

Enrolled Senate Bill 310

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary and Ballot Measure 110 Implementation for Department of Justice)

CHAPTER

AN ACT

Relating to antitrust enforcement; creating new provisions; amending ORS 646.705, 646.760, 646.770, 646.775, 646.780, 646.815 and 646.990; repealing ORS 646.790; and prescribing an effective date.

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

SECTION 1. ORS 646.705 is amended to read:

646.705. (1) As used in ORS [136.617 and] 646.705 to 646.805[,]:

(a) **“Public body” has the meaning given that term in ORS 174.109.**

(b) “Trade or commerce” means trade or commerce within [the state;] **this state** or between [the] **this** state and any state, territory, or foreign nation.

(2) As used in ORS 646.775, “natural persons” [shall] **does** not include proprietorships, [or] partnerships **or other business entities.**

SECTION 2. ORS 646.760 is amended to read:

646.760. (1) The Attorney General may prosecute an action for appropriate injunctive relief and civil penalties in the name of the state for any violation of ORS [646.725 or 646.730] **646.705 to 646.805.** The court may assess for the benefit of the state a civil penalty of not more than [\$250,000] **\$1 million** for each violation of ORS [136.617,] 646.705 to 646.805 [and 646.990]. **A court may find that** any act or series of acts by [one or more individual persons (officers, agents or partners)] **an officer, partner or agent of a business entity** on behalf of [a corporation or other] **the** business entity [may be found to constitute] **constitutes** a violation or violations by [such] **the** individual person [or persons as well as by the corporation or other] **as well as the** business entity[, and]. **The court may impose** separate penalties [may be imposed] against each [of such] individual [defendants and corporate or other] **as well as the** business entity [defendants] for [such a] **each** violation. The court may award reasonable attorney fees, expert [witness] fees and costs of investigation to the Attorney General if the Attorney General prevails in an action under this section. The court may award reasonable attorney fees, expert [witness] fees and costs of investigation to a defendant who prevails in an action under this section if the court determines that the Attorney General had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(2) The **Attorney General’s** complaint may also seek, and the court may order, in an appropriate case, the forfeiture of any corporate franchise, **business entity registration**, professional or business license[,] **or** right to do business or to use an assumed business name[, where] **if** the court

finds *[the use by any defendant]* a defendant's use of *[such]* the franchise, **business entity registration**, license or right has been material to a violation of ORS 646.725 or 646.730.

(3) The court shall take into consideration in mitigation of any penalty assessed under this section, any fine or penalty imposed against the defendant by a United States court in a final judgment under *[sections 1 to 45 of Title 15 of the United States Code]* **15 U.S.C. 1 to 45**, which the court finds to be based on the same or substantially the same acts of defendant.

SECTION 3. ORS 646.770 is amended to read:

646.770. (1) Any person, including the state or *[any municipal corporation or political subdivision]* a **public body**, threatened with injury *[in its]* to the person's business or property *[by]* from a violation of ORS 646.725 or 646.730 may prosecute a suit for equitable relief, and in addition to such relief shall recover the costs of suit, including necessary reasonable investigative costs and reasonable *[experts']* **expert** fees.

(2) Except as provided in subsection (3) of this section, in an action *[brought]* **that a person, other than the state or a public body, brings** under the provisions of this section *[by a person other than the state or any municipal corporation or political subdivision of the state]*, the court may award reasonable attorney fees to the prevailing party. Except as provided in subsection (3) of this section, in a civil action *[brought]* **that the state or a public body brings** under the provisions of this section *[by the state or any municipal corporation or political subdivision of the state]*:

(a) The court may award reasonable attorney fees to the state or *[political subdivision of the state]* **the public body** if the state or *[political subdivision]* **public body** prevails in the action; and

(b) The court may award reasonable attorney fees to a defendant who prevails in an action under this section if the court determines that the state or *[any municipal corporation or political subdivision of the state]* **the public body** had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(3) The court may not award attorney fees to a prevailing defendant under the provisions of subsection (2) of this section if the action under this section is maintained as a class action *[pursuant to]* **under ORCP 32.**

SECTION 4. ORS 646.775 is amended to read:

646.775. (1)(a) The Attorney General may bring a civil action in the name of the State of Oregon, on behalf of a *[political subdivision in this state]* **public body** or as *parens patriae* on behalf of a natural person, *in any circuit court in which venue is proper under ORS 646.790, to secure equitable and monetary relief as provided in this section]* for injury *[sustained by]* **that** the natural person or *[political subdivision]* **the state or the public body sustained** to the natural person's, **the state's** or *[political subdivision's]* **the public body's** property by reason of a violation of ORS 646.725 or 646.730. **In the action, the Attorney General may seek:**

(A) **Equitable relief, including disgorgement of any gains;**

(B) **Injunctive relief; and**

(C) **Monetary relief.**

(b) The Attorney General may bring *[the action authorized by this paragraph]* **an action under this subsection** regardless of whether the natural person, *[or political subdivision]* **the state or the public body** dealt directly or indirectly with the adverse party.

(c) **Subject to paragraphs (d) and (e) of this subsection, the court shall award to the Attorney General on behalf of a natural person, the state or a public body three times the total damages that the natural person, the state or the public body sustained from the violation plus the Attorney General's costs in bringing the action. The court may award to the Attorney General reasonable attorney fees and expert fees and costs of investigation if the Attorney General prevails in an action under this subsection.**

[(b)] (d) The court shall exclude from the amount of monetary relief awarded in an action *[pursuant to paragraph (a) of]* **under** this subsection any amount of monetary relief:

(A) That duplicates amounts that have been awarded for the same injury; or

(B) That is properly allocable to natural persons who have excluded their claims pursuant to subsection (2)(b) of this section, or to any business entity.

[(c)(A) Subject to paragraph (b) of this subsection, the court shall award the state as monetary relief three times the total damages sustained by natural persons and political subdivisions and the costs the state incurs in the action.]

[(B) The court may award reasonable attorney fees to the Attorney General if the Attorney General prevails in an action under this section.]

[(C) The court may award reasonable attorney fees to a defendant who prevails in an action under this section if the court determines that the Attorney General had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.]

[(d) Notwithstanding paragraph (c) of this subsection, the court shall award the state only the actual damages sustained by natural persons and political subdivisions in an action in which:]

*[(A)] (e) **The court shall award to the Attorney General only the actual damages that the natural person, the state or the public body sustains** if the Attorney General prevails solely on the basis of a judgment entered in a proceeding under 15 U.S.C. 1 to 45, or in another action by the state under ORS 646.760, 646.770 or 646.780, **that is** used as collateral estoppel against the defendant under ORS 646.805.[: or]*

[(B) The natural person or political subdivision dealt indirectly with the adverse party and the Attorney General establishes a violation other than a per se violation of ORS 646.725.]

(f) The court may award reasonable attorney fees to a defendant that prevails in an action under this subsection if the court determines that the Attorney General had no objectively reasonable basis for asserting the claim or no reasonable basis for appealing an adverse decision of the trial court.

(2)(a) In any action *[pursuant to subsection (1)(a)]* **the Attorney General brings under subsection (1)** of this section, the Attorney General shall, at the times, in the manner and with the content the court directs, give notice by publication. If the court finds that notice given solely by publication would deny due process of law to a natural person or *[political subdivision]* **a public body**, the court may direct further notice to the natural person or *[political subdivision]* **public body** according to the circumstances of the case.

(b) Any natural person or *[political subdivision]* **public body** on whose behalf **the Attorney General brings** an action *[is brought pursuant to subsection (1)(a)]* **under subsection (1)** of this section may elect to exclude from adjudication the portion of the claim for monetary relief attributable to the natural person or *[political subdivision]* **public body** by filing notice of the election with the court within the time specified in the notice given pursuant to paragraph (a) of this subsection.

(c) The final judgment in an action *[pursuant to subsection (1)(a)]* **under subsection (1)** of this section *[shall be]* **is** res judicata as to any claim *[under this section by]* any natural person or *[political subdivision on behalf of whom such action was brought and who]* **public body has in an action that the Attorney General brought on behalf of the natural person or the public body if the natural person or public body** fails to give the notice specified in paragraph (b) of this subsection within the period specified in the notice *[given pursuant to]* **the Attorney General gives under** paragraph (a) of this subsection.

(3) An action *[pursuant to subsection (1)(a)]* **under subsection (1)** of this section *[shall]* **may** not be dismissed or compromised without the approval of the court, and the notice of any proposed dismissal or compromise *[shall]* **must** be given in the manner the court directs.

(4) In any action *[pursuant to subsection (1)(a)]* **under subsection (1)** of this section in which there has been a determination that a defendant agreed to fix prices in violation of ORS 646.725, damages may be proved and assessed in the aggregate by statistical or sampling methods, by the computation and pro rata allocation of illegal overcharges, or by any other reasonable system of estimating aggregate damages *[as]* **that** the court in *[its]* **the court's** discretion may permit without the necessity of separately proving the individual claim of, or amount of damage to, **the** natural *[persons or political subdivisions]* **person or public body** on whose behalf the *[suit was]* **the Attorney General** brought **the action**.

(5)(a) Monetary relief recovered in an action [pursuant to subsection (1)(a)] **under subsection (1)** of this section [shall] **must** be distributed in the manner the court in [its] **the court's** discretion may authorize, subject to the requirement that any distribution procedure adopted afford a **reasonable opportunity to secure an appropriate portion of the net monetary relief** to each natural person or [political subdivision] **public body** on whose behalf the [suit was] **the Attorney General** brought **the action** [a reasonable opportunity to secure an appropriate portion of the net monetary relief].

(b) The Attorney General shall deposit that portion of the monetary relief [awarded by] the court **awards** as costs of [suit] **the action** and a reasonable attorney fee in the Department of Justice Protection and Education Revolving Account established pursuant to ORS 180.095.

(c) To the extent that the monetary relief [awarded by] the court **awards** is not exhausted by distribution [pursuant to] **under** paragraphs (a) and (b) of this subsection, the remaining funds [shall be deemed] **are** a civil penalty [by the court and assessed as such] for the benefit of the state [pursuant to] **under** ORS 646.760.

(6) The powers granted in this section are in addition to and not in derogation of the common law powers of the Attorney General to act as parens patriae, or the powers of the Attorney General to sue as a representative party on behalf of a class [pursuant to] **under** ORCP 32.

SECTION 5. ORS 646.780 is amended to read:

646.780. (1)(a) A person, the state or [any political subdivision in the state injured in its business or property by a violation of ORS 646.725 or 646.730 may sue for the injury and shall recover three times the damages sustained] **a public body may bring an action for an injury to the person's, the state's or the public body's business or property from a violation of ORS 646.705 to 646.805 and, upon prevailing in the action, shall recover three times the damages the person, the state or the public body sustained.** An action authorized by this paragraph may be brought regardless of whether the plaintiff dealt directly or indirectly with the adverse party.

(b) Notwithstanding paragraph (a) of this subsection, **if the state brings an action under ORS 646.760**, the state may recover only the state's actual damages sustained and any attorney fees, expert [witness] fees or investigative costs that the court may award under subsection (3) of this section.[, if the state:]

[A] Brings an action under ORS 646.760;]

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

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

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

(2) Unless there is a subsequent judgment that the court lacks jurisdiction, [the] taking [of any] testimony at the commencement of trial on a civil complaint for damages filed under the anti-trust laws of the United States [shall constitute] **constitutes** an absolute bar and waiver of any right of a plaintiff in such action to recover damages from the same defendant under this section for the same or substantially the same acts of plaintiff.

(3)(a) Except as provided in subsection (4) of this section, in an action brought under [the provisions of] this section by a person other than the state or [any political subdivision in the state] **public body**, the court may award reasonable attorney fees, expert [witness] fees and investigative costs to the prevailing party.

(b) Except as provided in subsection (4) of this section, in a civil action brought under [the provisions of] this section or under ORS 646.760 by the state or [any political subdivision in the state] **public body**:

(A) The court may award reasonable attorney fees, expert *[witness]* fees and investigative costs to the state or *[political subdivision]* **public body** if the state or *[political subdivision]* **public body** prevails in the action; and

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

(4) The court may not award attorney fees, expert *[witness]* fees or investigative costs to a prevailing defendant under the provisions of this section if the action is maintained as a class action *[pursuant to]* **under** ORCP 32.

(5)(a) *[When]* **If** the Attorney General files an action *parens patriae* under ORS 646.775 within *[30]* **60** days *[of]* **after** the date that a natural person files an action as a class action under this section and both the Attorney General and the natural person seek to represent the same class of natural persons, the action brought by the Attorney General must be deemed superior to the natural person's action for the purposes of determining whether the natural person's action under this section may not be maintained as a class action under ORCP 32.

(b) Upon commencement of an action as a class action under this section by a natural person, the natural person shall mail a copy of the complaint to the Attorney General. Failure to mail a copy of the complaint is not a jurisdictional defect.

(c) The Attorney General's action *[shall]* **must** be deemed superior to the *[natural person's]* action brought as a class action as described in paragraph (a) of this subsection until the earlier of:

(A) Thirty days after the natural person mails a copy of the complaint to the Attorney General as provided in paragraph (b) of this subsection; or

(B) The date that a court finds that the natural person's action is to be maintained as a class action.

(d) Nothing in this subsection *[shall prohibit]* **prohibits** a natural person from filing an action as a class action if:

(A) The Attorney General's *parens patriae* action is dismissed *[prior to]* **before** adjudication of the issues without damages paid to any natural person; or

(B) A sufficient number of natural persons opt out of the *parens patriae* action to sustain a separate class action.

SECTION 6. ORS 646.815 is amended to read:

646.815. *[(1)]* Exclusive jurisdiction for criminal prosecution of any violation of ORS 646.725 or 646.730 is vested in the Attorney General. At any time, the Attorney General may receive and respond to an offer to compromise pending or potential criminal charges and any other related claims for relief under ORS 646.760, 646.770, 646.775 or 646.780.

[(2) The commencement of trial seeking civil penalties in any action under ORS 646.760 shall bar any subsequent criminal prosecution for violation of ORS 646.725 or 646.730, based upon the same acts complained of. The commencement of trial in a criminal prosecution for violation of ORS 646.725 or 646.730 shall bar any subsequent action for recovery of civil penalties under ORS 646.760, based upon the same acts complained of, but shall not bar a subsequent suit for injunctive relief under ORS 646.760.]

SECTION 7. ORS 646.990 is amended to read:

646.990. (1) A person, firm or corporation, whether acting as principal, agent, officer or director, commits a Class B misdemeanor for each violation of a provision of ORS 646.010 to 646.180.

(2) Violation of ORS 646.725 or 646.730 is a Class *[A misdemeanor]* **B felony**.

(3) Violation of ORS 646.910 is a Class D violation.

(4) Violation of a rule that the State Department of Agriculture adopts under ORS 646.915 is a Class D violation.

(5) Violation of ORS 646.920 is a Class D violation.

(6) A person that violates ORS 646.930 commits a Class C misdemeanor.

SECTION 8. ORS 646.790 is repealed.

SECTION 9. The amendments to ORS 646.705, 646.760, 646.770, 646.775, 646.780, 646.815 and 646.990 by sections 1 to 7 of this 2023 Act and the repeal of ORS 646.790 by section 8 of this 2023 Act apply to actions and proceedings that began before the effective date of this 2023 Act and for which a judgment or decree has not yet been entered, or that begin on and after the effective date of this 2023 Act.

SECTION 10. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.

Passed by Senate February 15, 2023

.....
Lori L. Brocker, Secretary of Senate

.....
Rob Wagner, President of Senate

Passed by House May 8, 2023

.....
Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

.....
Secretary of State