

House Bill 3111

Sponsored by Representatives KAHL, RICHARDSON; Representative BARTON

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**.

Restricts award of attorney fees in civil action brought by private party to prevailing plaintiff unless action is frivolous. Increases minimum amount of damages.

A BILL FOR AN ACT

1
2 Relating to unlawful trade practice cases; amending ORS 646.638.

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

4 **SECTION 1.** ORS 646.638 is amended to read:

5 646.638. (1) Except as provided in subsection (8) of this section, any person who suffers any
6 ascertainable loss of money or property, real or personal, as a result of willful use or employment
7 by another person of a method, act or practice declared unlawful by ORS 646.608, may bring an in-
8 dividual action in an appropriate court to recover actual damages or [~~\$200~~] **\$500**, whichever is
9 greater. The court or the jury, as the case may be, may award punitive damages and the court may
10 provide the equitable relief the court considers necessary 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 attorney
18 fees to [*the prevailing party*] **a prevailing plaintiff** in an action under this section. **The court may**
19 **award reasonable attorney fees to a prevailing defendant only if it finds the action to have**
20 **been frivolous. As used in this subsection, "frivolous" means the action is not supported by**
21 **substantial evidence or is filed without reasonable prospect of prevailing.**

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

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

29 (6) Actions brought under this section shall be commenced within one year from the discovery
30 of the unlawful method, act or practice. However, whenever any complaint is filed by a prosecuting
31 attorney to prevent, restrain or punish violations of ORS 646.608, running of the statute of limita-

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 tions with respect to every private right of action under this section and based in whole or in part
2 on any matter complained of in said proceeding shall be suspended during the pendency thereof.

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

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

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