



## OREGON LIABILITY REFORM COALITION

TO: Chair Holvey, Members of the House Business and Labor Committee  
FROM: Fawn Barrie, Oregon Liability Reform Coalition  
RE: Harmful Lawsuit provisions in HB 2698

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HB 2698 has expansive liability provisions and would establish Oregon as a state to test class action lawsuits against a variety of equipment manufacturers over what is and is not a trade secret, what must be supplied and how it must be supplied.

A person that suffers an "ascertainable" loss as a result of an original equipment manufacturer's failure to comply may file an individual or class action lawsuit to recover the greater of the person's actual damages or statutory damages of \$1,000.

An ascertainable loss in Oregon doesn't mean significant monetary damages and can simply be based on the fact the person received something different than expected. If a plaintiff is filing a suit under this legislation, proving an ascertainable loss would be very easy to do for both a consumer and a repair shop.

The language in this bill is lifted from the Unlawful Trade Protection Act or UTPA which allows consumers to recover damages for a variety of consumer protection issues. When negotiating with proponents on legislation, our organization always prefers an enforcement mechanism as opposed to a private right of action. Under the UTPA, there are provisions subject to a private right of action that include the ability to file class action lawsuits, but there is also a section of the UTPA that only allows for the Attorney General to bring an action. ORLRC has always worked to limit adding additional provisions to the UTPA that will be subject to a private right of action and class action lawsuits in favor of allowing the AG to take action.

It's unusual for legislation to include litigation provisions that are actually worse than the threat of a UTPA violation. The UTPA statute limits statutory damages to \$200. We have seen massive verdicts and settlements in Oregon based on the \$200 statutory damages in the UTPA including a \$600 million verdict concerning a 35-cent charge that had not been properly displayed. The potential for class action lawsuits under this bill is staggering because the statutory damages in this bill of \$1,000 is five times that in the UTPA. Additionally, these liability provisions appear to apply to both the consumer AND the repair provider, essentially lifting consumer protection relief from the UTPA and applying it to a business to business relationship specifically exempt from the UTPA. This opens up the equipment manufacturer to two separate class action suits with massive statutory damages when aggregated. If this legislation passes, attorneys will seek out plaintiffs and cases to test for class action suits specifically because of this legislation. The questions around what is and is not a trade secret will be subject to class action lawsuits. The bill also applies to any covered product in service when the bill passes which means there are no limits on how far back a consumer or repair shop could go in identifying the products potentially subject to these lawsuits.

I would just close by saying if the legislature chooses to pass this bill, it will be the first in the country to do so. There are so many questions about how this legislation will play out and how issues around what is and is not required will be determined. We urge you not to pass this legislation especially with these harmful lawsuit provisions.

### **Fawn Barrie**

Executive Director  
Oregon Liability Reform Coalition