

**A-Engrossed**  
**House Bill 2585**

Ordered by the House April 29  
Including House Amendments dated April 29

Sponsored by COMMITTEE ON JUDICIARY

**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.

Repeals Oregon Rule of Civil Procedure prohibiting class action for recovery of statutory minimum penalties for violations of Unlawful Trade Practices Act, federal Truth in Lending Act and similar statutes.

**Imposes requirements for recovery of statutory damages for class action lawsuits under Unlawful Trade Practices Act.**

Declares emergency, effective on passage.

**A BILL FOR AN ACT**

1  
2 Relating to class actions; creating new provisions; amending ORS 646.638 and ORCP 32 L, M, N and  
3 O; repealing ORCP 32 K; and declaring an emergency.

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

5 **SECTION 1. ORCP 32 K is repealed.**

6 **SECTION 2.** ORCP 32 L is amended to read:

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

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

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

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

25 **[L(3)] K(3)** The judge of any court in which there is pending an action sharing a common ques-  
26 tion of fact or law with coordinated actions, upon motion of any party or on the court's own initi-

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.  
New sections are in **boldfaced** type.

1     ative, may request the judge assigned to hear the coordinated action for an order coordinating such  
 2     actions. Coordination of the action pending before the judge so requesting shall be determined un-  
 3     der the standards specified in subsection (1) of this section.

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

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

10    **SECTION 3.** ORCP 32 M is amended to read:

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

16    **SECTION 4.** ORCP 32 N is amended to read:

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

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

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

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

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

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

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

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

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

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

37    [N(1)(e)(v)] **M(1)(e)(v)** Appropriate criteria in Rule 1.5 of the Oregon Rules of Professional Con-  
 38    duct.

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

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

45    [N(2)(b)] **M(2)(b)** A copy of any written agreement, or a summary of any oral agreement, be-

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

6 **SECTION 5.** ORCP 32 O is amended to read:

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

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

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

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

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

16 **SECTION 6.** ORS 646.638 is amended to read:

17 646.638. (1) Except as provided in [subsection (8)] **subsections (8) and (9)** of this section, any  
18 person who suffers any ascertainable loss of money or property, real or personal, as a result of  
19 willful use or employment by another person of a method, act or practice declared unlawful by ORS  
20 646.608, may bring an individual action in an appropriate court to recover actual damages or **stat-**  
21 **utory damages of \$200**, whichever is greater. The court or the jury, as the case may be, may  
22 award punitive damages and the court may provide the equitable relief the court considers neces-  
23 sary or proper.

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

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

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

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

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

44 (7) Notwithstanding subsection (6) of this section, in any action brought by a seller or lessor  
45 against a purchaser or lessee of real estate, goods or services, the purchaser or lessee may assert

1 any counterclaim the purchaser or lessee has arising out of a violation of ORS 646.605 to 646.652.

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

4 **(a) Statutory damages under subsection (1) of this section may be recovered on behalf**  
5 **of class members only if the plaintiffs in the action establish that the members have sus-**  
6 **tained an ascertainable loss of money or property as a result of a reckless or knowing use**  
7 **or employment by the defendant of a method, act or practice declared unlawful by ORS**  
8 **646.608;**

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

10 **(c) The court may award appropriate equitable relief.**

11 [(8)] **(9) This section does not apply to any method, act or practice described in ORS 646.608**  
12 **(1)(aa). Actions for violation of laws relating to odometers are provided under ORS 815.410 and**  
13 **815.415.**

14 **SECTION 7. (1) Except as provided in subsection (2) of this section, the repeal of ORCP**  
15 **32 K by section 1 of this 2009 Act and the amendments to ORS 646.638 by section 6 of this**  
16 **2009 Act apply to all causes of action, whether arising before, on or after the effective date**  
17 **of this 2009 Act.**

18 **(2) The repeal of ORCP 32 K by section 1 of this 2009 Act and the amendments to ORS**  
19 **646.638 by section 6 of this 2009 Act do not apply to a cause of action for which a judgment**  
20 **was entered before the effective date of this 2009 Act.**

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