

House Bill 3169

Sponsored by Representative OLSON; Representative WHISNANT (at the request of Oregon Liability Reform Coalition)

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**.

Provides that individual who brings action to recover damages for ascertainable loss of money or property resulting from unlawful practice must prove actual damages measured by difference between amount paid for good or service and market value of good or service received.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to actions to recover damages for unlawful practices; creating new provisions; amending
3 ORS 646.638; and prescribing an effective date.

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

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

6 646.638. (1) Except as provided in subsection [(8)] **(9)** of this section **and subject to subsection**
7 **(2) of this section**, [any] **an** [person] **individual** who suffers [any] **an** ascertainable loss of money
8 or property, real or personal, as a result of willful use or employment by another person of a
9 method, act or practice declared unlawful by ORS 646.608, may bring an individual action in an
10 appropriate court to recover actual damages, **measured for the purposes of an action brought**
11 **under this subsection as the difference between the amount the individual paid for the good**
12 **or service in the transaction that resulted in the individual's loss and the market value of**
13 **the good or service the individual received.** [or \$200, whichever is greater.] The court or the jury,
14 as the case may be, may award punitive damages and the court may provide the equitable relief the
15 court considers necessary or proper.

16 **(2) An individual may bring an action under subsection (1) of this section to recover**
17 **damages only for an ascertainable loss of money or property that results from a purchase**
18 **or lease of goods or services for personal, family or household purposes. The individual must**
19 **prove that the unlawful method, act or practice caused the individual to enter into the**
20 **transaction that resulted in the ascertainable loss of money or property. An award of dam-**
21 **ages may not be made for an action brought under this section unless the individual proves**
22 **that the individual suffered actual damages measured in accordance with the provisions of**
23 **subsection (1) of this section.**

24 [(2)] **(3)** Upon commencement of [any] **an** action brought under subsection (1) of this section the
25 party bringing the action shall mail a copy of the complaint or other initial pleading to the Attorney
26 General and, upon entry of [any] **a** 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] **is not** a jurisdictional de-
28 fect, but a court may not enter judgment for the plaintiff until proof of mailing is filed with the
29 court. Proof of mailing may be by affidavit or by return receipt of mailing.

30 [(3)] **(4)** Except as provided in subsection [(4)] **(5)** of this section, the court may award reason-

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 able attorney fees to the prevailing party in an action under this section.

2 [(4)] (5) The court may not award attorney fees to a prevailing defendant under the provisions
 3 of subsection [(3)] (4) of this section if the action under this section is maintained as a class action
 4 pursuant to ORCP 32.

5 [(5)] (6) [Any] A permanent injunction or final judgment or order of the court made under ORS
 6 646.632 or 646.636 is prima facie evidence in an action brought under this section that the re-
 7 spondent used or employed a method, act or practice declared unlawful by ORS 646.608, but an as-
 8 surance of voluntary compliance, whether or not approved by the court, [shall not be] **is not**
 9 evidence of the violation.

10 [(6)] (7) Actions brought under this section [shall] **must** be commenced within one year from the
 11 discovery of the unlawful method, act or practice. However, whenever [any] **a prosecuting attorney**
 12 **files a** complaint [is filed by a prosecuting attorney] to prevent, restrain or punish violations of ORS
 13 646.608, running of the statute of limitations with respect to [every] **a** private right of action under
 14 this section and based in whole or in part on [any] **a** matter complained of in [said] **the** proceeding
 15 [shall be] **is** suspended during the pendency [thereof] **of the proceeding**.

16 [(7)] (8) Notwithstanding subsection [(6)] (7) of this section, in [any] **an** action [brought by] a
 17 seller or lessor **brings** against a purchaser or lessee of real estate, goods or services, the purchaser
 18 or lessee may assert any counterclaim the purchaser or lessee has [arising] **that arises** out of a
 19 violation of ORS 646.605 to 646.652.

20 [(8)] (9) This section does not apply to [any] **a** method, act or practice described in ORS 646.608
 21 (1)(aa). Actions for violation of laws relating to odometers are provided under ORS 815.410 and
 22 815.415.

23 **SECTION 2. The amendments to ORS 646.638 by section 1 of this 2009 Act apply to**
 24 **actions brought under section 1 of this 2009 Act on or after the effective date of this 2009**
 25 **Act.**

26 **SECTION 3. This 2009 Act takes effect on the 91st day after the date on which the reg-**
 27 **ular session of the Seventy-fifth Legislative Assembly adjourns sine die.**

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