

D R A F T

SUMMARY

Modifies definition of “economic damages” with regard to medical expenses to mean reasonable charges paid for medical, hospital, nursing and rehabilitative services and other health care services.

Corrects inaccurate reference for definition.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to economic damages; creating new provisions; amending ORS
3 30.298, 30.650, 31.360, 31.705, 31.710, 31.715, 124.100, 137.103, 260.532 and
4 742.544; and declaring an emergency.

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

6 **SECTION 1.** ORS 31.710 is amended to read:

7 31.710. (1) Except for claims subject to ORS 30.260 to 30.300 and ORS
8 chapter 656, in any civil action seeking damages arising out of bodily injury,
9 including emotional injury or distress, death or property damage of any one
10 person including claims for loss of care, comfort, companionship and society
11 and loss of consortium, the amount awarded for noneconomic damages
12 [*shall*] **as defined in ORS 31.705 may** not exceed \$500,000.

13 [(2) *As used in this section:*]

14 [(a) *“Economic damages” means objectively verifiable monetary losses in-*
15 *cluding but not limited to reasonable charges necessarily incurred for medical,*
16 *hospital, nursing and rehabilitative services and other health care services,*
17 *burial and memorial expenses, loss of income and past and future impairment*
18 *of earning capacity, reasonable and necessary expenses incurred for substitute*
19 *domestic services, recurring loss to an estate, damage to reputation that is*

1 *economically verifiable, reasonable and necessarily incurred costs due to loss*
2 *of use of property and reasonable costs incurred for repair or for replacement*
3 *of damaged property, whichever is less.]*

4 [(b) “Noneconomic damages” means subjective, nonmonetary losses, includ-
5 ing but not limited to pain, mental suffering, emotional distress, humiliation,
6 injury to reputation, loss of care, comfort, companionship and society, loss of
7 consortium, inconvenience and interference with normal and usual activities
8 apart from gainful employment.]

9 [(3)] (2) This section does not apply to punitive damages.

10 [(4)] (3) The jury shall not be advised of the limitation set forth in this
11 section.

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

13 31.705. (1) A verdict shall set forth separately economic damages and
14 noneconomic damages[, *if any, as defined in ORS 31.710*].

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

16 (a) **“Economic damages” means objectively verifiable monetary**
17 **losses, including but not limited to reasonable charges paid by or on**
18 **behalf of the claimant for medical, hospital, nursing and rehabilitative**
19 **services and other health care services, burial and memorial expenses,**
20 **loss of income and past and future impairment of earning capacity,**
21 **reasonable and necessary expenses incurred for substitute domestic**
22 **services, recurring loss to an estate, damage to reputation that is**
23 **economically verifiable, reasonable and necessarily incurred costs due**
24 **to loss of use of property and reasonable costs incurred for repair or**
25 **for replacement of damaged property, whichever is less.**

26 (b) **“Noneconomic damages” means subjective, nonmonetary losses,**
27 **including but not limited to pain, mental suffering, emotional distress,**
28 **humiliation, injury to reputation, loss of care, comfort, companionship**
29 **and society, loss of consortium, inconvenience and interference with**
30 **normal and usual activities apart from gainful employment.**

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

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

5 (a) A foster home that is maintained by the foster parents and that has
6 been certified by the department under the provisions of ORS 418.625 to
7 418.645;

8 (b) An approved home that is maintained by the foster parents and that
9 is receiving payment from the department under the provisions of ORS
10 418.027 or under the provisions of ORS 420.810 and 420.815; or

11 (c) A developmental disability child foster home that has been certified
12 by the department under the provisions of ORS 443.830 and 443.835.

13 (2) Except as otherwise provided in this section, the Oregon Youth Au-
14 thority is liable, without regard to fault, for injury to the person of foster
15 parents or damage to the property of foster parents caused by a youth
16 offender if the youth offender resides in a youth offender foster home that
17 is maintained by the foster parents and that has been certified by the au-
18 thority under the provisions of ORS 420.888 to 420.892.

19 (3) Except as otherwise provided in this section, the liability of the de-
20 partment and of the authority under this section is subject to the same re-
21 quirements and limitations provided in ORS 30.260 to 30.300, and a claim
22 under this section shall be treated as a claim for damages within the scope
23 of ORS 30.260 to 30.300 for the purposes of ORS 278.120.

24 (4) Notwithstanding ORS 30.260 to 30.300:

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

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

31 (c) The department and the authority are liable under this section only

1 to the extent the loss is not covered by other insurance; and

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

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

6 (a) Damage to or destruction of currency, securities or any other intan-
7 gible property;

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

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

11 (6) In no event does the liability of the department or the authority under
12 this section for damage to property exceed the difference between the fair
13 market value of the property immediately before its damage or destruction
14 and its fair market value immediately thereafter. The department and the
15 authority are not liable for the costs of any betterments to the property that
16 may be required by code, statute or other law as a condition of repair, re-
17 placement or reconstruction.

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

22 (8) For the purposes of this section:

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

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

25 (c) "Economic damages" and "noneconomic damages" have [*those*
26 *meanings given in ORS 31.710*] **the meaning given those terms in ORS**
27 **31.705.**

28 (d) "Foster child" has [*that*] **the meaning given that term** in ORS 30.297.

29 (e) "Youth offender" has the meaning given **that term** in ORS 419A.004.

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

31 30.650. Noneconomic damages, as defined in ORS [*31.710*] **31.705**, may not

1 be awarded to an inmate in an action against a public body unless the in-
2 mate has established that the inmate suffered economic damages, as defined
3 in ORS [31.710] **31.705**.

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

5 31.360. (1) For the purpose of establishing a claim for economic damages,
6 as defined in ORS [31.710] **31.705**, in an action arising from an injury caused
7 by a dog:

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

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

12 (2) This section does not prevent the owner of a dog that caused an injury
13 from asserting that the dog was provoked, or from asserting any other de-
14 fense that may be available to the owner.

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

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

18 31.715. (1) Except as provided in this section, a plaintiff may not recover
19 noneconomic damages, as defined in ORS [31.710] **31.705**, in any action for
20 injury or death arising out of the operation of a motor vehicle if the plaintiff
21 was in violation of ORS 806.010 or 813.010 at the time the act or omission
22 causing the death or injury occurred. A claim for noneconomic damages shall
23 not be considered by the jury if the jury determines that the limitation on
24 liability established by this section applies to the claim for noneconomic
25 damages.

26 (2) For the purpose of the limitation on liability established by this sec-
27 tion, a person is conclusively presumed to have been in violation of ORS
28 806.010 or 813.010 if the person is convicted in a criminal proceeding of one
29 or both of those offenses. If the person has not been convicted of violating
30 ORS 806.010 or 813.010, the defendant in the civil action may establish in the
31 civil action, by a preponderance of the evidence, that the plaintiff was in

1 violation of ORS 806.010 or 813.010 at the time the act or omission causing
2 the death or injury occurred.

3 (3) The court shall abate a civil action upon the motion of any defendant
4 in the civil action against whom a plaintiff has asserted a claim for none-
5 conomic damages if the defendant alleges that the claim of the plaintiff is
6 subject to the limitation on liability established by this section and:

7 (a) A criminal proceeding for a violation of ORS 813.010 has been com-
8 menced against the plaintiff in the civil action at the time the motion is
9 made; or

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

14 (4) The court may order that only the claim that is subject to the limi-
15 tation on liability established by this section be abated under subsection (3)
16 of this section. An abatement under subsection (3) of this section shall re-
17 main in effect until the conclusion of the criminal proceedings.

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

20 (a) The defendant in the civil action was also in violation of ORS 806.010
21 or 813.010 at the time the act or omission causing the death or injury oc-
22 curred;

23 (b) The death or injury resulted from acts or omissions of the defendant
24 that constituted an intentional tort;

25 (c) The defendant was engaged in conduct that would constitute a vio-
26 lation of ORS 811.140 at the time the act or omission causing the death or
27 injury occurred; or

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

30 (6) The limitation on liability established by this section based on a vio-
31 lation of ORS 806.010 does not apply if the plaintiff in the civil action was

1 insured under a motor vehicle liability insurance policy within 180 days be-
2 fore the act or omission occurred, and the plaintiff has not operated a motor
3 vehicle in violation of ORS 806.010 within the one-year period immediately
4 preceding the date on which coverage under the motor vehicle liability in-
5 surance policy lapsed.

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

7 124.100. (1) As used in ORS 124.100 to 124.140:

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

9 (b) "Financially incapable" has the meaning given that term in ORS
10 125.005.

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

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

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

16 (B) Prevents performance of substantially all the ordinary duties of oc-
17 cupations in which an individual not having the physical or mental impair-
18 ment is capable of engaging, having due regard to the training, experience
19 and circumstances of the person with the physical or mental impairment.

20 (e) "Vulnerable person" means:

21 (A) An elderly person;

22 (B) A financially incapable person;

23 (C) An incapacitated person; or

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

27 (2) A vulnerable person who suffers injury, damage or death by reason
28 of physical abuse or financial abuse may bring an action against any person
29 who has caused the physical or financial abuse or who has permitted another
30 person to engage in physical or financial abuse. The court shall award the
31 following to a plaintiff who prevails in an action under this section:

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

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

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

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

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

10 (a) A vulnerable person;

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

12 (c) A personal representative for the estate of a decedent who was a vul-
13 nerable person at the time the cause of action arose; or

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

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

18 (5) An action may be brought under this section against a person for
19 permitting another person to engage in physical or financial abuse if the
20 person knowingly acts or fails to act under circumstances in which a rea-
21 sonable person should have known of the physical or financial abuse.

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

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

26 137.103. As used in ORS 137.101 to 137.109, 161.675 and 161.685:

27 (1) "Criminal activities" means any offense with respect to which the de-
28 fendant is convicted or any other criminal conduct admitted by the defend-
29 ant.

30 (2) "Economic damages":

31 (a) Has the meaning given that term in ORS [31.710] **31.705**, except that

1 “economic damages” does not include future impairment of earning capacity;
2 and

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

5 (A) The value to the defendant of the victim’s services as defined in ORS
6 163.261; or

7 (B) The value of the victim’s services, as defined in ORS 163.261, com-
8 puted using the minimum wage established under ORS 653.025 and the over-
9 time provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C.
10 201 et seq.).

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

14 (4) “Victim” means:

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

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

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

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

25 (5) “Victim” does not include any coparticipant in the defendant’s crimi-
26 nal activities.

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

28 260.532. (1) No person shall cause to be written, printed, published, posted,
29 communicated or circulated, any letter, circular, bill, placard, poster, photo-
30 graph or other publication, or cause any advertisement to be placed in a
31 publication, or singly or with others pay for any advertisement, with

1 knowledge or with reckless disregard that the letter, circular, bill, placard,
2 poster, photograph, publication or advertisement contains a false statement
3 of material fact relating to any candidate, political committee or measure.

4 (2) As used in subsection (1) of this section, "cause" does not include the
5 broadcast of an advertisement by a radio or television station or cable tele-
6 vision company unless the advertisement is for:

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

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

11 (3) A candidate who knows of and consents to a publication or adver-
12 tisement prohibited by this section with knowledge or with reckless disre-
13 gard that it contains a false statement of material fact, violates this section
14 regardless of whether the candidate has participated directly in the publica-
15 tion or advertisement.

16 (4) There is a rebuttable presumption that a candidate knows of and
17 consents to any publication or advertisement prohibited by this section
18 caused by a political committee over which the candidate exercises any di-
19 rection and control.

20 (5) Any candidate or political committee aggrieved by a violation of this
21 section shall have a right of action against the person alleged to have com-
22 mitted the violation. The aggrieved party may file the action in the circuit
23 court for any county in this state in which a defendant resides or can be
24 found or, if the defendant is a nonresident of this state, in the circuit court
25 for any county in which the publication occurred. To prevail in such an
26 action, the plaintiff must show by clear and convincing evidence that the
27 defendant violated subsection (1) of this section.

28 (6) A plaintiff who prevails in an action provided by subsection (5) of this
29 section may recover economic and noneconomic damages, as defined in ORS
30 [31.710] **31.705**, or \$2,500, whichever is greater. The court may award such
31 additional equitable relief as it considers necessary or proper. The equitable

1 relief may include, but is not limited to, a requirement that a retraction of
2 the false statement be disseminated in the manner directed by the court.
3 Proof of entitlement to economic and noneconomic damages must be by a
4 preponderance of evidence. The court shall award the prevailing party rea-
5 sonable attorney fees at trial and on appeal.

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

14 (8) If a judgment is rendered in an action under this section against a
15 defendant who has been nominated to public office or elected to a public
16 office other than state Senator or state Representative, and it is established
17 by clear and convincing evidence that the false statement was deliberately
18 made or caused to be made by the defendant, the finder of fact shall deter-
19 mine whether the false statement reversed the outcome of the election. If
20 the finder of fact finds by clear and convincing evidence that the false
21 statement reversed the outcome of the election, the defendant shall be de-
22 prived of the nomination or election and the nomination or office shall be
23 declared vacant.

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

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

1 (b) Final judgment on a complaint which relates to an election to an of-
2 fice is rendered before the term of that office begins.

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

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

6 742.544. (1) A provider of personal injury protection benefits shall be re-
7 imbursed for personal injury protection payments made on behalf of any
8 person only to the extent that the total amount of benefits paid exceeds the
9 economic damages as defined in ORS [31.710] **31.705** suffered by that person.
10 As used in this section, “total amount of benefits” means the amount of
11 money recovered by a person from:

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

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

15 (c) Personal injury protection payments; and

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

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

20 **SECTION 11.** The amendments to ORS 30.298, 30.650, 31.360, 31.705,
21 31.710, 31.715, 124.100, 137.103, 260.532 and 742.544 by sections 1 to 10 of
22 this 2013 Act apply only to causes of action arising on or after the ef-
23 fective date of this 2013 Act.

24 **SECTION 12.** This 2013 Act being necessary for the immediate
25 preservation of the public peace, health and safety, an emergency is
26 declared to exist, and this 2013 Act takes effect on its passage.

27