

Senate Bill 976

Sponsored by COMMITTEE ON BUSINESS AND TRANSPORTATION (at the request of Oregon Vehicle Dealer Association)

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**.

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 Unlawful Trade Practices Act;
3 creating new provisions; and amending ORS 646.638.

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

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

6 646.638. (1) Except as provided in subsections (8) and (9) of this section, a person that suffers
7 an ascertainable loss of money or property, real or personal, as a result of another person's willful
8 use or employment of a method, act or practice [*declared*] **that is** unlawful under ORS 646.608, may
9 bring an individual action in an appropriate court to recover actual damages or statutory damages
10 of \$200, whichever is greater. The court or the jury may award punitive damages and the court may
11 provide any equitable relief the court considers necessary or proper.

12 (2)(a) A person that [*brings*] **intends to bring** an action under subsection (1) of this section
13 shall **notify the prospective defendant of the person's intent at least 30 days before bringing**
14 **the action and offer the prospective defendant an opportunity to restore, reimburse or oth-**
15 **erwise remedy the person's loss.**

16 (b) **If a prospective defendant does not respond to a notification under paragraph (a) of**
17 **this subsection or does not adequately restore, reimburse or otherwise remedy the person's**
18 **loss and the person commences an action, the person shall** mail a copy of the complaint or
19 other initial pleading to the Attorney General at the time the action commences and, upon entry
20 of any judgment in the action, shall mail a copy of the judgment to the Attorney General. Failure
21 to mail a copy of the complaint is not a jurisdictional defect, but a court may not enter judgment
22 for the plaintiff until proof of mailing is filed with the court. Proof of mailing may be by affidavit
23 or by return receipt of mailing.

24 (3) [*The*] **A** court may award reasonable attorney fees and costs at trial and on appeal to a
25 prevailing plaintiff in an action under this section **unless the plaintiff has failed to give the no-**
26 **tification described in subsection (2)(a) of this section.** The court may award reasonable attor-
27 ney fees and costs at trial and on appeal to a prevailing defendant only if:

28 (a) The court finds that an objectively reasonable basis for bringing the action or asserting the

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 ground for appeal did not exist[.]; or

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

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 the court makes under ORS 646.632 or
 8 646.636 is prima facie evidence in an action brought under this section that the respondent used or
 9 employed a method, act or practice [*declared*] **that is** unlawful under ORS 646.608, but an assurance
 10 of voluntary compliance, whether or not approved by the court, is not evidence of the violation.

11 (6) Actions brought under this section must be commenced within one year after the discovery
 12 of the unlawful method, act or practice. Notwithstanding this limitation, if a prosecuting attorney
 13 filed a complaint to prevent, restrain or punish a violation of ORS 646.608, the complaint tolls the
 14 statute of limitations with respect to every private right of action under this section that is based
 15 in whole or in part on any matter set forth in the prosecuting attorney's complaint for the period
 16 of time in which the proceeding that the prosecuting attorney initiated is pending.

17 (7) Notwithstanding subsection (6) of this section, in any action that a seller or lessor brings
 18 against a purchaser or lessee of real estate, goods or services, the purchaser or lessee may assert
 19 any counterclaim that the purchaser or lessee has arising out of a violation of ORS 336.184 and
 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 damages under subsection (1) of this section may be recovered on behalf of class
 23 members only if the plaintiffs in the action establish that the members have sustained an
 24 ascertainable loss of money or property as a result of a reckless or knowing use or employment by
 25 the defendant of a method, act or practice [*declared*] **that is** unlawful [*by*] **under** ORS 646.608;

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

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

28 (9) This section does not apply to:

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

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

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