

House Bill 2480

Sponsored by COMMITTEE ON JUDICIARY

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**.

Clarifies that doctrine of contributory negligence is abolished.

A BILL FOR AN ACT

Relating to contributory negligence; amending ORS 31.600 and 608.360 and ORCP 19 B.

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

SECTION 1. ORS 31.600 is amended to read:

31.600. (1) **The defense of contributory negligence is abolished and may not be asserted in any civil action.** [*Contributory*] **A plaintiff's** negligence [*shall*] **does** not bar recovery in an action by [*any person*] **the plaintiff** or the legal representative of the [*person*] **plaintiff** to recover damages for death or injury to person or property, **or for economic loss**, if the fault attributable to the claimant was not greater than the combined fault of all persons specified in subsection (2) of this section, but any damages allowed shall be diminished in the proportion to the percentage of fault attributable to the claimant. [*This section is not intended to create or abolish any defense.*]

(2) The trier of fact shall compare the fault of the claimant with the fault of any party against whom recovery is sought, the fault of third party defendants who are liable in tort to the claimant, and the fault of any person with whom the claimant has settled. The failure of a claimant to make a direct claim against a third party defendant does not affect the requirement that the fault of the third party defendant be considered by the trier of fact under this subsection. Except for persons who have settled with the claimant, there shall be no comparison of fault with any person:

(a) Who is immune from liability to the claimant;

(b) Who is not subject to the jurisdiction of the court; or

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

(3) A defendant who files a third party complaint against a person alleged to be at fault in the matter, or who alleges that a person who has settled with the claimant is at fault in the matter, has the burden of proof in establishing:

(a) The fault of the third party defendant or the fault of the person who settled with the claimant; and

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

(4) Any party to an action may seek to establish that the fault of a person should not be considered by the trier of fact by reason that the person does not meet the criteria established by subsection (2) of this section for the consideration of fault by the trier of fact.

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

3 **SECTION 2.** ORCP 19 B is amended to read:

4 B Affirmative defenses. In pleading to a preceding pleading, a party shall set forth affirmatively
5 accord and satisfaction, arbitration and award, assumption of risk, comparative [*or contributory*]
6 negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, in-
7 jury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of
8 limitations, unconstitutionality, waiver, and any other matter constituting an avoidance or affirma-
9 tive defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim
10 as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been
11 a proper designation.

12 **SECTION 3.** ORS 608.360 is amended to read:

13 608.360. In every action for the recovery of the value of any livestock killed, or for damages for
14 injury to any livestock, under ORS 608.340, proof of such killing or injury shall of itself be deemed
15 conclusive evidence in any court of this state of negligence upon the part of the person, or the
16 lessees or agents of the person, owning or operating such railroad. [*Contributory*] **Comparative**
17 negligence on the part of the plaintiff in such action may be set up as a defense, but allowing stock
18 to run at large upon common unfenced range or upon enclosed land owned or in possession of the
19 owner of such stock shall not be deemed [*contributory*] **comparative** negligence. In any such action,
20 proof of willful intent on the part of the plaintiff to procure the killing or injury of such stock shall
21 defeat the recovery of any damages for such killing or injury.

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