

**SENATE MINORITY REPORT
AMENDMENTS TO
A-ENGROSSED HOUSE BILL 3706**

February 22

President Courtney:

A minority of your Committee on Rules, to whom was referred A-engrossed House Bill 3706, having had the same under consideration, respectfully reports it back with the recommendation that it do pass with the following amendments:

- 1 On page 1 of the printed A-engrossed bill, delete line 3 and insert “646.605, 646.618, 646.632 and
2 646.638; and declaring an emergency.”.
- 3 In line 24, after “(6)” insert “(a)”.
- 4 On page 2, line 1, after the period delete the rest of the line and lines 2 and 3 and insert:
5 “(b) Notwithstanding paragraph (a) of this subsection:
6 “(A) ‘Real estate’ does not cover conduct covered by ORS chapter 90, except as provided in
7 section 2, chapter 658, Oregon Laws 2003.
8 “(B) ‘Loans and extensions of credit’ does not include transactions involving a mortgage broker,
9 as defined in ORS 86A.100.”.
- 10 On page 4, line 11, after “(6)” insert “(a)”.
- 11 In line 14, after the period delete the rest of the line and line 15 and insert:
12 “(b) Notwithstanding paragraph (a) of this subsection:
13 “(A) ‘Real estate’ does not cover conduct covered by ORS chapter 90.
14 “(B) ‘Loans and extensions of credit’ does not include transactions involving a mortgage broker,
15 as defined in ORS 86A.100.”.
- 16 On page 6, line 3, delete “6” and insert “7”.
- 17 In line 18, delete “6” and insert “7”.
- 18 On page 7, after line 31, insert:
19 “**SECTION 5.** ORS 646.638 is amended to read:
20 “646.638. (1) Except as provided in subsections (8) [*and*], (9) **and** (10) of this section, any person
21 who suffers any ascertainable loss of money or property, real or personal, as a result of willful use
22 or employment by another person of a method, act or practice declared unlawful by ORS 646.608,
23 may bring an individual action in an appropriate court to recover actual damages or statutory
24 damages of \$200, whichever is greater. The court or the jury, as the case may be, may award puni-
25 tive damages and the court may provide the equitable relief the court considers necessary or proper.
26 “(2) Upon commencement of any action brought under subsection (1) of this section the party
27 bringing the action shall mail a copy of the complaint or other initial pleading to the Attorney
28 General and, upon entry of any judgment in the action, shall mail a copy of the judgment to the
29 Attorney General. Failure to mail a copy of the complaint shall not be a jurisdictional defect, but
30 a court may not enter judgment for the plaintiff until proof of mailing is filed with the court. Proof
31 of mailing may be by affidavit or by return receipt of mailing.
32 “(3) The court may award reasonable attorney fees and costs at trial and on appeal to a pre-

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

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

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

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

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

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

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

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

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

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

28 **“(10) This section does not apply to any method, act or practice involving real estate,
29 goods or services that arises out of a loan or extension of credit.”.**

30 In line 32, delete “5” and insert “6” and delete “6” and insert “7”.

31 In line 34, delete “6” and insert “7”.

32 On page 8, line 12, delete “7” and insert “8”.

33 /s/ Ted Ferrioli
34 Senator

35 /s/ Jason Atkinson
36 Senator

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