

Enrolled
House Bill 2585

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to class actions; creating new provisions; amending ORS 646.638 and ORCP 32 L, M, N and O; repealing ORCP 32 K; and declaring an emergency.

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

SECTION 1. ORCP 32 K is repealed.

SECTION 2. ORCP 32 L is amended to read:

[L] K Coordination of pending class actions sharing common question of law or fact.

[L(1)(a)] **K(1)(a)** When class actions sharing a common question of fact or law are pending in different courts, the presiding judge of any such court, upon motion of any party or on the court's own initiative, may request the Supreme Court to assign a Circuit Court, Court of Appeals, or Supreme Court judge to determine whether coordination of the actions is appropriate, and a judge shall be so assigned to make that determination.

[L(1)(b)] **K(1)(b)** Coordination of class actions sharing a common question of fact or law is appropriate if one judge hearing all of the actions for all purposes in a selected site or sites will promote the ends of justice taking into account whether the common question of fact or law is predominating and significant to the litigation; the convenience of parties, witnesses, and counsel; the relative development of the actions and the work product of counsel; the efficient utilization of judicial facilities and personnel; the calendar of the courts; the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and the likelihood of settlement of the actions without further litigation should coordination be denied.

[L(2)] **K(2)** If the assigned judge determines that coordination is appropriate, such judge shall order the actions coordinated, report that fact to the Chief Justice of the Supreme Court, and the Chief Justice shall assign a judge to hear and determine the actions in the site or sites the Chief Justice deems appropriate.

[L(3)] **K(3)** The judge of any court in which there is pending an action sharing a common question of fact or law with coordinated actions, upon motion of any party or on the court's own initiative, may request the judge assigned to hear the coordinated action for an order coordinating such actions. Coordination of the action pending before the judge so requesting shall be determined under the standards specified in subsection (1) of this section.

[L(4)] **K(4)** Pending any determination of whether coordination is appropriate, the judge assigned to make the determination may stay any action being considered for, or affecting any action being considered for, coordination.

[L(5)] **K(5)** Notwithstanding any other provision of law, the Supreme Court shall provide by rule the practice and procedure for coordination of class actions in convenient courts, including provision for giving notice and presenting evidence.

SECTION 3. ORCP 32 M is amended to read:

[M] L Form of judgment. The judgment in an action ordered maintained as a class action, whether or not favorable to the class, shall specify or describe those found to be members of the class or who, as a condition of exclusion, have agreed to be bound by the judgment. If a judgment that includes a money award is entered in favor of a class, the judgment must, when possible, identify by name each member of the class and the amount to be recovered thereby.

SECTION 4. ORCP 32 N is amended to read:

[N] M Attorney fees, costs, disbursements, and litigation expenses.

[N(1)(a)] M(1)(a) Attorney fees for representing a class are subject to control of the court.

[N(1)(b)] M(1)(b) If under an applicable provision of law a defendant or defendant class is entitled to attorney fees, costs, or disbursements from a plaintiff class, only representative parties and those members of the class who have appeared individually are liable for those amounts. If a plaintiff is entitled to attorney fees, costs, or disbursements from a defendant class, the court may apportion the fees, costs, or disbursements among the members of the class.

[N(1)(c)] M(1)(c) If the prevailing class recovers a judgment that can be divided for the purpose, the court may order reasonable attorney fees and litigation expenses of the class to be paid from the recovery.

[N(1)(d)] M(1)(d) The court may order the adverse party to pay to the prevailing class its reasonable attorney fees and litigation expenses if permitted by law in similar cases not involving a class.

[N(1)(e)] M(1)(e) In determining the amount of attorney fees for a prevailing class the court shall consider the following factors:

[N(1)(e)(i)] M(1)(e)(i) The time and effort expended by the attorney in the litigation, including the nature, extent, and quality of the services rendered;

[N(1)(e)(ii)] M(1)(e)(ii) Results achieved and benefits conferred upon the class;

[N(1)(e)(iii)] M(1)(e)(iii) The magnitude, complexity, and uniqueness of the litigation;

[N(1)(e)(iv)] M(1)(e)(iv) The contingent nature of success; and

[N(1)(e)(v)] M(1)(e)(v) Appropriate criteria in Rule 1.5 of the Oregon Rules of Professional Conduct.

[N(2)] M(2) Before a hearing under section C of this rule or at any other time the court directs, the representative parties and the attorney for the representative parties shall file with the court, jointly or separately:

[N(2)(a)] M(2)(a) A statement showing any amount paid or promised them by any person for the services rendered or to be rendered in connection with the action or for the costs and expenses of the litigation and the source of all of the amounts;

[N(2)(b)] M(2)(b) A copy of any written agreement, or a summary of any oral agreement, between the representative parties and their attorney concerning financial arrangement or fees; and

[N(2)(c)] M(2)(c) A copy of any written agreement, or a summary of any oral agreement, by the representative parties or the attorney to share these amounts with any person other than a member, regular associate, or an attorney regularly of counsel with the law firm of the representative parties' attorney. This statement shall be supplemented promptly if additional arrangements are made.

SECTION 5. ORCP 32 O is amended to read:

[O] N Statute of limitations. The statute of limitations is tolled for all class members upon the commencement of an action asserting a class action. The statute of limitations resumes running against a member of a class:

[O(1)] N(1) Upon filing of an election of exclusion by such class member;

[O(2)] N(2) Upon entry of an order of certification, or of an amendment thereof, eliminating the class member from the class;

[O(3)] N(3) Except as to representative parties, upon entry of an order under section C of this rule refusing to certify the class as a class action; and

[O(4)] N(4) Upon dismissal of the action without an adjudication on the merits.

SECTION 6. ORS 646.638 is amended to read:

646.638. (1) Except as provided in [subsection (8)] **subsections (8) and (9)** of this section, any person who suffers any ascertainable loss of money or property, real or personal, as a result of willful use or employment by another person of a method, act or practice declared unlawful by ORS 646.608, may bring an individual action in an appropriate court to recover actual damages or **statutory damages of \$200**, whichever is greater. The court or the jury, as the case may be, may award punitive damages and the court may provide the equitable relief the court considers necessary or proper.

(2) Upon commencement of any action brought under subsection (1) of this section the party bringing the action shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of any judgment in the action, shall mail a copy of the judgment to the Attorney General. Failure to mail a copy of the complaint shall not be a jurisdictional defect, but a court may not enter judgment for the plaintiff until proof of mailing is filed with the court. Proof of mailing may be by affidavit or by return receipt of mailing.

(3) Except as provided in subsection (4) of this section, the court may award reasonable attorney fees to the prevailing party in an action under this section.

(4) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (3) of this section if the action under this section is maintained as a class action pursuant to ORCP 32.

(5) Any permanent injunction or final judgment or order of the court made under ORS 646.632 or 646.636 is prima facie evidence in an action brought under this section that the respondent used or employed a method, act or practice declared unlawful by ORS 646.608, but an assurance of voluntary compliance, whether or not approved by the court, shall not be evidence of the violation.

(6) Actions brought under this section shall be commenced within one year from the discovery of the unlawful method, act or practice. However, whenever any complaint is filed by a prosecuting attorney to prevent, restrain or punish violations of ORS 646.608, running of the statute of limitations with respect to every private right of action under this section and based in whole or in part on any matter complained of in said proceeding shall be suspended during the pendency thereof.

(7) Notwithstanding subsection (6) of this section, in any action brought by a seller or lessor against a purchaser or lessee of real estate, goods or services, the purchaser or lessee may assert any counterclaim the purchaser or lessee has arising out of a violation of ORS 646.605 to 646.652.

(8) A class action may be maintained under this section. In any class action under this section:

(a) Statutory damages under subsection (1) of this section may be recovered on behalf of class members only if the plaintiffs in the action establish that the members have sustained an ascertainable loss of money or property as a result of a reckless or knowing use or employment by the defendant of a method, act or practice declared unlawful by ORS 646.608;

(b) The trier of fact may award punitive damages; and

(c) The court may award appropriate equitable relief.

[8] (9) This section does not apply to any method, act or practice described in ORS 646.608 (1)(aa). Actions for violation of laws relating to odometers are provided under ORS 815.410 and 815.415.

SECTION 7. (1) Except as provided in subsection (2) of this section, the repeal of ORCP 32 K by section 1 of this 2009 Act and the amendments to ORS 646.638 by section 6 of this 2009 Act apply to all causes of action, whether arising before, on or after the effective date of this 2009 Act.

(2) The repeal of ORCP 32 K by section 1 of this 2009 Act and the amendments to ORS 646.638 by section 6 of this 2009 Act do not apply to a cause of action for which a judgment was entered before the effective date of this 2009 Act.

SECTION 8. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by House May 4, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate June 4, 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