

Senate Bill 547

Sponsored by Senators MORSE, BATES

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**.

Modifies laws relating to comparative negligence. Provides that, for purpose of determining percentages of fault for each defendant, trier of fact may consider fault of person who is not subject to jurisdiction of court and fault of person who is not subject to action because claim is barred by statute of limitation or statute of ultimate repose.

Allows defendant in action to elect to withdraw consideration of fault of person who settled with claimant. Provides that, if fault of person is withdrawn from consideration, defendant need not establish fault of person and court must reduce total amount of damages awarded in action by amounts paid to person in settlement.

A BILL FOR AN ACT

1
2 Relating to torts; creating new provisions; and amending ORS 31.600, 31.605 and 31.610.

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

4 **SECTION 1.** ORS 31.600 is amended to read:

5 31.600. (1) Contributory negligence shall not bar recovery in an action by any person or the le-
6 gal representative of the person to recover damages for death or injury to person or property if the
7 fault attributable to the claimant was not greater than the combined fault of all persons [*specified*
8 *in*] **considered by the trier of fact pursuant to** subsection (2) of this section, but any damages
9 allowed shall be diminished in the proportion to the percentage of fault attributable to the claimant.
10 This section is not intended to create or abolish any defense.

11 (2) The trier of fact shall compare the fault of the claimant with the fault of any party against
12 whom recovery is sought, the fault of third party defendants who are liable in tort to the claimant,
13 [*and*] the fault of any person with whom the claimant has settled **and the fault of any other per-**
14 **son who is not immune from liability to the claimant.** The failure of a claimant to make a direct
15 claim against a third party defendant does not affect the requirement that the fault of the third
16 party defendant be considered by the trier of fact under this subsection. Except for persons who
17 have settled with the claimant, there shall be no comparison of fault with any person[.]

18 [(a)] who is immune from liability to the claimant[.];

19 [(b) *Who is not subject to the jurisdiction of the court; or*]

20 [(c) *Who is not subject to action because the claim is barred by a statute of limitation or statute*
21 *of ultimate repose*].

22 (3) A defendant who files a third party complaint against a person alleged to be at fault in the
23 matter, or who alleges that a person who has settled with the claimant **or who has otherwise not**
24 **been made a defendant in the action** is at fault in the matter, has the burden of proof in estab-
25 lishing:

26 (a) The fault of the third party defendant or [*the fault of the*] **other** person [*who settled with the*
27 *claimant*]; and

28 (b) That the fault of the third party defendant or [*the*] **other** person [*who settled with 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 *claimant*] was a contributing cause to the injury or death under the law applicable in the matter.

2 (4) **Notwithstanding subsection (2) of this section, if the claimant has settled with any**
 3 **person in an action subject to this section, any defendant in the action may elect to withdraw**
 4 **consideration of the fault of the person from the trier of fact. If consideration of the fault**
 5 **of a person who settled is withdrawn from the trier of fact under this subsection, the de-**
 6 **fendant need not establish the fault of the person and the court shall reduce the total**
 7 **amount of damages awarded in the action by the amounts paid to the person in settlement**
 8 **before making the calculation required by ORS 31.610 (2).**

9 [(4)] (5) Any party to an action may seek to establish that the fault of a person should not be
 10 considered by the trier of fact [*by reason that*] **because** the person [*does not meet the criteria estab-*
 11 *lished by subsection (2) of this section for the consideration of fault by the trier of fact*] **is immune**
 12 **from liability to the plaintiff.**

13 [(5)] (6) This section does not prevent a party from alleging that the party was not at fault in
 14 the matter because the injury or death was the sole and exclusive fault of a person who is not a
 15 party in the matter.

16 **SECTION 2.** ORS 31.605 is amended to read:

17 31.605. (1) When requested by any party the trier of fact shall answer special questions indi-
 18 cating:

19 (a) The amount of damages to which a party seeking recovery would be entitled, assuming that
 20 party not to be at fault.

21 (b) The degree of fault of each person [*specified in*] **considered by the trier of fact pursuant**
 22 **to ORS 31.600 [(2)].** The degree of each person’s fault so determined shall be expressed as a per-
 23 centage of the total fault attributable to all persons considered by the trier of fact pursuant to ORS
 24 31.600.

25 (2) A jury shall be informed of the legal effect of its answer to the questions listed in subsection
 26 (1) of this section.

27 (3) The jury shall not be informed of any settlement made by the claimant for damages arising
 28 out of the injury or death that is the subject of the action.

29 (4) For the purposes of subsection (1) of this section, the court may order that two or more
 30 persons be considered a single person for the purpose of determining the degree of fault of the
 31 persons [*specified in*] **considered by the trier of fact pursuant to ORS 31.600 [(2)].**

32 **SECTION 3.** ORS 31.610 is amended to read:

33 31.610. (1) Except as otherwise provided in this section, in any civil action arising out of bodily
 34 injury, death or property damage, including claims for emotional injury or distress, loss of care,
 35 comfort, companionship and society, and loss of consortium, the liability of each defendant for
 36 damages awarded to plaintiff shall be several only and shall not be joint.

37 (2) In any action described in subsection (1) of this section, the court shall determine the award
 38 of damages to each claimant in accordance with the percentages of fault determined by the trier of
 39 fact under ORS 31.605 and shall enter judgment against each party determined to be liable. The
 40 court shall enter a judgment in favor of the plaintiff against any third party defendant who is found
 41 to be liable in any degree, even if the plaintiff did not make a direct claim against the third party
 42 defendant. The several liability of each defendant and third party defendant shall be set out sepa-
 43 rately in the judgment, based on the percentages of fault determined by the trier of fact under ORS
 44 31.605. The court shall calculate and state in the judgment a monetary amount reflecting the share
 45 of the obligation of each person [*specified in*] **considered by the trier of fact pursuant to ORS**

1 31.600 [(2)]. Each person's share of the obligation shall be equal to the total amount of the damages
2 found by the trier of fact, with no reduction for amounts paid in settlement of the claim or by way
3 of contribution, multiplied by the percentage of fault determined for the person by the trier of fact
4 under ORS 31.605.

5 [(3) *Upon motion made not later than one year after judgment has become final by lapse of time*
6 *for appeal or after appellate review, the court shall determine whether all or part of a party's share*
7 *of the obligation determined under subsection (2) of this section is uncollectible. If the court determines*
8 *that all or part of any party's share of the obligation is uncollectible, the court shall reallocate any*
9 *uncollectible share among the other parties. The reallocation shall be made on the basis of each party's*
10 *respective percentage of fault determined by the trier of fact under ORS 31.605. The claimant's share*
11 *of the reallocation shall be based on any percentage of fault determined to be attributable to the*
12 *claimant by the trier of fact under ORS 31.605, plus any percentage of fault attributable to a person*
13 *who has settled with the claimant. Reallocation of obligations under this subsection does not affect any*
14 *right to contribution from the party whose share of the obligation is determined to be uncollectible.*
15 *Unless the party has entered into a covenant not to sue or not to enforce a judgment with the claimant,*
16 *reallocation under this subsection does not affect continuing liability on the judgment to the claimant*
17 *by the party whose share of the obligation is determined to be uncollectible.]*

18 [(4) *Notwithstanding subsection (3) of this section, a party's share of the obligation to a claimant*
19 *may not be increased by reason of reallocation under subsection (3) of this section if:]*

20 [(a) *The percentage of fault of the claimant is equal to or greater than the percentage of fault of*
21 *the party as determined by the trier of fact under ORS 31.605; or]*

22 [(b) *The percentage of fault of the party is 25 percent or less as determined by the trier of fact*
23 *under ORS 31.605.]*

24 [(5) *If any party's share of the obligation to a claimant is not increased by reason of the application*
25 *of subsection (4) of this section, the amount of that party's share of the reallocation shall be considered*
26 *uncollectible and shall be reallocated among all other parties who are not subject to subsection (4) of*
27 *this section, including the claimant, in the same manner as otherwise provided for reallocation under*
28 *subsection (3) of this section.]*

29 [(6)] (3) This section does not apply to:

30 (a) A civil action resulting from the violation of a standard established by Oregon or federal
31 statute, rule or regulation for the spill, release or disposal of any hazardous waste, as defined in
32 ORS 466.005, hazardous substance, as defined in ORS 453.005 or radioactive waste, as defined in ORS
33 469.300.

34 (b) A civil action resulting from the violation of Oregon or federal standards for air pollution,
35 as defined in ORS 468A.005 or water pollution, as defined in ORS 468B.005.

36 **SECTION 4. The amendments to ORS 31.600, 31.605 and 31.610 by sections 1 to 3 of this**
37 **2007 Act apply only to actions commenced as described in ORS 12.020 on or after the effective**
38 **date of this 2007 Act.**

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