

Enrolled House Bill 2584

Sponsored by Representative HUNT, Senator DEVLIN; Representatives NOLAN, SHIELDS, Senator BONAMICI

CHAPTER

AN ACT

Relating to antitrust regulation; creating new provisions; and amending ORS 646.780.

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

SECTION 1. ORS 646.780 is amended to read:

646.780. (1)(a) A person [*including*], the state or any political subdivision in the state injured in its business or property by a violation of ORS 646.725 or 646.730 may sue for the injury and shall recover three times the damages sustained. [*The state may bring the*] **An** action authorized by this paragraph **may be brought** regardless of whether the [*state*] **plaintiff** dealt directly or indirectly with the adverse party.

(b) Notwithstanding paragraph (a) of this subsection, the state may recover only the state’s actual damages sustained and any attorney fees, expert witness fees or investigative costs that the court may award under subsection (3) of this section, if the state:

- (A) Brings an action under ORS 646.760;
- (B) Commences a prosecution under ORS 646.815 and 646.990 (2); or
- (C) Brings an action for an injury that the state suffered by dealing indirectly with the adverse party and the state establishes a violation other than a per se violation of ORS 646.725.

(c) Notwithstanding paragraph (a) of this subsection, in any action under this section in which the plaintiff prevails solely on the basis of a judgment or decree entered in a proceeding under 15 U.S.C. 1 to 45 or in another action by the state under ORS 646.760, 646.770 or this section, used as collateral estoppel against a defendant pursuant to ORS 646.805, plaintiff’s recovery shall be limited to the actual damages sustained and any attorney fees, expert witness fees or investigative costs that may be awarded under subsection (3) of this section.

(2) Unless there is a subsequent judgment that the court lacks jurisdiction, the taking of any testimony at the commencement of trial on a civil complaint for damages filed under the antitrust laws of the United States shall constitute an absolute bar and waiver of any right of a plaintiff in such action to recover damages from the same defendant under this section for the same or substantially the same acts of plaintiff.

(3)(a) Except as provided in subsection (4) of this section, in an action brought under the provisions of this section by a person other than the state or any political subdivision in the state, the court may award reasonable attorney fees, expert witness fees and investigative costs to the prevailing party.

(b) Except as provided in subsection (4) of this section, in a civil action brought under the provisions of this section or under ORS 646.760 by the state or any political subdivision in the state:

(A) The court may award reasonable attorney fees, expert witness fees and investigative costs to the state or political subdivision if the state or political subdivision prevails in the action; and

(B) The court may award reasonable attorney fees, expert witness fees and investigative costs to a defendant who prevails in an action under this section if the court determines that the state or political subdivision had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(4) The court may not award attorney fees, expert witness fees or investigative costs to a prevailing defendant under the provisions of this section if the action is maintained as a class action pursuant to ORCP 32.

(5)(a) When the Attorney General files an action parens patriae under ORS 646.775 within 30 days of the date that a natural person files an action as a class action under this section and both the Attorney General and the natural person seek to represent the same class of natural persons, the action brought by the Attorney General must be deemed superior to the natural person's action for the purposes of determining whether the natural person's action under this section may not be maintained as a class action under ORCP 32.

(b) Upon commencement of an action as a class action under this section by a natural person, the natural person shall mail a copy of the complaint to the Attorney General. Failure to mail a copy of the complaint is not a jurisdictional defect.

(c) The Attorney General's action shall be deemed superior to the natural person's action brought as a class action as described in paragraph (a) of this subsection until the earlier of:

(A) Thirty days after the natural person mails a copy of the complaint to the Attorney General as provided in paragraph (b) of this subsection; or

(B) The date that a court finds that the natural person's action is to be maintained as a class action.

(d) Nothing in this subsection shall prohibit a natural person from filing an action as a class action if:

(A) The Attorney General's parens patriae action is dismissed prior to adjudication of the issues without damages paid to any natural person; or

(B) A sufficient number of natural persons opt out of the parens patriae action to sustain a separate class action.

SECTION 2. The amendments to ORS 646.780 by section 1 of this 2009 Act apply to actions commenced on or after the effective date of this 2009 Act.

Passed by House April 23, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate May 27, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State