

Enrolled
House Bill 3111

Sponsored by Representatives KAHL, RICHARDSON; Representative BARTON

CHAPTER

AN ACT

Relating to unlawful trade practice cases; amending ORS 646.638.

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

SECTION 1. ORS 646.638 is amended to read:

646.638. (1) Except as provided in subsection (8) 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 \$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.]

(3) The court may award reasonable attorney fees and costs at trial and on appeal to a prevailing plaintiff in an action under this section. The court may award reasonable attorney fees and costs at trial and on appeal to a prevailing defendant only if the court finds there was no objectively reasonable basis for bringing the action or asserting the ground for appeal.

(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) 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.

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 26, 2009

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President of Senate

Received by Governor:

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Approved:

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Governor

Filed in Office of Secretary of State:

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Secretary of State