

# House Bill 3157

Sponsored by COMMITTEE ON CONSUMER PROTECTION AND GOVERNMENT EFFICIENCY

## 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 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

1  
2 Relating to punitive damages; creating new provisions; amending ORS 30.882, 105.700 and 192.541;  
3 repealing ORS 31.735; and declaring an emergency.

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

5 **SECTION 1. ORS 31.735 is repealed.**

6 **SECTION 2.** ORS 30.882 is amended to read:

7 30.882. (1) In addition to, and not in lieu of any other damages that may be claimed, a plaintiff  
8 who is a sports official shall receive liquidated damages in an amount not less than \$500 but not  
9 more than \$1,000 in any action in which the plaintiff establishes that:

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

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

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

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

17 (2) The court shall award reasonable attorney fees to a prevailing plaintiff in an action in which  
18 liquidated damages are awarded under this section.

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

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

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

24 (b) Is a member of, or registered by, a local, state, regional or national organization that en-  
25 gages in providing education and training in sports officiating.

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

27 105.700. (1) In addition to and not in lieu of any other damages that may be claimed, a plaintiff  
28 who is a landowner shall receive liquidated damages in an amount not to exceed \$1,000 in any  
29 action in which the plaintiff establishes that:

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

31 (b) The defendant entered and remained upon the land of the plaintiff without the permission

**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 of the plaintiff.

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

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

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

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

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

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

18 (A) A conspicuous sign no closer than 30 feet from the center line of the roadway where it en-  
 19 ters the land, containing words substantially similar to "PRIVATE PROPERTY, NO TRESPASSING  
 20 OFF ROAD NEXT \_\_\_\_\_ MILES"; or

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

25 (3) Nothing contained in this section prevents emergency or law enforcement vehicles from en-  
 26 tering upon the posted land.

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

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

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

32 192.541. (1) An individual or an individual's blood relative, representative or estate may bring  
 33 a civil action against any person who violates ORS 192.535, 192.537, 192.539 or 192.547.

34 (2) For a violation of ORS 192.537 or 192.547, the court shall award the greater of actual dam-  
 35 ages or:

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

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

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

39 (d) \$15,000, for a knowing violation based on a fraudulent misrepresentation; or

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

42 (3) For a violation of ORS 192.535 or 192.539, the court shall award the greater of actual dam-  
 43 ages or:

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

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

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

2 (d) \$150,000, for a knowing violation based on a fraudulent misrepresentation; or

3 (e) \$250,000, for a knowing violation committed with intent to sell, transfer or use for commer-  
4 cial advantage, personal gain or malicious harm.

5 (4) It is an affirmative defense to an action described in subsection (2)(a) or (b) or (3)(a) or (b)  
6 of this section that the defendant corrected the violation through destruction of illegally retained  
7 or obtained samples or information, or took other action to correct the violation, if the correction  
8 was completed within 120 days after the defendant knew or should have known that the violation  
9 occurred.

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

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

14 (b) The court shall award attorney fees to a plaintiff if the court finds that the defendant com-  
15 mitted a violation described in subsection (2)(c), (d) or (e) or (3)(c), (d) or (e) of this section.

16 (7) An action authorized by subsection (1) of this section must be commenced within three years  
17 after the date the plaintiff knew or should have known of the violation, but in no instance more than  
18 10 years after the date of the violation.

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

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

23 **SECTION 5. The amendments to ORS 30.882, 105.700 and 192.541 by sections 2 to 4 of this**  
24 **2013 Act and the repeal of ORS 31.735 by section 1 of this 2013 Act apply only to causes of**  
25 **action that arise on and after the effective date of this 2013 Act.**

26 **SECTION 6. This 2013 Act being necessary for the immediate preservation of the public**  
27 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
28 **on its passage.**

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