

House Bill 2271

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Attorney General Hardy Myers for Department of Justice)

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 Department of Justice becomes party to civil action upon return of verdict including award of punitive damages. Specifies that department becomes party solely for purpose of protecting interest of state in amount payable to Criminal Injuries Compensation Account.

Provides that court may not reduce or vacate amount payable to Criminal Injuries Compensation Account unless Department of Justice stipulates in writing to reduction or vacation, or court determines that reduction or vacation is required by state or federal law.

A BILL FOR AN ACT

1
2 Relating to punitive damages; creating new provisions; and amending ORS 31.735.

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

4 **SECTION 1.** ORS 31.735 is amended to read:

5 31.735. (1) [*Upon the entry of a verdict including an award of punitive damages, the Department*
6 *of Justice shall become a judgment creditor as to the punitive damages portion of the award to which*
7 *the Criminal Injuries Compensation Account is entitled pursuant to paragraph (b) of this subsection,*
8 *and the punitive damage portion of an award shall be allocated as follows:]* **Any punitive damages**
9 **recovered in a civil action shall be allocated as follows:**

10 (a) Forty percent shall be paid to the prevailing party. The attorney for the prevailing party
11 shall be paid out of the amount allocated under this paragraph, in the amount agreed upon between
12 the attorney and the prevailing party. However, in no event may more than 20 percent of the
13 amount awarded as punitive damages be paid to the attorney for the prevailing party.

14 (b) Sixty percent shall be paid to the Criminal Injuries Compensation Account of the Department
15 of Justice Crime Victims' Assistance Section to be used for the purposes set forth in ORS chapter
16 147. However, if the prevailing party is a public entity, the amount otherwise payable to the Criminal
17 Injuries Compensation Account shall be paid to the general fund of the public entity.

18 [(2) *The party preparing the proposed judgment shall assure that the judgment identifies the judgment*
19 *creditors specified in subsection (1) of this section.*]

20 [(3) *Upon the entry of a verdict including an award of punitive damages, the prevailing party shall*
21 *provide notice of the verdict to the Department of Justice. In addition, upon entry of a judgment based*
22 *on a verdict that includes an award of punitive damages, the prevailing party shall provide notice of*
23 *the judgment to the Department of Justice. The notices required under this subsection must be in*
24 *writing and must be delivered to the Department of Justice Crime Victims' Assistance Section in Salem,*
25 *Oregon within five days after the entry of the verdict or judgment.*]

26 **(2) Upon the return of a verdict including an award of punitive damages, the Department**
27 **of Justice becomes a party to the action solely for the purpose of protecting the interest of**
28 **the state in the amount payable to the Criminal Injuries Compensation Account under sub-**

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 **section (1)(b) of this section. The clerk of the court shall add the Department of Justice to**
2 **the list of parties in the register of the court, with the address of the department's Crime**
3 **Victims' Assistance Section in Salem, Oregon. The department must be served with any**
4 **proposed form of judgment in the action at least seven days before the judgment is signed**
5 **by the judge in the action.**

6 **(3) A court may not reduce or vacate the amount payable to the Criminal Injuries Com-**
7 **ensation Account under subsection (1)(b) of this section unless:**

8 **(a) The Department of Justice stipulates in writing to the reduction or vacation of the**
9 **award; or**

10 **(b) The court determines that the reduction or vacation is required by state or federal**
11 **law.**

12 (4) Whenever a judgment includes both compensatory and punitive damages, any payment on the
13 judgment by or on behalf of any defendant, whether voluntary or by execution or otherwise, shall
14 be applied first to compensatory damages, costs and court-awarded attorney fees awarded against
15 that defendant and then to punitive damages awarded against that defendant unless all affected
16 parties, including the Department of Justice, expressly agree otherwise, or unless that application
17 is contrary to the express terms of the judgment.

18 (5) Whenever any judgment creditor of a judgment which includes punitive damages governed
19 by this section receives any payment on the judgment by or on behalf of any defendant, the judgment
20 creditor receiving the payment shall notify the attorney for the other judgment creditors and all
21 sums collected shall be applied as required by subsections (1) and (4) of this section, unless all af-
22 fected parties, including the Department of Justice, expressly agree otherwise, or unless that appli-
23 cation is contrary to the express terms of the judgment.

24 **SECTION 2. The amendments to ORS 31.735 by section 1 of this 2009 Act apply only to**
25 **civil actions in which judgments are entered on or after the effective date of this 2009 Act.**
26 **If a verdict containing an award of punitive damages is returned before the effective date**
27 **of this 2009 Act, but a judgment has not been entered in the action on the effective date of**
28 **this 2009 Act, a judgment may not be entered in the action until the requirements of ORS**
29 **31.735, as amended by section 1 of this 2009 Act, have been met.**

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