

Senate Bill 864

Sponsored by Senator BONAMICI

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**.

Allows civil action by private party under Unlawful Trade Practices Act for unlawful collection practice.

A BILL FOR AN ACT

Relating to unlawful collection practices; 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 subsections (8) and (9) 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 **646.607 (6) or** 646.608, may bring an individual action in an appropriate court to recover actual damages or statutory damages of \$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) 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 **646.607 (6) or** 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

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 attorney to prevent, restrain or punish violations of ORS **646.607 (6) or** 646.608, running of the
2 statute of limitations with respect to every private right of action under this section and based in
3 whole or in part on any matter complained of in said proceeding shall be suspended during the
4 pendency thereof.

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

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

9 (a) Statutory damages under subsection (1) of this section may be recovered on behalf of class
10 members only if the plaintiffs in the action establish that the members have sustained an
11 ascertainable loss of money or property as a result of a reckless or knowing use or employment by
12 the defendant of a method, act or practice declared unlawful by ORS **646.607 (6) or** 646.608;

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

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

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

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