

D R A F T

SUMMARY

Repeals provisions providing for allocation of certain percentage of punitive damages awards to Attorney General for deposit in certain accounts.
Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to punitive damages; creating new provisions; amending ORS 30.882, 105.700 and 192.541; repealing ORS 31.735; and declaring an emergency.

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

SECTION 1. ORS 31.735 is repealed.

SECTION 2. ORS 30.882 is amended to read:

30.882. (1) In addition to, and not in lieu of any other damages that may be claimed, a plaintiff who is a sports official shall receive liquidated damages in an amount not less than \$500 but not more than \$1,000 in any action in which the plaintiff establishes that:

(a) The defendant intentionally subjected the plaintiff to offensive physical contact;

(b) The defendant knew that the plaintiff was a sports official at the time the offensive physical contact was made;

(c) The offensive physical contact is made while the plaintiff is within, or in the immediate vicinity of, a facility at which the plaintiff serves as a sports official for a sports event; and

(d) The offensive physical contact is made while the plaintiff is serving as a sports official or within a brief period of time thereafter.

(2) The court shall award reasonable attorney fees to a prevailing plaintiff

1 in an action in which liquidated damages are awarded under this section.

2 (3) An award of liquidated damages under this section is not subject to
3 ORS 31.725[,] **or** 31.730 [*or 31.735*].

4 (4) As used in this section, “sports official” means a person who:

5 (a) Serves as a referee, umpire, linesman or judge or performs similar
6 functions under a different title; and

7 (b) Is a member of, or registered by, a local, state, regional or national
8 organization that engages in providing education and training in sports
9 officiating.

10 **SECTION 3.** ORS 105.700 is amended to read:

11 105.700. (1) In addition to and not in lieu of any other damages that may
12 be claimed, a plaintiff who is a landowner shall receive liquidated damages
13 in an amount not to exceed \$1,000 in any action in which the plaintiff es-
14 tablishes that:

15 (a) The plaintiff closed the land of the plaintiff as provided in subsection
16 (2) of this section; and

17 (b) The defendant entered and remained upon the land of the plaintiff
18 without the permission of the plaintiff.

19 (2) A landowner or an agent of the landowner may close the privately
20 owned land of the landowner by posting notice as follows:

21 (a) For land through which the public has no right of way, the landowner
22 or agent must place a notice at each outer gate and normal point of access
23 to the land, including both sides of a body of water that crosses the land
24 wherever the body of water intersects an outer boundary line. The notice
25 must be placed on a post, structure or natural object in the form of a sign
26 or a blaze of paint. If a blaze of paint is used, it must consist of at least 50
27 square inches of fluorescent orange paint, except that when metal fence posts
28 are used, approximately the top six inches of the fence post must be painted.
29 If a sign is used, the sign:

30 (A) Must be no smaller than eight inches in height and 11 inches in
31 width;

1 (B) Must contain the words "Closed to Entry" or words to that effect in
2 letters no less than one inch in height; and

3 (C) Must display the name, business address and phone number, if any,
4 of the landowner or agent of the landowner.

5 (b) For land through which or along which the public has an unfenced
6 right of way by means of a public road, the landowner or agent must place:

7 (A) A conspicuous sign no closer than 30 feet from the center line of the
8 roadway where it enters the land, containing words substantially similar to
9 "PRIVATE PROPERTY, NO TRESPASSING OFF ROAD NEXT _____
10 MILES"; or

11 (B) A sign or blaze of paint, as described in paragraph (a) of this sub-
12 section, no closer than 30 feet from the center line of the roadway at regular
13 intervals of not less than one-fourth mile along the roadway where it borders
14 the land, except that a blaze of paint may not be placed on posts where the
15 public road enters the land.

16 (3) Nothing contained in this section prevents emergency or law enforce-
17 ment vehicles from entering upon the posted land.

18 (4) An award of liquidated damages under this section is not subject to
19 ORS 31.725[,] **or** 31.730 [*or* 31.735].

20 (5) Nothing in this section affects any other remedy, civil or criminal,
21 that may be available for a trespass described in this section.

22 **SECTION 4.** ORS 192.541 is amended to read:

23 192.541. (1) An individual or an individual's blood relative, representative
24 or estate may bring a civil action against any person who violates ORS
25 192.535, 192.537, 192.539 or 192.547.

26 (2) For a violation of ORS 192.537 or 192.547, the court shall award the
27 greater of actual damages or:

28 (a) \$100, for an inadvertent violation that does not arise out of the
29 negligence of the defendant;

30 (b) \$500, for a negligent violation;

31 (c) \$10,000, for a knowing or reckless violation;

1 (d) \$15,000, for a knowing violation based on a fraudulent misrepresen-
2 tation; or

3 (e) \$25,000, for a knowing violation committed with intent to sell, transfer
4 or use for commercial advantage, personal gain or malicious harm.

5 (3) For a violation of ORS 192.535 or 192.539, the court shall award the
6 greater of actual damages or:

7 (a) \$1,000, for an inadvertent violation that does not arise out of the
8 negligence of the defendant;

9 (b) \$5,000, for a negligent violation;

10 (c) \$100,000, for a knowing or reckless violation;

11 (d) \$150,000, for a knowing violation based on a fraudulent misrepresen-
12 tation; or

13 (e) \$250,000, for a knowing violation committed with intent to sell,
14 transfer or use for commercial advantage, personal gain or malicious harm.

15 (4) It is an affirmative defense to an action described in subsection (2)(a)
16 or (b) or (3)(a) or (b) of this section that the defendant corrected the vio-
17 lation through destruction of illegally retained or obtained samples or in-
18 formation, or took other action to correct the violation, if the correction was
19 completed within 120 days after the defendant knew or should have known
20 that the violation occurred.

21 (5) The court may provide such equitable relief as it deems necessary or
22 proper.

23 (6)(a) The court may award attorney fees to a defendant only if the court
24 finds that the plaintiff had no objectively reasonable basis for asserting a
25 claim or for appealing an adverse decision of the trial court.

26 (b) The court shall award attorney fees to a plaintiff if the court finds
27 that the defendant committed a violation described in subsection (2)(c), (d)
28 or (e) or (3)(c), (d) or (e) of this section.

29 (7) An action authorized by subsection (1) of this section must be com-
30 menced within three years after the date the plaintiff knew or should have
31 known of the violation, but in no instance more than 10 years after the date

1 of the violation.

2 (8) A plaintiff may recover damages provided by subsections (2) and (3)
3 of this section for each violation by a defendant.

4 (9) ORS 31.725, 31.730[, 31.735] and 31.740 do not apply to amounts
5 awarded in actions under this section.

6 **SECTION 5. The amendments to ORS 30.882, 105.700 and 192.541 by
7 sections 2 to 4 of this 2013 Act and the repeal of ORS 31.735 by section
8 1 of this 2013 Act apply only to causes of action that arise on and after
9 the effective date of this 2013 Act.**

10 **SECTION 6. This 2013 Act being necessary for the immediate pres-
11 ervation of the public peace, health and safety, an emergency is de-
12 clared to exist, and this 2013 Act takes effect on its passage.**

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