

D R A F T

SUMMARY

Requires person that intends to bring action under Unlawful Trade Practices Act to notify prospective defendant at least 30 days before bringing action and to offer prospective defendant opportunity to restore, reimburse or otherwise remedy person's loss. Provides that court may not award attorney fees to plaintiff unless plaintiff has provided notification to prospective defendant. Permits court to award attorney fees to prevailing defendant if defendant responded to notification with good-faith attempt to restore, reimburse or otherwise remedy plaintiff's loss.

A BILL FOR AN ACT

1
2 Relating to required notifications before bringing an action under the Un-
3 lawful Trade Practices Act; creating new provisions; and amending ORS
4 646.638.

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

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

7 646.638. (1) Except as provided in subsections (8) and (9) of this section,
8 a person that suffers an ascertainable loss of money or property, real or
9 personal, as a result of another person's willful use or employment of a
10 method, act or practice [*declared*] **that is** unlawful under ORS 646.608, may
11 bring an individual action in an appropriate court to recover actual damages
12 or statutory damages of \$200, whichever is greater. The court or the jury
13 may award punitive damages and the court may provide any equitable relief
14 the court considers necessary or proper.

15 (2)(a) A person that [*brings*] **intends to bring** an action under subsection
16 (1) of this section shall **notify the prospective defendant of the person's**
17 **intent at least 30 days before bringing the action and offer the pro-**

1 **spective defendant an opportunity to restore, reimburse or otherwise**
2 **remedy the person's loss.**

3 **(b) If a prospective defendant does not respond to a notification**
4 **under paragraph (a) of this subsection or does not adequately restore,**
5 **reimburse or otherwise remedy the person's loss and the person com-**
6 **mences an action, the person shall** mail a copy of the complaint or other
7 initial pleading to the Attorney General at the time the action commences
8 and, upon entry of any judgment in the action, shall mail a copy of the
9 judgment to the Attorney General. Failure to mail a copy of the complaint
10 is not a jurisdictional defect, but a court may not enter judgment for the
11 plaintiff until proof of mailing is filed with the court. Proof of mailing may
12 be by affidavit or by return receipt of mailing.

13 (3) [*The*] **A** court may award reasonable attorney fees and costs at trial
14 and on appeal to a prevailing plaintiff in an action under this section **unless**
15 **the plaintiff has failed to give the notification described in subsection**
16 **(2)(a) of this section.** The court may award reasonable attorney fees and
17 costs at trial and on appeal to a prevailing defendant only if:

18 **(a)** The court finds that an objectively reasonable basis for bringing the
19 action or asserting the ground for appeal did not exist[.]; **or**

20 **(b) The defendant responded to a notification under subsection**
21 **(2)(a) of this section with a good-faith attempt to restore, reimburse**
22 **or otherwise remedy the plaintiff's loss.**

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

26 (5) Any permanent injunction or final judgment or order the court makes
27 under ORS 646.632 or 646.636 is prima facie evidence in an action brought
28 under this section that the respondent used or employed a method, act or
29 practice [*declared*] **that is** unlawful under ORS 646.608, but an assurance of
30 voluntary compliance, whether or not approved by the court, is not evidence
31 of the violation.

1 (6) Actions brought under this section must be commenced within one
2 year after the discovery of the unlawful method, act or practice. Notwith-
3 standing this limitation, if a prosecuting attorney filed a complaint to pre-
4 vent, restrain or punish a violation of ORS 646.608, the complaint tolls the
5 statute of limitations with respect to every private right of action under this
6 section that is based in whole or in part on any matter set forth in the
7 prosecuting attorney's complaint for the period of time in which the pro-
8 ceeding that the prosecuting attorney initiated is pending.

9 (7) Notwithstanding subsection (6) of this section, in any action that a
10 seller or lessor brings against a purchaser or lessee of real estate, goods or
11 services, the purchaser or lessee may assert any counterclaim that the pur-
12 chaser or lessee has arising out of a violation of ORS 336.184 and 646.605 to
13 646.652.

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

16 (a) Statutory damages under subsection (1) of this section may be recov-
17 ered on behalf of class members only if the plaintiffs in the action establish
18 that the members have sustained an ascertainable loss of money or property
19 as a result of a reckless or knowing use or employment by the defendant of
20 a method, act or practice [*declared*] **that is** unlawful [*by*] **under** ORS 646.608;

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

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

23 (9) This section does not apply to:

24 (a) Any method, act or practice described in ORS 646.608 (1)(aa). Actions
25 for violation of laws relating to odometers are provided under ORS 815.410
26 and 815.415.

27 (b) A violation of ORS 86.726 (1)(a) or (2), 86.729 (4) or 86.732 (1) or (2).

28 **SECTION 2. The amendments to ORS 646.638 by section 1 of this**
29 **2017 Act apply to actions that a person brings or intends to bring on**
30 **or after the effective date of this 2017 Act.**

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