

## HOUSE AMENDMENTS TO HOUSE BILL 2585

By COMMITTEE ON JUDICIARY

April 29

1 On page 1 of the printed bill, line 2, after “amending” insert “ORS 646.638 and”.

2 On page 3, delete lines 12 through 16 and insert:

3 “**SECTION 6.** ORS 646.638 is amended to read:

4 “646.638. (1) Except as provided in [*subsection (8)*] **subsections (8) and (9)** of this section, any  
5 person who suffers any ascertainable loss of money or property, real or personal, as a result of  
6 willful use or employment by another person of a method, act or practice declared unlawful by ORS  
7 646.608, may bring an individual action in an appropriate court to recover actual damages or **stat-**  
8 **utory damages of \$200**, whichever is greater. The court or the jury, as the case may be, may  
9 award punitive damages and the court may provide the equitable relief the court considers neces-  
10 sary or proper.

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

17 “(3) Except as provided in subsection (4) of this section, the court may award reasonable attor-  
18 ney fees to the prevailing party in an action under this section.

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

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

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

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

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

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

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

7       “(c) The court may award appropriate equitable relief.

8       “[(8)] (9) This section does not apply to any method, act or practice described in ORS 646.608  
9 (1)(aa). Actions for violation of laws relating to odometers are provided under ORS 815.410 and  
10 815.415.

11       “**SECTION 7. (1) Except as provided in subsection (2) of this section, the repeal of ORCP**  
12 **32 K by section 1 of this 2009 Act and the amendments to ORS 646.638 by section 6 of this**  
13 **2009 Act apply to all causes of action, whether arising before, on or after the effective date**  
14 **of this 2009 Act.**

15       “(2) The repeal of ORCP 32 K by section 1 of this 2009 Act and the amendments to ORS  
16 646.638 by section 6 of this 2009 Act do not apply to a cause of action for which a judgment  
17 was entered before the effective date of this 2009 Act.”.

18       In line 17, delete “7” and insert “8”.