

House Bill 2546

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

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 class of plaintiffs for civil action for unlawful practice to natural persons.
Limits damages that natural persons may recover for unlawful practice.

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 **a person willfully** *[willful use or employment by another person of]* **using or employing** a
8 method, act or practice declared unlawful *[by]* **under** ORS 646.608*[,]* **that causes the natural per-**
9 **son to enter into a transaction with the person that involves real estate, goods or services**
10 may bring an individual action in an appropriate court to recover *[actual damages or statutory*
11 *damages of \$200, whichever is greater]* **damages.**

12 **(b) A natural person who brings an action under this subsection may not recover more**
13 **in damages than the difference between the amount the natural person paid for real estate,**
14 **goods or services and the fair market value of the real estate, goods or services the natural**
15 **person actually received.**

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

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

26 (3) The court may award reasonable attorney fees and costs at trial and on appeal to a pre-
27 vailing plaintiff in an action under this section. The court may award reasonable attorney fees and
28 costs at trial and on appeal to a prevailing defendant only if the court finds *[there was no]* **that the**
29 **plaintiff did not have an** objectively reasonable basis for bringing the action or asserting the
30 ground for appeal.

31 (4) The court may not award attorney fees to a prevailing defendant under the provisions of

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 subsection (3) of this section if the action under this section is maintained as a class action pursuant
 2 to ORCP 32.

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

8 (6)(a) **Except as provided in paragraph (b) of this subsection**, actions brought under this
 9 section [shall] **must** be commenced within one year [from] **after** the discovery of the unlawful
 10 method, act or practice.

11 (b) [However, whenever any complaint is filed by] **If** a prosecuting attorney **files a complaint** to
 12 prevent, restrain or punish violations of ORS 646.608, **during the time in which the prosecuting**
 13 **attorney's complaint is pending** [running of] the statute of limitations **is suspended** with respect
 14 to every private right of action under this section [and] **that is** based in whole or in part on [any
 15 matter complained of in said proceeding shall be suspended during the pendency thereof] **the claim**
 16 **the prosecuting attorney files.**

17 (7) Notwithstanding subsection (6) of this section, in any action [brought by] a seller or lessor
 18 **brings** against a purchaser or lessee of real estate, goods or services, the purchaser or lessee may
 19 assert any counterclaim the purchaser or lessee has [arising] **that arises** out of a violation of ORS
 20 646.605 to 646.652.

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

22 (a) [Statutory] **Plaintiffs may recover** damages under subsection (1) of this section [may be re-
 23 covered] on behalf of class members only if the plaintiffs [in the action] establish that the members
 24 have sustained [an ascertainable loss of money or property] **damages** as a result of [a] **the**
 25 **defendant's** reckless or knowing use or employment [by the defendant] of a method, act or practice
 26 declared unlawful [by] **under** ORS 646.608;

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

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

29 (9) This section does not apply to [any] a method, act or practice described in ORS 646.608
 30 (1)(aa). Actions for [violation of] **violating** laws relating to odometers are provided under ORS
 31 815.410 and 815.415.

32 **SECTION 2. The amendments to ORS 646.638 by section 1 of this 2013 Act apply to**
 33 **actions that plaintiffs commence on or after the effective date of this 2013 Act.**