

Senate Bill 215

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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 attorneys for natural persons in antitrust class to notify Attorney General of filing and proposed settlement of claims under state antitrust laws.

A BILL FOR AN ACT

1
2 Relating to notice to the Attorney General in antitrust class actions; creating new provisions; and
3 amending ORS 646.780.

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

5 **SECTION 1.** ORS 646.780 is amended to read:

6 646.780. (1)(a) A person including the state or any political subdivision in the state injured in
7 its business or property by a violation of ORS 646.725 or 646.730 may sue for the injury and shall
8 recover three times the damages sustained. The state may bring the action authorized by this par-
9 agraph regardless of whether the state dealt directly or indirectly with the adverse party.

10 (b) Notwithstanding paragraph (a) of this subsection, the state may recover only the state's ac-
11 tual damages sustained and any attorney fees, expert witness fees or investigative costs that the
12 court may award under subsection (3) of this section, if the state:

13 (A) Brings an action under ORS 646.760;

14 (B) Commences a prosecution under ORS 646.815 and 646.990 (2); or

15 (C) Brings an action for an injury that the state suffered by dealing indirectly with the adverse
16 party and the state establishes a violation other than a per se violation of ORS 646.725.

17 (c) Notwithstanding paragraph (a) of this subsection, in any action under this section in which
18 the plaintiff prevails solely on the basis of a judgment or decree entered in a proceeding under 15
19 U.S.C. 1 to 45 or in another action by the state under ORS 646.760, 646.770 or this section, used as
20 collateral estoppel against a defendant pursuant to ORS 646.805, plaintiff's recovery shall be limited
21 to the actual damages sustained and any attorney fees, expert witness fees or investigative costs
22 that may be awarded under subsection (3) of this section.

23 (2) Unless there is a subsequent judgment that the court lacks jurisdiction, the taking of any
24 testimony at the commencement of trial on a civil complaint for damages filed under the antitrust
25 laws of the United States shall constitute an absolute bar and waiver of any right of a plaintiff in
26 such action to recover damages from the same defendant under this section for the same or sub-
27 stantially the same acts of plaintiff.

28 (3)(a) Except as provided in subsection (4) of this section, in an action brought under the pro-
29 visions of this section by a person other than the state or any political subdivision in the state, the
30 court may award reasonable attorney fees, expert witness fees and investigative costs to the pre-

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 vailing party.

2 (b) Except as provided in subsection (4) of this section, in a civil action brought under the pro-
3 visions of this section or under ORS 646.760 by the state or any political subdivision in the state:

4 (A) The court may award reasonable attorney fees, expert witness fees and investigative costs
5 to the state or political subdivision if the state or political subdivision prevails in the action; and

6 (B) The court may award reasonable attorney fees, expert witness fees and investigative costs
7 to a defendant who prevails in an action under this section if the court determines that the state
8 or political subdivision had no objectively reasonable basis for asserting the claim or no reasonable
9 basis for appealing an adverse decision of the trial court.

10 (4) The court may not award attorney fees, expert witness fees or investigative costs to a pre-
11 vailing defendant under the provisions of this section if the action is maintained as a class action
12 pursuant to ORCP 32.

13 **(5)(a) If a person other than the state brings an action under this section and seeks to**
14 **maintain the action on behalf of a class of natural persons alleging a violation of ORS 646.725**
15 **or 646.730, the attorneys for the person shall, within 30 days of the filing of the action, pro-**
16 **vide to the Attorney General:**

17 (A) Written notice of the filing of the action; and

18 (B) A copy of the complaint in the action.

19 (b) **If the settlement of a class action contemplates the waiver or release of claims of**
20 **natural persons under ORS 646.725 or 646.730, the attorneys for the plaintiff class shall pro-**
21 **vide to the Attorney General:**

22 (A) Written notice of the proposed settlement;

23 (B) A copy of the proposed settlement agreement and proposed judgment documents; and

24 (C) A copy of the documents submitted to the court in support of the proposed settle-
25 ment agreement and proposed judgment documents.

26 (c) The attorneys for the plaintiff class shall provide the information required by para-
27 graph (b) of this subsection at the earlier of:

28 (A) The time that notice is first given to any putative member of the class.

29 (B) Forty-five days before the last date on which the public may submit comments to the
30 court on the proposed settlement.

31 (C) Forty-five days before the deadline for natural persons to opt out of the proposed
32 settlement.

33 (d) Notice to the Attorney General under paragraph (b) of this subsection does not:

34 (A) Constitute approval of the proposed settlement by the Attorney General.

35 (B) Impose an obligation on the Attorney General to take a position on the proposed
36 settlement.

37 (e) **If a person does not provide the information required by paragraph (b) of this sub-**
38 **section within the time required by paragraph (c) of this subsection and the court approves**
39 **the settlement, the court shall, upon the request of the Attorney General, set aside the**
40 **settlement.**

41 **SECTION 2. (1) The amendments to ORS 646.780 by section 1 of this 2005 Act apply to**
42 **actions pending on or after the effective date of this 2005 Act.**

43 **(2) If an action has been pending for more than 30 days on the effective date of this 2005**
44 **Act, the attorneys shall provide the notice and copy required by ORS 646.780 (5)(a) within 30**
45 **days after the effective date of this 2005 Act.**

