

**Enrolled**  
**House Bill 2228**

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Department of Justice)

CHAPTER .....

AN ACT

Relating to liability of mail agents; creating new provisions; and amending ORS 646.229 and 646.240.

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

**SECTION 1.** ORS 646.229 is amended to read:

646.229. (1) Except as provided in subsection [(2)] (5) of this section, [each] a mail agent shall maintain:

(a) A surety bond in the sum of \$10,000 **executed by the mail agent as obligor, together with a surety company authorized to do business in this state as surety; or**

(b) **An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in the amount of \$10,000.**

(2) **The bond or letter of credit must:**

(a) **Be executed to the State of Oregon and for the use of the state and of any person who may have a cause of action against the obligor of the bond or the letter of credit for a violation of ORS 646.225 or for damages under ORS 646.235.**

(b) **Provide that the obligor will comply with ORS 646.225 and will pay to the state and to any person the moneys that may become due or owing to the state or to the person from the obligor for a violation of ORS 646.225.**

(3) **The Attorney General shall approve the form of the bond or letter of credit.**

(4) **If a person recovers a judgment against a mail agent for a violation of ORS 646.225 and execution issued upon the judgment is returned unsatisfied in whole or in part, the person may maintain an action upon the bond or letter of credit.**

[(2)] (5) Subsection (1) of this section [shall] **does** not apply to a mail agent whose activity as a mail agent consists solely of receiving, storing, sorting, holding or forwarding United States mail or materials received from or delivered by a private express carrier for tenants of the mail agent if:

(a) The tenant is also renting or leasing from the mail agent an office, store, residential unit or other space or unit intended for human occupancy, [which] **and the** space or unit is located on the same premises as the mailbox; and

(b) The mail agent services [which] **that** the mail agent is providing to the tenant are incidental to and a part of the landlord-tenant relationship [which] **that** exists between the mail agent and the tenant with respect to the leased space or unit.

**SECTION 2.** ORS 646.240 is amended to read:

646.240. (1) The Attorney General may bring an action in the name of the state against any mail agent for violation of ORS 646.225 or 646.229. Upon proof by a preponderance of the evidence of a

violation of ORS 646.225 or 646.229, a mail agent shall forfeit and pay a civil penalty of not more than \$1,000 for an initial violation. For a second or subsequent violation, the mail agent shall forfeit and pay a civil penalty of not more than \$5,000 for each violation.

(2) The Attorney General may bring an action in the name of the state against any mail agent or other person or entity to restrain or prevent any violation of ORS 646.225 or 646.229.

**(3) The Attorney General may bring an action on behalf of a person to obtain the damages caused to the person by a mail agent's violation of ORS 646.225 or 646.229.**

[3] (4) The court may award reasonable attorney fees and costs of investigation, preparation and litigation to the Attorney General if the Attorney General prevails in an action under this section. The court may award reasonable attorney fees and costs of investigation, preparation and litigation to a defendant who prevails in an action under this section if the court determines that the Attorney General had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

**SECTION 3. (1) The amendments to ORS 646.229 by section 1 of this 2005 Act apply to persons serving as mail agents on or after the effective date of this 2005 Act.**

**(2) The amendments to ORS 646.240 by section 2 of this 2005 Act apply to damages caused before, on or after the effective date of this 2005 Act.**

Passed by House May 20, 2005

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Chief Clerk of House

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Speaker of House

Passed by Senate June 14, 2005

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President of Senate

Received by Governor:

.....M.,....., 2005

Approved:

.....M.,....., 2005

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2005

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Secretary of State