

House Bill 3288

Sponsored by COMMITTEE ON JUDICIARY (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**.

Limits plaintiffs in civil action for unlawful business or trade practice to natural persons.

Limits damages that can be recovered by natural persons for unlawful business or trade practices.

A BILL FOR AN ACT

1
2 Relating to civil actions for unlawful practices; creating new provisions; and 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)(a) Except as provided in subsections (8) and (9) of this section, *[any]* **a natural**
6 person who suffers *[any ascertainable loss of money or property, real or personal,]* **damages** as a re-
7 sult of willful use or employment by *[another]* **a** person of a method, act or practice declared un-
8 lawful by ORS 646.608^[.] **that causes the natural person to enter into a transaction involving**
9 **real estate, goods or services with the person** may bring an individual action in an appropriate
10 court to recover *[actual damages or statutory damages of \$200, whichever is greater]* **damages.**

11 **(b) Damages that may be recovered in an action under this subsection are limited to the**
12 **difference between the amount paid by the natural person for real estate, goods or services**
13 **and the fair market value of the real estate, goods or services the natural person actually**
14 **received.**

15 **(c)** The court or the jury, as the case may be, may award punitive damages and the court may
16 provide the equitable relief the court considers necessary or proper.

17 (2) Upon commencement of *[any]* **an** action *[brought]* under subsection (1) of this section, the
18 party bringing the action shall mail a copy of the complaint or other initial pleading to the Attorney
19 General and, upon entry of any judgment in the action, shall mail a copy of the judgment to the
20 Attorney General. Failure to mail a copy of the complaint shall not be a jurisdictional defect, but
21 a court may not enter judgment for the plaintiff until proof of mailing is filed with the court. Proof
22 of mailing may be by affidavit or by return receipt of mailing.

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

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

30 (5) Any permanent injunction or final judgment or order of the court made under ORS 646.632
31 or 646.636 is prima facie evidence in an action brought under this section that the respondent used

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 or employed a method, act or practice declared unlawful by ORS 646.608, but an assurance of vol-
2 untary compliance, whether or not approved by the court, shall not be evidence of the violation.

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

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

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

12 (a) [Statutory] Damages under subsection (1) of this section may be recovered on behalf of class
13 members only if the plaintiffs in the action establish that the members have sustained [*an*
14 *ascertainable loss of money or property*] **damages** as a result of a reckless or knowing use or em-
15 ployment by the defendant of a method, act or practice declared unlawful by ORS 646.608;

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

17 (c) The court may award appropriate equitable relief.

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

20 **SECTION 2. The amendments to ORS 646.638 by section 1 of this 2011 Act apply to**
21 **actions commenced on or after the effective date of this 2011 Act.**

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