

# House Bill 3538

Sponsored by Representatives BOONE, PARRISH

## 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**.

Modifies allocation of punitive damages when incident giving rise to punitive damages occurred outside this state.

Applies to awards of punitive damages included in verdicts entered on or after January 1, 2013.  
Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to punitive damages; creating new provisions; amending ORS 31.735; and declaring an  
3 emergency.

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

5 **SECTION 1.** ORS 31.735 is amended to read:

6 31.735. (1) Upon the entry of a verdict including an award of punitive damages, the Department  
7 of Justice becomes a judgment creditor as to the amounts payable under paragraphs *[(b) and (c) of*  
8 *this section, and]* **(a)(B) and (C) and (b)(B) and (C) of this subsection.** The punitive damage por-  
9 tion of an award shall be allocated as follows:

10 **(a) If the injury giving rise to the award of punitive damages occurred in this state:**

11 *[(a)]* **(A)** Thirty percent is payable to the prevailing party. The attorney for the prevailing party  
12 shall be paid out of the amount allocated under this *[paragraph]* **subparagraph**, in the amount  
13 agreed upon between the attorney and the prevailing party. However, in no event may more than  
14 20 percent of the amount awarded as punitive damages be paid to the attorney for the prevailing  
15 party.

16 *[(b)]* **(B)** Sixty percent is payable to the Attorney General for deposit in the Criminal Injuries  
17 Compensation Account of the Department of Justice Crime Victims' Assistance Section, and may be  
18 used only for the purposes set forth in ORS chapter 147. However, if the prevailing party is a public  
19 entity, the amount otherwise payable to the Criminal Injuries Compensation Account shall be paid  
20 to the general fund of the public entity.

21 *[(c)]* **(C)** Ten percent is payable to the Attorney General for deposit in the State Court Facilities  
22 and Security Account established under ORS 1.178, and may be used only for the purposes specified  
23 in ORS 1.178 (2)(d).

24 **(b) If the injury giving rise to the award of punitive damages occurred outside this state:**

25 **(A) Sixty percent is payable to the prevailing party. The attorney for the prevailing party**  
26 **shall be paid out of the amount allocated under this subparagraph, in the amount agreed**  
27 **upon between the attorney and the prevailing party. However, in no event may more than**  
28 **20 percent of the amount awarded as punitive damages be paid to the attorney for the pre-**  
29 **vailing party.**

30 **(B) Twenty percent is payable to the Attorney General for deposit in the Criminal Inju-**

**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 **ries Compensation Account of the Department of Justice Crime Victims' Assistance Section,**  
 2 **and may be used only for the purposes set forth in ORS chapter 147. However, if the pre-**  
 3 **ailing party is a public entity, the amount otherwise payable to the Criminal Injuries Com-**  
 4 **ensation Account shall be paid to the general fund of the public entity.**

5 **(C) Twenty percent is payable to the Attorney General for deposit in the State Court**  
 6 **Facilities and Security Account established under ORS 1.178, and may be used only for the**  
 7 **purposes specified in ORS 1.178 (2)(d).**

8 (2) The party preparing the proposed judgment shall assure that the judgment identifies the  
 9 judgment creditors specified in subsection (1) of this section.

10 (3) Upon the entry of a verdict including an award of punitive damages, the prevailing party  
 11 shall provide notice of the verdict to the Department of Justice. In addition, upon entry of a judg-  
 12 ment based on a verdict that includes an award of punitive damages, the prevailing party shall  
 13 provide notice of the judgment to the Department of Justice. The notices required under this sub-  
 14 section must be in writing and must be delivered to the Department of Justice Crime Victims' As-  
 15 sistance Section in Salem, Oregon within five days after the entry of the verdict or judgment.

16 (4) Whenever a judgment includes both compensatory and punitive damages, any payment on the  
 17 judgment by or on behalf of any defendant, whether voluntary or by execution or otherwise, shall  
 18 be applied first to compensatory damages, costs and court-awarded attorney fees awarded against  
 19 that defendant and then to punitive damages awarded against that defendant unless all affected  
 20 parties, including the Department of Justice, expressly agree otherwise, or unless that application  
 21 is contrary to the express terms of the judgment.

22 (5) Whenever any judgment creditor of a judgment which includes punitive damages governed  
 23 by this section receives any payment on the judgment by or on behalf of any defendant, the judgment  
 24 creditor receiving the payment shall notify the attorney for the other judgment creditors and all  
 25 sums collected shall be applied as required by subsections (1) and (4) of this section, unless all af-  
 26 fected parties, including the Department of Justice, expressly agree otherwise, or unless that appli-  
 27 cation is contrary to the express terms of the judgment.

28 **SECTION 2. The amendments to ORS 31.735 by section 1 of this 2013 Act apply to awards**  
 29 **of punitive damages included in a verdict entered on or after January 1, 2013.**

30 **SECTION 3. This 2013 Act being necessary for the immediate preservation of the public**  
 31 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
 32 **on its passage.**

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