

Senate Bill 548

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**.

Requires disclosure of expert witnesses in civil actions unless directed by court or agreed to by stipulation. Requires disclosure to contain name and address of expert witness, qualifications of witness, list of other cases in which witness has testified as expert at trial or by deposition and compensation of witness. Prohibits use of expert witness at trial if disclosure not made. Prohibits deposition of expert witness except for purpose of showing failure to comply with disclosure requirements. Allows court to modify disclosure requirements.

A BILL FOR AN ACT

1
2 Relating to expert witnesses.

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

4 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of the Oregon Rules**
5 **of Civil Procedure.**

6 **SECTION 2.**
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DISCLOSURE OF EXPERT WITNESSES

RULE 42

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11 **A Disclosure required. Unless otherwise directed by the court or agreed to by stipulation,**
12 **a party must serve all other parties with a notice that makes the disclosures required by**
13 **section B of this rule for any person who will testify at trial as an expert witness under ORS**
14 **40.410.**

15 **B Contents of disclosure.**

16 **B(1) Disclosure generally. The disclosure required under this rule must contain:**

17 **(B)(1)(a) The name and address of the person who will testify as an expert witness;**

18 **(B)(1)(b) The qualifications of the expert witness, including a list of all publications au-**
19 **thored by the witness within the preceding five years;**

20 **(B)(1)(c) The compensation paid or to be paid to the expert witness for preparation for**
21 **trial, including compensation for studies conducted by the witness, and for the witness's**
22 **appearance at trial; and**

23 **(B)(1)(d) A list of any other cases in which the witness has testified as an expert at trial**
24 **or by deposition within the preceding five years.**

25 **B(2) Modification by court. Upon motion of any party, or upon the court's own motion,**
26 **the court may modify the required disclosures of this rule for good cause shown, or may**
27 **enter such protective orders as the court deems appropriate. If a party seeks to disclose an**
28 **additional expert witness after expiration of the time allowed under section C of this rule,**
29 **in addition to any other showing the court may require, the party must establish that at 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 time disclosure was required under section C of this rule the party could not have reasonably
2 anticipated the need for the expert witness.

3 **C Time of disclosure.**

4 **C(1) Initial disclosure.** Subject to subsection (2) of this section, unless otherwise directed
5 by the court or agreed to by stipulation, the notice required by this rule must be served at
6 least 90 days before trial.

7 **C(2) Rebuttal disclosure.** Within 45 days after service of notice under subsection (1) of
8 this section, any party may serve on all other parties a notice that makes the disclosures
9 required by section A of this rule for any person who will testify at trial for the party as an
10 expert witness in rebuttal to the testimony of an expert witness disclosed in a notice served
11 under subsection (1) of this section.

12 **D Supplemental notice.** A party who has served notice under this rule, including any
13 party who has served notice under subsection C(2) of this rule, must file a supplemental
14 notice that includes information about a previously disclosed expert witness that was ac-
15 quired after the notice was served if the party discovers that the notice is incomplete or
16 incorrect in some material respect. Supplemental notice under this section may not be used
17 to disclose additional expert witnesses after expiration of the time allowed under section C
18 of this rule. Supplemental notices under this section must be served no later than 30 days
19 before trial unless the discovery is made within the 30-day period preceding trial. If the dis-
20 covery is made within the 30-day period preceding trial, the supplemental notice must be
21 served within 24 hours after the party makes the discovery.

22 **E Depositions.** An expert witness may not be deposed or otherwise contacted by the
23 parties to whom notice is given under this rule except with specific authorization from the
24 court and only for the purpose of showing that the party offering the testimony of the expert
25 witness failed to comply with the requirements of this rule.

26 **F Sanctions.** The court may not allow an expert witness to testify at trial unless the
27 party offering the testimony has given notice of the name and address of the expert witness
28 in the manner required by this rule. The court may impose such other sanctions as may be
29 appropriate for failure to fully comply with any other disclosure requirement of section B
30 of this rule.

31 **SECTION 3.** Section 2 of this 2007 Act applies only to actions commenced as described in
32 ORS 12.020 on or after the effective date of this 2007 Act.
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