

House Bill 2585

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 **as introduced**.

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.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to class actions; creating new provisions; amending ORCP 32 L, M, N and O; repealing
3 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 ORCP 32 K is repealed.**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-
27 ative, may request the judge assigned to hear the coordinated action for an order coordinating such
28 actions. Coordination of the action pending before the judge so requesting shall be determined un-
29 der the standards specified in subsection (1) of this section.

30 [L(4)] **K(4)** Pending any determination of whether coordination is appropriate, the judge assigned

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 to make the determination may stay any action being considered for, or affecting any action being
 2 considered for, coordination.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 [N(2)(c)] M(2)(c) A copy of any written agreement, or a summary of any oral agreement, by the
 44 representative parties or the attorney to share these amounts with any person other than a member,
 45 regular associate, or an attorney regularly of counsel with the law firm of the representative parties'

1 attorney. This statement shall be supplemented promptly if additional arrangements are made.

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

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

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

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

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

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

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

15 **(2) The repeal of ORCP 32 K by section 1 of this 2009 Act does not apply to a cause of**
16 **action for which a judgment was entered before the effective date of this 2009 Act.**

17 **SECTION 7.** **This 2009 Act being necessary for the immediate preservation of the public**
18 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**
19 **on its passage.**

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