

# Senate Bill 561

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Law Commission)

## 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**.

Establishes rules for conflict of laws in tort claims and certain other noncontractual claims.

## A BILL FOR AN ACT

Relating to conflict of laws.

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

## DEFINITIONS

**SECTION 1. Definitions. For the purposes of sections 1 to 12 of this 2009 Act:**

(1) **"Conduct"** means an act or omission that has occurred or that may occur in the future.

(2) **"Domicile"** means the place identified under section 5 of this 2009 Act.

(3) **"Injury"** means physical or nonphysical harm to a person or property caused by the conduct of another person.

(4) **"Law,"** when used in reference to the law of another state, does not include that state's choice-of-law rules.

(5) **"Noncontractual claim"** means a claim, other than a claim for failure to perform a contractual or other consensual obligation, that arises from a tort as defined in ORS 30.260, or any conduct that caused or may cause injury compensable by damages, without regard to whether damages are sought.

(6) **"Person"** means a person as defined in ORS 174.100 and a public body.

(7) **"Public body"** means a public body as defined in ORS 174.109, the Oregon Health and Science University, and the Oregon State Bar.

(8) **"State"** means, unless the context requires otherwise, the United States, any state, territory, possession or other jurisdiction of the United States, any Indian tribe or other Native American, Hawaiian or Alaskan group recognized by federal law or formally acknowledged by a state of the United States, and any foreign country or territorial subdivision of such country that has its own system of laws.

## APPLICABILITY

**SECTION 2. Applicability. Sections 1 to 12 of this 2009 Act govern the choice of law applicable to noncontractual claims when a choice between or among the laws of more than one state is at issue. Sections 1 to 12 of this 2009 Act do not supersede the provisions of**

**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 other Oregon statutes that expressly designate the law governing a particular noncontractual claim.  
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4 **PRELIMINARY ISSUES**

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 6 **SECTION 3. Characterization.** (1) Oregon law determines the scope and meaning of terms  
 7 used in sections 1 to 12 of this 2009 Act, including whether a claim is a noncontractual claim.

8 (2) The law of the state determined to be applicable under sections 1 to 12 of this 2009  
 9 Act determines the scope and meaning of terms used in that law.

10 **SECTION 4. Localization and other factual determinations.** For the purposes of sections  
 11 1 to 12 of this 2009 Act, the following issues are determined under Oregon law:

12 (1) What conduct caused the injury, and where the conduct occurred. If injurious conduct  
 13 occurs in more than one state, the state where the conduct occurred that is primarily re-  
 14 sponsible for the injury is the state where the injurious conduct occurred.

15 (2) Who caused the injury. If a person is liable for the conduct of another person, both  
 16 persons are considered to have caused the injury.

17 (3) Where the injury occurred. If the same conduct causes injury in more than one state,  
 18 the place of injury is in the state in which most of the injurious effects occurred or may  
 19 occur. If different persons suffer injury in different states by reason of the same conduct,  
 20 the place of injury is determined separately for each person. If a person suffers loss by rea-  
 21 son of injury or death of another person, the place of injury is determined based on the in-  
 22 jury to the other person.

23 (4) Who suffered the injury. If a claim is made for loss caused by injury or death of an-  
 24 other person, both the claimant and the other person are considered to be injured persons.

25 **SECTION 5. Determining domicile.** For the purposes of sections 1 to 12 of this 2009 Act:

26 (1)(a) The domicile of a natural person is in the state in which the person resides with  
 27 the intent to make it the person's home for an indefinite period of time.

28 (b) A domicile once established continues until it is superseded by the acquisition of a  
 29 new domicile. If a person's intent to change domicile is legally ineffective, the previously  
 30 established domicile continues to be the person's domicile.

31 (c) If a person's intent to have a domicile in a given state would be legally effective but  
 32 cannot be ascertained, the state in which the person resides is the person's domicile, and if  
 33 the person resides in more than one state, the residence state that has the most pertinent  
 34 connection to the disputed issue is deemed to be the domicile with regard to that issue.

35 (2) The domicile of a person other than a natural person is located in the state in which  
 36 the person maintains its principal place of business. If the dispute arises from activities di-  
 37 rected from another state in which the person maintains a place of business other than the  
 38 principal place of business, either state may be considered as the domicile at the choice of  
 39 the other party.

40 (3) The domicile of a person is determined as of the date of the injury for which the  
 41 noncontractual claim is made.

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 43 **CLAIMS GOVERNED BY OREGON LAW**

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 45 **SECTION 6. Claims governed by Oregon law.** Notwithstanding sections 8, 9 and 11 of this

1 2009 Act, Oregon law governs noncontractual claims in the following actions:

2 (1) Actions in which, after the events giving rise to the dispute, the parties agree to the  
3 application of Oregon law.

4 (2) Actions in which none of the parties raises the issue of applicability of foreign law.

5 (3) Actions in which the party or parties who rely on foreign law fail to assist the court  
6 in establishing the relevant provisions of foreign law after being requested by the court to  
7 do so.

8 (4) Actions filed against a public body of the State of Oregon, unless the application of  
9 Oregon law is waived by a person authorized by Oregon law to make the waiver on behalf  
10 of the public body.

11 (5) Actions against an owner, lessor or possessor of land, buildings or other real property  
12 situated in Oregon that seek to recover for, or to prevent, injury on that property and aris-  
13 ing out of conduct that occurs in Oregon.

14 (6) Actions between an employer and an employee who is primarily employed in Oregon  
15 that arise out of an injury that occurs in Oregon.

16 (7) Actions for professional malpractice arising from services rendered entirely in Oregon  
17 by personnel licensed to perform those services under Oregon law.

18 **SECTION 7. Product liability civil actions.** (1) Notwithstanding sections 8 and 9 of this  
19 2009 Act, Oregon law applies to product liability civil actions, as defined in ORS 30.900, if:

20 (a) The injured person was domiciled in Oregon and the injury occurred in Oregon; or

21 (b) The injured person was domiciled in Oregon or the injury occurred in Oregon, and the  
22 product:

23 (A) Was manufactured or produced in Oregon; or

24 (B) Was delivered when new for use or consumption in Oregon.

25 (2) Subsection (1) of this section does not apply to a product liability civil action if a de-  
26 fendant demonstrates that the use in Oregon of the product that caused the injury could not  
27 have been foreseen and that none of the defendant's products of the same type were available  
28 in Oregon in the ordinary course of trade at the time of the injury.

29 (3) If a party demonstrates that the application of the law of a state other than Oregon  
30 to a disputed issue is substantially more appropriate under the principles of section 9 of this  
31 2009 Act, that issue shall be governed by the law of the other state.

32 (4) All noncontractual claims or issues in product liability civil actions not provided for  
33 or not disposed of under this section are governed by the law of the state determined under  
34 section 9 of this 2009 Act.

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36 **CHOICE OF LAW**

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38 **SECTION 8. General Rules.** (1) Noncontractual claims between an injured person and the  
39 person whose conduct caused the injury are governed by the law of the state designated in  
40 this section.

41 (2)(a) If the injured person and the person whose conduct caused the injury were  
42 domiciled in the same state, the law of that state governs. However, the law of the state in  
43 which the injurious conduct occurred determines the standard of care by which the conduct  
44 is judged. If the injury occurred in a state other than the one in which the conduct occurred,  
45 the provisions of subsection (3)(c) of this section apply.

1 (b) For the purposes of this section, persons domiciled in different states shall be treated  
2 as if domiciled in the same state to the extent that laws of those states on the disputed is-  
3 sues would produce the same outcome.

4 (3) If the injured person and the person whose conduct caused the injury were domiciled  
5 in different states and the laws of those states on the disputed issues would produce a dif-  
6 ferent outcome, the law of the state designated in this subsection governs.

7 (a) If both the injurious conduct and the resulting injury occurred in the same state, the  
8 law of that state governs if either the injured person or the person whose conduct caused  
9 the injury was domiciled in that state.

10 (b) If both the injurious conduct and the resulting injury occurred in a state other than  
11 the state in which either the injured person or the person whose conduct caused the injury  
12 were domiciled, the law of the state of conduct and injury governs. If a party demonstrates  
13 that, under the circumstances of the particular case, the application of that law to a disputed  
14 issue will not serve the objectives of that law, that issue will be governed by the law selected  
15 under section 9 of this 2009 Act.

16 (c) If the injurious conduct occurred in one state and the resulting injury in another  
17 state, the law of the state of conduct governs. However, the law of the state of injury gov-  
18 erns if:

19 (A) The activities of the person whose conduct caused the injury were such as to make  
20 foreseeable the occurrence of injury in that state; and

21 (B) The injured person formally requests the application of that state's law by a pleading  
22 or amended pleading. The request shall be deemed to encompass all claims and issues against  
23 that defendant.

24 (4) If a party demonstrates that application to a disputed issue of the law of a state other  
25 than the state designated by subsection (2) or (3) of this section is substantially more ap-  
26 propriate under the principles of section 9 of this 2009 Act, that issue is governed by the law  
27 of the other state.

28 **SECTION 9. General and Residual Approach.** Except as provided in sections 6, 7, 8 and  
29 11 of this 2009 Act, the rights and liabilities of the parties with regard to disputed issues in  
30 a noncontractual claim are governed by the law of the state whose contacts with the parties  
31 and the dispute and whose policies on the disputed issues make application of the state's law  
32 the most appropriate for those issues. The most appropriate law is determined by:

33 (1) Identifying the states that have a relevant contact with the dispute, such as the place  
34 of the injurious conduct, the place of the resulting injury, the domicile, habitual residence  
35 or pertinent place of business of each person, or the place in which the relationship between  
36 the parties was centered;

37 (2) Identifying the policies embodied in the laws of these states on the disputed issues;  
38 and

39 (3) Evaluating the relative strength and pertinence of these policies with due regard to:

40 (a) The policies of encouraging responsible conduct, deterring injurious conduct and  
41 providing adequate remedies for the conduct; and

42 (b) The needs and policies of the interstate and international systems, including the pol-  
43 icy of minimizing adverse effects on strongly held policies of other states.

44 **SECTION 10. Joint tortfeasors and third parties.** Notwithstanding sections 6, 7 and 8 of  
45 this 2009 Act, if two or more persons are liable for the same claim, the rights and liabilities

1 between those persons are governed by the law determined for the particular issue under  
2 section 9 of this 2009 Act. If a third party pays compensation to a person injured by the  
3 conduct of another person, the right of the third party to recoup the amount paid is gov-  
4 erned by the law determined for the particular issue under section 9 of this 2009 Act.

5 **SECTION 11. Agreements on applicable foreign law.** Notwithstanding sections 8, 9 and  
6 10 of this 2009 Act, but subject to ORS 81.100 to 81.135, an agreement providing that an issue  
7 or issues falling within the scope of sections 1 to 12 of this 2009 Act will be governed by the  
8 law of a state other than Oregon is enforceable in Oregon if the agreement was entered into  
9 after the parties had knowledge of the events giving rise to the dispute.

10 **SECTION 12. Commentary.** The Oregon Law Commission shall make available on the  
11 website maintained by the commission a copy of the commentary approved by the commis-  
12 sion for the provisions of sections 1 to 12 of this 2009 Act.

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14 **MISCELLANEOUS**  
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16 **SECTION 13. Transitional provisions.** (1) Except as provided in subsection (2) of this  
17 section, sections 1 to 12 of this 2009 Act apply to all noncontractual claims as defined in  
18 section 1 of this 2009 Act, whether arising before, on or after the effective date of this 2009  
19 Act.

20 (2) Sections 1 to 12 of this 2009 Act do not apply to noncontractual claims as defined in  
21 section 1 of this 2009 Act in actions filed before the effective date of this 2009 Act.

22 **SECTION 14. Captions.** The unit and section captions used in this 2009 Act are provided  
23 only for the convenience of the reader and do not become part of the statutory law of this  
24 state or express any legislative intent in the enactment of this 2009 Act.  
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