certificate application that the department receives before January 1, 2015, is \$25. Notwithstanding section 2 of this 2011 Act, if the owner of the equine obtained a lifetime brand inspection for the equine under ORS 604.066 before the effective date of this 2011 Act, an inspection and registration fee is not required for an equine ownership certificate application that the department receives before January 1, 2015. + }

SECTION 25. { + (1) Sections 3 to 9, 11, 12 and 15 of this 2011 Act and the amendments to ORS 599.205, 599.510, 599.620, 604.005, 604.015, 604.066 and 646.608 by sections 17 to 23 of this 2011 Act become operative January 1, 2015.

(2) The State Department of Agriculture shall make equine trader permits available for issuance to applicants no later than January 1, 2014. Notwithstanding subsection (1) of this section, sections 8 and 9 of this 2011 Act apply to any equine trader that

is issued a permit under section 7 of this 2011 Act.
(3) The department shall make equine rescue facility registration available under section 10 of this 2011 Act no later than January 1, 2014. Notwithstanding subsection (1) of this section, section 11 of this 2011 Act applies to any equine rescue facility that is registered under section 10 of this 2011 Act. + }
