

House Bill 3215

Sponsored by Representative GARRETT, Senator COURTNEY; Representatives BARKER, BUCKLEY, KRIEGER, OLSON, TOMEI, WAND, Senators BONAMICI, ROSENBAUM

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**.

Authorizes court, as part of settlement or judgment in class action, to approve process for payment of damages. Directs court to order that amounts awarded as damages that are not paid to class members be paid to Oregon Student Assistance Commission for purpose of funding Oregon Opportunity Grants.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to class actions; creating new provisions; amending ORCP 32 F and 32 L; appropriating
3 money; and declaring an emergency.

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

5 **SECTION 1.** ORCP 32 F is amended to read:

6 **F Notice and exclusion.**

7 F(1) When ordering that an action be maintained as a class action under this rule, the court
8 shall direct that notice be given to some or all members of the class under subsection E(2) of this
9 rule, shall determine when and how this notice should be given and shall determine whether, when,
10 how, and under what conditions putative members may elect to be excluded from the class. The
11 matters pertinent to these determinations ordinarily include: (a) the nature of the controversy and
12 the relief sought; (b) the extent and nature of any member's injury or liability; (c) the interest of the
13 party opposing the class in securing a final resolution of the matters in controversy; (d) the ineffi-
14 ciency or impracticality of separately maintained actions to resolve the controversy; (e) the cost of
15 notifying the members of the class; and (f) the possible prejudice to members to whom notice is not
16 directed. When appropriate, exclusion may be conditioned on a prohibition against institution or
17 maintenance of a separate action on some or all of the matters in controversy in the class action
18 or a prohibition against use in a separately maintained action of any judgment rendered in favor
19 of the class from which exclusion is sought.

20 *[F(2)(i) Prior to the entry of a judgment against a defendant the court shall request members of the*
21 *class who may be entitled to individual monetary recovery to submit a statement in a form prescribed*
22 *by the court requesting affirmative relief which may also, where appropriate, require information re-*
23 *garding the nature of the loss, injury, claim, transactional relationship, or damage.]*

24 *[F(2)(ii) The form of the statement shall be designed to meet the ends of justice. In determining the*
25 *language and form of the documents to be sent class members under subsection F(2)(i) or (iii), the court*
26 *shall consider at least: (a) the nature of the acts of the defendant; (b) the amount of knowledge a class*
27 *member would have about the extent of such member's damages; (c) the nature of the class including*
28 *the probable degree of sophistication of its members and any special needs created by class members'*
29 *disabilities; (d) whether it is appropriate for the statement to be prepared in alternative formats, such*

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 as large type, Braille, or in languages in addition to English; and (e) the availability of relevant in-
 2 formation from sources other than the individual class members.]

3 [F(2)(iii) When the names and addresses of the class members can reasonably be determined from
 4 the defendant's business records and individual monetary recoveries are capable of calculation without
 5 the need for individualized adjudications, the court, instead of requiring the statement referred to in
 6 subsection F(2)(i), may direct the defendant to send each class member notice of (a) the amount of the
 7 monetary recovery that has been calculated for that person and (b) that person's right to request ex-
 8 clusion from the class. All class members who do not request exclusion within the time specified by the
 9 court shall be deemed to have requested affirmative relief in the calculated amount.]

10 [F(2)(iv) The amount of damages assessed against the defendant shall not exceed the total amount
 11 of damages determined to be allowable by the court for all individual class members who have filed the
 12 statement required by the court under subsection F(2)(i) or who are deemed to have requested affirma-
 13 tive relief under subsection F(2)(iii), assessable court costs, and an award of attorney fees, if any, as
 14 determined by the court.]

15 [F(2)(v) If the parties agree and the court approves, any of the procedures set forth in subsection
 16 F(2)(i) to subsection F(2)(iv) may be waived in a particular case.]

17 [F(3) If a class member fails to file the statement required by the court under subsection F(2)(i) or
 18 if a class member requests exclusion under subsection F(2)(iii) within the time specified by the court,
 19 that person's claim for monetary recovery shall be dismissed without prejudice to the right to maintain
 20 an individual, but not a class, action for such claim.]

21 [F(4) Nothing in subsections F(2) or F(3) is intended to allow the court to award any monetary
 22 recovery that is not claimed either because a class member failed to file the statement required by the
 23 court under subsection F(2)(i), or because a class member requested exclusion under subsection F(2)(iii)
 24 within the time specified by the court.]

25 [F(5)] **F(2)** Plaintiffs shall bear costs of any notice ordered prior to a determination of liability.
 26 The court may, however, order that defendant bear all or a specified part of the costs of any notice
 27 included with a regular mailing by defendant to its current customers or employees. The court may
 28 hold a hearing to determine how the costs of such notice shall be apportioned.

29 [F(6)] **F(3)** No duty of compliance with due process notice requirements is imposed on a de-
 30 fendant by reason of the defendant including notice with a regular mailing by the defendant to
 31 current customers or employees of the defendant under this section.

32 [F(7)] **F(4)** As used in this section, "customer" includes a person, including but not limited to
 33 a student, who has purchased services or goods from a defendant.

34 **SECTION 2.** ORCP 32 L is amended to read:

35 **L Form of judgment.** The judgment in an action ordered maintained as a class action, whether
 36 or not favorable to the class, [*shall specify or*] **must generally** describe [*those found to be*] **the**
 37 members of the class [*or*] **and must specifically identify any persons** who, as a condition of ex-
 38 clusion, have agreed to be bound by the judgment. [*If a judgment that includes a money award is*
 39 *entered in favor of a class, the judgment must, when possible, identify by name each member of the*
 40 *class and the amount to be recovered thereby.*]

41 **SECTION 3.** ORCP 32 is amended by adding a new section O to read:

42 **O Payment of damages.** As part of the settlement or judgment in a class action, the
 43 court may approve a process for the payment of damages. The process may include the use
 44 of claim forms. If any amount awarded as damages is not claimed within the time specified
 45 by the court, or if the court finds that payment of all or part of the damages to class mem-

1 **bers is not practicable, the court shall order that any amounts not paid to class members**
2 **be paid to the Oregon Student Assistance Commission. Amounts paid to the commission**
3 **under this section are continuously appropriated to the commission, and may be used only**
4 **for the purpose of funding grants under the Oregon Opportunity Grant program established**
5 **in ORS 348.205.**

6 **SECTION 4. Section 3 of this 2011 Act and the amendments to ORCP 32 F and 32 L by**
7 **sections 1 and 2 of this 2011 Act apply only to class actions commenced on or after the ef-**
8 **fective date of this 2011 Act.**

9 **SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**
10 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
11 **on its passage.**

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