

House Bill 2558

Sponsored by Representative FLORES

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**.

Provides that punitive damages may be awarded by court only if award of punitive damages is expressly authorized by statute. Imposes limits on awards of punitive damages.

Requires that court impanel new jury for purpose of considering proper amount of punitive damages.

Prohibits amendment of pleading to make claim for punitive damages unless party produces affidavits and supporting documentation that set forth specific facts supported by evidence that is both admissible and substantial and that establishes that there is probability that plaintiff will prevail on claim.

Prohibits award of punitive damages against health practitioner for acts or omissions that are within scope of license, registration or certificate held by health practitioner unless act or omission constitutes intentional tort.

A BILL FOR AN ACT

1
2 Relating to punitive damages; creating new provisions; and amending ORS 31.725 and 31.740.

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

4 **SECTION 1. (1) Punitive damages may be awarded by a court only if an award of punitive**
5 **damages is expressly authorized by statute.**

6 **(2) Subject to subsection (4) of this section, punitive damages for any claim not based on**
7 **physical injury or death may not be greater than twice the amount of compensatory damages**
8 **awarded on the claim.**

9 **(3) Subject to subsection (4) of this section, punitive damages for any claim based on**
10 **physical injury or death may not be greater than three times the amount of compensatory**
11 **damages awarded on the claim.**

12 **(4) A jury may not award more than \$1 million in punitive damages.**

13 **(5) If a claim for punitive damages is made against a defendant that operates a business**
14 **and the claim arises out of the operation of the business, punitive damages may not be**
15 **awarded on the claim in an amount that exceeds 10 percent of the net worth of the business**
16 **when the net worth of the business, calculated as of the date the action is filed, is less than**
17 **\$2 million.**

18 **SECTION 2. (1) If a pleading is amended under ORS 31.725 to assert a claim for punitive**
19 **damages and the action is tried before a jury, the court shall submit to the jury the question**
20 **of whether punitive damages should be awarded, but shall not submit to the jury the question**
21 **of the amount of punitive damages. As soon as possible after the entry of a verdict finding**
22 **that punitive damages should be awarded, the court shall impanel a new jury for the purpose**
23 **of considering the proper amount of punitive damages in the case.**

24 **(2) If the issue of the amount of punitive damages is decided before a general judgment**
25 **is entered in the case, the court shall include any award of punitive damages in that judg-**
26 **ment. If the issue of the amount of punitive damages is not decided before a general judg-**

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 **ment is entered in the case, the court shall include any award of punitive damages in a**
 2 **supplemental judgment.**

3 **SECTION 3.** ORS 31.725 is amended to read:

4 31.725. (1) A pleading in a civil action may not contain a request for an award of punitive
 5 damages except as provided in this section.

6 (2) At the time of filing a pleading with the court, the pleading may not contain a request for
 7 an award of punitive damages. At any time after the pleading is filed, a party may move the court
 8 to allow the party to amend the pleading to assert a claim for punitive damages. The party making
 9 the motion may submit affidavits and documentation supporting the claim for punitive damages. The
 10 party or parties opposing the motion may submit opposing affidavits and documentation.

11 (3) The court shall deny a motion to amend a pleading made under the provisions of this section
 12 if:

13 (a) The court determines that the affidavits and supporting documentation submitted by the
 14 party seeking punitive damages fail to set forth specific facts supported by [*admissible evidence ad-*
 15 *equate to avoid the granting of a motion for a directed verdict to the party opposing the motion on the*
 16 *issue of punitive damages in a trial of the matter*] **evidence that is both admissible and substantial**
 17 **and that establishes that there is a probability that the plaintiff will prevail on the claim;** or

18 (b) The party opposing the motion establishes that the timing of the motion to amend prejudices
 19 the party's ability to defend against the claim for punitive damages.

20 (4) The court may grant a continuance on a motion under this section to allow a party opposing
 21 the motion to conduct such discovery as is necessary to establish one of the grounds for denial of
 22 the motion specified in subsection (3) of this section. If the court grants the motion, the court may
 23 continue the action to allow such discovery as the defendant may require to defend against the
 24 claim for punitive damages.

25 (5) Subject to subsection (4) of this section, the court shall conduct a hearing on a motion filed
 26 under this section not more than 30 days after the motion is filed and served. The court shall issue
 27 a decision within 10 days after the hearing. If no decision is issued within 10 days, the motion shall
 28 be considered denied.

29 (6) Discovery of evidence of a defendant's ability to pay shall not be allowed by a court unless
 30 and until the court grants a motion to amend a pleading under this section.

31 **SECTION 4.** ORS 31.740 is amended to read:

32 31.740. [*Punitive damages shall not be awarded against a health practitioner if:*]

33 [*(1) The health practitioner is licensed, registered or certified as:*]

34 [*(a) A psychologist under ORS 675.030 to 675.070, 675.085 and 675.090;*]

35 [*(b) An occupational therapist under ORS 675.230 to 675.300;*]

36 [*(c) A licensed clinical social worker under ORS 675.530, 675.540 to 675.560, 675.580 and*
 37 *675.585;*]

38 [*(d) A physician under ORS 677.100 to 677.228;*]

39 [*(e) An emergency medical technician under ORS chapter 682;*]

40 [*(f) A podiatric physician and surgeon under ORS 677.820 to 677.840;*]

41 [*(g) A nurse under ORS 678.040 to 678.101;*]

42 [*(h) A nurse practitioner under ORS 678.375 to 678.390;*]

43 [*(i) A dentist under ORS 679.060 to 679.180;*]

44 [*(j) A dental hygienist under ORS 680.040 to 680.100;*]

45 [*(k) A denturist under ORS 680.515 to 680.535;*]

1 *[(L) An audiologist or speech-language pathologist under ORS 681.250 to 681.350;]*

2 *[(m) An optometrist under ORS 683.040 to 683.155 and 683.170 to 683.220;]*

3 *[(n) A chiropractor under ORS 684.040 to 684.105;]*

4 *[(o) A naturopath under ORS 685.060 to 685.110, 685.125 and 685.135;]*

5 *[(p) A massage therapist under ORS 687.021 to 687.086;]*

6 *[(q) A physical therapist under ORS 688.040 to 688.145;]*

7 *[(r) A radiologic technician under ORS 688.445 to 688.525;]*

8 *[(s) A pharmacist under ORS 689.151 and 689.225 to 689.285; or]*

9 *[(t) A physician assistant as provided by ORS 677.505 to 677.525; and]*

10 *[(2) The health practitioner was engaged in conduct regulated by the license, registration or cer-*
 11 *tificate issued by the appropriate governing body and was acting within the scope of practice for which*
 12 *the license, registration or certificate was issued and without malice.]*

13 **(1) Except as provided in subsection (2) of this section, punitive damages may not be**
 14 **awarded against a health practitioner for acts or omissions that are within the scope of the**
 15 **license, registration or certificate held by the health practitioner. A health care facility, as**
 16 **defined by ORS 442.015, may not be held vicariously liable for punitive damages by reason of**
 17 **any act or omission of a health care practitioner that is subject to this section.**

18 **(2) This section does not apply to any intentional tort committed by a health practitioner.**

19 **(3) For the purposes of this section, “health practitioner” means a person licensed, reg-**
 20 **istered or certified as:**

21 **(a) A psychologist under ORS 675.030 to 675.070, 675.085 and 675.090;**

22 **(b) An occupational therapist under ORS 675.230 to 675.300;**

23 **(c) A licensed clinical social worker under ORS 675.530, 675.540 to 675.560, 675.580 and**
 24 **675.585;**

25 **(d) A physician under ORS 677.100 to 677.228;**

26 **(e) An emergency medical technician under ORS chapter 682;**

27 **(f) A podiatric physician and surgeon under ORS 677.820 to 677.840;**

28 **(g) A nurse under ORS 678.040 to 678.101;**

29 **(h) A nurse practitioner under ORS 678.375 to 678.390;**

30 **(i) A dentist under ORS 679.060 to 679.180;**

31 **(j) A dental hygienist under ORS 680.040 to 680.100;**

32 **(k) A denturist under ORS 680.515 to 680.535;**

33 **(L) An audiologist or speech-language pathologist under ORS 681.250 to 681.350;**

34 **(m) An optometrist under ORS 683.040 to 683.155 and 683.170 to 683.220;**

35 **(n) A chiropractor under ORS 684.040 to 684.105;**

36 **(o) A naturopath under ORS 685.060 to 685.110, 685.125 and 685.135;**

37 **(p) A massage therapist under ORS 687.021 to 687.086;**

38 **(q) A physical therapist under ORS 688.040 to 688.145;**

39 **(r) A radiologic technician under ORS 688.445 to 688.525;**

40 **(s) A pharmacist under ORS 689.151 and 689.225 to 689.285; or**

41 **(t) A physician assistant under ORS 677.505 to 677.525.**

42 **SECTION 5. Sections 1 and 2 of this 2007 Act and the amendments to ORS 31.725 and**
 43 **31.740 by sections 3 and 4 of this 2007 Act apply only to causes of action that arise on or after**
 44 **the effective date of this 2007 Act.**