

# House Bill 2802

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**.

Repeals \$500,000 limit on noneconomic damages recoverable in wrongful death actions and other statutorily created causes of action.

## A BILL FOR AN ACT

1  
2 Relating to noneconomic damages; creating new provisions; amending ORS 30.298, 30.650, 31.360,  
3 31.705, 31.715, 124.100, 137.103, 260.532 and 742.544; and repealing ORS 31.710.

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

5 **SECTION 1. ORS 31.710 is repealed.**

6 **SECTION 2.** ORS 31.705 is amended to read:

7 31.705. (1) A verdict shall set forth separately economic damages and noneconomic damages[, *if*  
8 *any, as defined in ORS 31.710*].

9 **(2) As used in this section:**

10 (a) **"Economic damages" means objectively verifiable monetary losses including but not**  
11 **limited to reasonable charges necessarily incurred for medical, hospital, nursing and**  
12 **rehabilitative services and other health care services, burial and memorial expenses, loss of**  
13 **income and past and future impairment of earning capacity, reasonable and necessary ex-**  
14 **penditures incurred for substitute domestic services, recurring loss to an estate, damage to**  
15 **reputation that is economically verifiable, reasonable and necessarily incurred costs due to**  
16 **loss of use of property and reasonable costs incurred for repair or for replacement of dam-**  
17 **aged property, whichever is less.**

18 (b) **"Noneconomic damages" means subjective, nonmonetary losses, including but not**  
19 **limited to pain, mental suffering, emotional distress, humiliation, injury to reputation, loss**  
20 **of care, comfort, companionship and society, loss of consortium, inconvenience and inter-**  
21 **ference with normal and usual activities apart from gainful employment.**

22 **SECTION 3.** ORS 30.298 is amended to read:

23 30.298. (1) Except as otherwise provided in this section, the Department of Human Services is  
24 liable, without regard to fault, for injury to the person of foster parents or damage to the property  
25 of foster parents caused by a foster child if the foster child is residing in:

26 (a) A foster home that is maintained by the foster parents and that has been certified by the  
27 department under the provisions of ORS 418.625 to 418.645;

28 (b) An approved home that is maintained by the foster parents and that is receiving payment  
29 from the department under the provisions of ORS 418.027 or under the provisions of ORS 420.810  
30 and 420.815; or

31 (c) A developmental disability child foster home that has been certified by the department under

**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 the provisions of ORS 443.830 and 443.835.

2 (2) Except as otherwise provided in this section, the Oregon Youth Authority is liable, without  
 3 regard to fault, for injury to the person of foster parents or damage to the property of foster parents  
 4 caused by a youth offender if the youth offender resides in a youth offender foster home that is  
 5 maintained by the foster parents and that has been certified by the authority under the provisions  
 6 of ORS 420.888 to 420.892.

7 (3) Except as otherwise provided in this section, the liability of the department and of the au-  
 8 thority under this section is subject to the same requirements and limitations provided in ORS  
 9 30.260 to 30.300, and a claim under this section shall be treated as a claim for damages within the  
 10 scope of ORS 30.260 to 30.300 for the purposes of ORS 278.120.

11 (4) Notwithstanding ORS 30.260 to 30.300:

12 (a) In no event shall the liability of the department or the authority under this section exceed  
 13 \$5,000 for any number of claims arising out of a single occurrence;

14 (b) The liability of the department and the authority under this section is limited to economic  
 15 damages, and in no event shall the department or the authority be liable for noneconomic damages;

16 (c) The department and the authority are liable under this section only to the extent the loss  
 17 is not covered by other insurance; and

18 (d) No claim shall be allowed under this section unless written notice of the claim is delivered  
 19 to the Oregon Department of Administrative Services within 90 days after the alleged loss or injury.

20 (5) The department and the authority are not liable under this section for:

21 (a) Damage to or destruction of currency, securities or any other intangible property;

22 (b) The unexplained disappearance of any property; or

23 (c) Loss or damage that is due to wear and tear, inherent vice or gradual deterioration.

24 (6) In no event does the liability of the department or the authority under this section for  
 25 damage to property exceed the difference between the fair market value of the property immediately  
 26 before its damage or destruction and its fair market value immediately thereafter. The department  
 27 and the authority are not liable for the costs of any betterments to the property that may be re-  
 28 quired by code, statute or other law as a condition of repair, replacement or reconstruction.

29 (7) The liability imposed under this section is in addition to that imposed for the intentional  
 30 torts of a foster child or youth offender under ORS 30.297, but any amounts paid under this section  
 31 shall reduce any recovery that may be made under ORS 30.297.

32 (8) For the purposes of this section:

33 (a) "Authority" means the Oregon Youth Authority.

34 (b) "Department" means the Department of Human Services.

35 (c) "Economic damages" and "noneconomic damages" have those meanings given in ORS  
 36 [31.710] **31.705**.

37 (d) "Foster child" has that meaning given in ORS 30.297.

38 (e) "Youth offender" has the meaning given in ORS 419A.004.

39 **SECTION 4.** ORS 30.650 is amended to read:

40 30.650. Noneconomic damages, as defined in ORS [31.710] **31.705**, may not be awarded to an in-  
 41 mate in an action against a public body unless the inmate has established that the inmate suffered  
 42 economic damages, as defined in ORS [31.710] **31.705**.

43 **SECTION 5.** ORS 31.360 is amended to read:

44 31.360. (1) For the purpose of establishing a claim for economic damages, as defined in ORS  
 45 [31.710] **31.705**, in an action arising from an injury caused by a dog:

1 (a) The plaintiff need not prove that the owner of the dog could foresee that the dog would  
2 cause the injury; and

3 (b) The owner of the dog may not assert as a defense that the owner could not foresee that the  
4 dog would cause the injury.

5 (2) This section does not prevent the owner of a dog that caused an injury from asserting that  
6 the dog was provoked, or from asserting any other defense that may be available to the owner.

7 (3) This section does not affect the requirements for an award of punitive damages provided in  
8 ORS 31.730 (1).

9 **SECTION 6.** ORS 31.715 is amended to read:

10 31.715. (1) Except as provided in this section, a plaintiff may not recover noneconomic damages,  
11 as defined in ORS [31.710] **31.705**, in any action for injury or death arising out of the operation of  
12 a motor vehicle if the plaintiff was in violation of ORS 806.010 or 813.010 at the time the act or  
13 omission causing the death or injury occurred. A claim for noneconomic damages shall not be con-  
14 sidered by the jury if the jury determines that the limitation on liability established by this section  
15 applies to the claim for noneconomic damages.

16 (2) For the purpose of the limitation on liability established by this section, a person is conclu-  
17 sively presumed to have been in violation of ORS 806.010 or 813.010 if the person is convicted in a  
18 criminal proceeding of one or both of those offenses. If the person has not been convicted of vio-  
19 lating ORS 806.010 or 813.010, the defendant in the civil action may establish in the civil action, by  
20 a preponderance of the evidence, that the plaintiff was in violation of ORS 806.010 or 813.010 at the  
21 time the act or omission causing the death or injury occurred.

22 (3) The court shall abate a civil action upon the motion of any defendant in the civil action  
23 against whom a plaintiff has asserted a claim for noneconomic damages if the defendant alleges that  
24 the claim of the plaintiff is subject to the limitation on liability established by this section and:

25 (a) A criminal proceeding for a violation of ORS 813.010 has been commenced against the  
26 plaintiff in the civil action at the time the motion is made; or

27 (b) The district attorney for the county in which the conduct occurred informs the court at the  
28 time the motion is made that criminal proceedings for a violation of ORS 813.010 will be commenced  
29 against the plaintiff in the civil action.

30 (4) The court may order that only the claim that is subject to the limitation on liability estab-  
31 lished by this section be abated under subsection (3) of this section. An abatement under subsection  
32 (3) of this section shall remain in effect until the conclusion of the criminal proceedings.

33 (5) The limitation on liability established by this section does not apply if:

34 (a) The defendant in the civil action was also in violation of ORS 806.010 or 813.010 at the time  
35 the act or omission causing the death or injury occurred;

36 (b) The death or injury resulted from acts or omissions of the defendant that constituted an in-  
37 tentional tort;

38 (c) The defendant was engaged in conduct that would constitute a violation of ORS 811.140 at  
39 the time the act or omission causing the death or injury occurred; or

40 (d) The defendant was engaged in conduct that would constitute a felony at the time the act or  
41 omission causing the death or injury occurred.

42 (6) The limitation on liability established by this section based on a violation of ORS 806.010  
43 does not apply if the plaintiff in the civil action was insured under a motor vehicle liability insur-  
44 ance policy within 180 days before the act or omission occurred, and the plaintiff has not operated  
45 a motor vehicle in violation of ORS 806.010 within the one-year period immediately preceding the

1 date on which coverage under the motor vehicle liability insurance policy lapsed.

2 **SECTION 7.** ORS 124.100 is amended to read:

3 124.100. (1) As used in ORS 124.100 to 124.140:

4 (a) "Elderly person" means a person 65 years of age or older.

5 (b) "Financially incapable" has the meaning given that term in ORS 125.005.

6 (c) "Incapacitated" has the meaning given that term in ORS 125.005.

7 (d) "Person with a disability" means a person with a physical or mental impairment that:

8 (A) Is likely to continue without substantial improvement for no fewer than 12 months or to  
9 result in death; and

10 (B) Prevents performance of substantially all the ordinary duties of occupations in which an  
11 individual not having the physical or mental impairment is capable of engaging, having due regard  
12 to the training, experience and circumstances of the person with the physical or mental impairment.

13 (e) "Vulnerable person" means:

14 (A) An elderly person;

15 (B) A financially incapable person;

16 (C) An incapacitated person; or

17 (D) A person with a disability who is susceptible to force, threat, duress, coercion, persuasion  
18 or physical or emotional injury because of the person's physical or mental impairment.

19 (2) A vulnerable person who suffers injury, damage or death by reason of physical abuse or fi-  
20 nancial abuse may bring an action against any person who has caused the physical or financial  
21 abuse or who has permitted another person to engage in physical or financial abuse. The court shall  
22 award the following to a plaintiff who prevails in an action under this section:

23 (a) An amount equal to three times all economic damages, as defined in ORS [31.710] **31.705**,  
24 resulting from the physical or financial abuse, or \$500, whichever amount is greater.

25 (b) An amount equal to three times all noneconomic damages, as defined by ORS [31.710]  
26 **31.705**, resulting from the physical or financial abuse.

27 (c) Reasonable attorney fees incurred by the plaintiff.

28 (d) Reasonable fees for the services of a conservator or guardian ad litem incurred by reason  
29 of the litigation of a claim brought under this section.

30 (3) An action may be brought under this section only by:

31 (a) A vulnerable person;

32 (b) A guardian, conservator or attorney-in-fact for a vulnerable person;

33 (c) A personal representative for the estate of a decedent who was a vulnerable person at the  
34 time the cause of action arose; or

35 (d) A trustee for a trust on behalf of the trustor or the spouse of the trustor who is a vulnerable  
36 person.

37 (4) An action may be brought under this section only for physical abuse described in ORS  
38 124.105 or for financial abuse described in ORS 124.110.

39 (5) An action may be brought under this section against a person for permitting another person  
40 to engage in physical or financial abuse if the person knowingly acts or fails to act under circum-  
41 stances in which a reasonable person should have known of the physical or financial abuse.

42 (6) A person commencing an action under this section must serve a copy of the complaint on the  
43 Attorney General within 30 days after the action is commenced.

44 **SECTION 8.** ORS 137.103 is amended to read:

45 137.103. As used in ORS 137.101 to 137.109, 161.675 and 161.685:

1 (1) "Criminal activities" means any offense with respect to which the defendant is convicted or  
2 any other criminal conduct admitted by the defendant.

3 (2) "Economic damages":

4 (a) Has the meaning given that term in ORS [31.710] 31.705, except that "economic damages"  
5 does not include future impairment of earning capacity; and

6 (b) In cases involving criminal activities described in ORS 163.263, 163.264 or 163.266, includes  
7 the greater of:

8 (A) The value to the defendant of the victim's services as defined in ORS 163.261; or

9 (B) The value of the victim's services, as defined in ORS 163.261, computed using the minimum  
10 wage established under ORS 653.025 and the overtime provisions of the federal Fair Labor Standards  
11 Act of 1938 (29 U.S.C. 201 et seq.).

12 (3) "Restitution" means full, partial or nominal payment of economic damages to a victim.  
13 Restitution is independent of and may be awarded in addition to a compensatory fine awarded under  
14 ORS 137.101.

15 (4) "Victim" means:

16 (a) The person against whom the defendant committed the criminal offense, if the court deter-  
17 mines that the person has suffered economic damages as a result of the offense.

18 (b) Any person not described in paragraph (a) of this subsection whom the court determines has  
19 suffered economic damages as a result of the defendant's criminal activities.

20 (c) The Criminal Injuries Compensation Account, if it has expended moneys on behalf of a victim  
21 described in paragraph (a) of this subsection.

22 (d) An insurance carrier, if it has expended moneys on behalf of a victim described in paragraph  
23 (a) of this subsection.

24 (5) "Victim" does not include any coparticipant in the defendant's criminal activities.

25 **SECTION 9.** ORS 260.532 is amended to read:

26 260.532. (1) No person shall cause to be written, printed, published, posted, communicated or  
27 circulated, any letter, circular, bill, placard, poster, photograph or other publication, or cause any  
28 advertisement to be placed in a publication, or singly or with others pay for any advertisement, with  
29 knowledge or with reckless disregard that the letter, circular, bill, placard, poster, photograph,  
30 publication or advertisement contains a false statement of material fact relating to any candidate,  
31 political committee or measure.

32 (2) As used in subsection (1) of this section, "cause" does not include the broadcast of an ad-  
33 vertisement by a radio or television station or cable television company unless the advertisement  
34 is for:

35 (a) The candidacy of the owner, licensee or operator of the station or company; or

36 (b) A ballot measure of which a chief petitioner is the owner, licensee or operator of the station  
37 or company.

38 (3) A candidate who knows of and consents to a publication or advertisement prohibited by this  
39 section with knowledge or with reckless disregard that it contains a false statement of material fact,  
40 violates this section regardless of whether the candidate has participated directly in the publication  
41 or advertisement.

42 (4) There is a rebuttable presumption that a candidate knows of and consents to any publication  
43 or advertisement prohibited by this section caused by a political committee over which the candi-  
44 date exercises any direction and control.

45 (5) Any candidate or political committee aggrieved by a violation of this section shall have a

1 right of action against the person alleged to have committed the violation. The aggrieved party may  
 2 file the action in the circuit court for any county in this state in which a defendant resides or can  
 3 be found or, if the defendant is a nonresident of this state, in the circuit court for any county in  
 4 which the publication occurred. To prevail in such an action, the plaintiff must show by clear and  
 5 convincing evidence that the defendant violated subsection (1) of this section.

6 (6) A plaintiff who prevails in an action provided by subsection (5) of this section may recover  
 7 economic and noneconomic damages, as defined in ORS [31.710] **31.705**, or \$2,500, whichever is  
 8 greater. The court may award such additional equitable relief as it considers necessary or proper.  
 9 The equitable relief may include, but is not limited to, a requirement that a retraction of the false  
 10 statement be disseminated in the manner directed by the court. Proof of entitlement to economic and  
 11 noneconomic damages must be by a preponderance of evidence. The court shall award the prevailing  
 12 party reasonable attorney fees at trial and on appeal.

13 (7) A political committee has standing to bring an action provided by subsection (5) of this sec-  
 14 tion as plaintiff in its own name, if its purpose as evidenced by its preelection activities, solicitations  
 15 and publications has been injured by the violation and if it has fully complied with the provisions  
 16 of this chapter. In an action brought by a political committee as provided by subsection (5) of this  
 17 section, the plaintiff may recover economic and noneconomic damages for all injury to the purpose  
 18 of the committee as provided in subsection (6) of this section.

19 (8) If a judgment is rendered in an action under this section against a defendant who has been  
 20 nominated to public office or elected to a public office other than state Senator or state Represen-  
 21 tative, and it is established by clear and convincing evidence that the false statement was delib-  
 22 erately made or caused to be made by the defendant, the finder of fact shall determine whether the  
 23 false statement reversed the outcome of the election. If the finder of fact finds by clear and con-  
 24 vincing evidence that the false statement reversed the outcome of the election, the defendant shall  
 25 be deprived of the nomination or election and the nomination or office shall be declared vacant.

26 (9) An action under this section must be filed not later than the 30th day after the election re-  
 27 lating to which a publication or advertisement in violation of this section was made. Proceedings  
 28 on a complaint filed under this section shall have precedence over all other business on the docket.  
 29 The courts shall proceed in a manner which will ensure that:

30 (a) Final judgment on a complaint which relates to a primary election or nominating election is  
 31 rendered before the 30th day before the general election; and

32 (b) Final judgment on a complaint which relates to an election to an office is rendered before  
 33 the term of that office begins.

34 (10) The remedy provided by this section is the exclusive remedy for a violation of this section.

35 **SECTION 10.** ORS 742.544 is amended to read:

36 742.544. (1) A provider of personal injury protection benefits shall be reimbursed for personal  
 37 injury protection payments made on behalf of any person only to the extent that the total amount  
 38 of benefits paid exceeds the economic damages as defined in ORS [31.710] **31.705** suffered by that  
 39 person. As used in this section, "total amount of benefits" means the amount of money recovered  
 40 by a person from:

41 (a) Applicable underinsured motorist benefits described in ORS 742.502 (2);

42 (b) Liability insurance coverage available to the person receiving the personal injury protection  
 43 benefits from other parties to the accident;

44 (c) Personal injury protection payments; and

45 (d) Any other payments by or on behalf of the party whose fault caused the damages.

1           (2) Nothing in this section requires a person to repay more than the amount of personal injury  
2 protection benefits actually received.

3           **SECTION 11. (1) Except as provided in subsection (2) of this section, the repeal of ORS**  
4 **31.710 by section 1 of this 2009 Act applies to all causes of action, whether arising before, on**  
5 **or after the effective date of this 2009 Act.**

6           (2) The repeal of ORS 31.710 by section 1 of this 2009 Act does not apply to a cause of  
7 action for which a judgment was entered before the effective date of this 2009 Act.

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