

Minority Report
B-Engrossed
House Bill 4143

Ordered by the Senate March 3
Including House Amendments dated February 14 and Senate Minority
Report Amendments dated March 3

Sponsored by nonconcurring members of the Senate Committee on Judiciary: Senators CLOSE, KRUSE

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.

[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 Legal Aid Supplementary Account. Directs Oregon Department of Administrative Services to make quarterly distributions of interest earned by account to Oregon State Bar for funding Legal Services Program.]

[Establishes Legal Aid Supplementary Account in State Treasury.]

[Declares emergency, effective on passage.]

Provides that if amounts awarded in certain class actions are not claimed within time specified by court, 50 percent of unclaimed amounts be paid to Legal Aid Account and 50 percent of unclaimed amounts be paid to Domestic Violence Programs Account. Provides that unclaimed amounts may not be considered in attorney fees award.

Establishes Domestic Violence Programs Account in State Treasury. Continuously appropriates moneys in account for use in domestic violence programs.

Directs Secretary of State to conduct financial audit of Legal Services Program at least once every five years.

Directs Oregon State Bar to report biennially on Legal Services Program.

A BILL FOR AN ACT

1
2 Relating to lawsuits; creating new provisions; amending ORS 9.577 and ORCP 32 M; and appropri-
3 ating money.

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

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

6 **M Attorney fees, costs, disbursements, and litigation expenses.**

7 M(1)(a) Attorney fees for representing a class are subject to control of the court.

8 M(1)(b) If under an applicable provision of law a defendant or defendant class is entitled to at-
9 torney fees, costs, or disbursements from a plaintiff class, only representative parties and those
10 members of the class who have appeared individually are liable for those amounts. If a plaintiff is
11 entitled to attorney fees, costs, or disbursements from a defendant class, the court may apportion
12 the fees, costs, or disbursements among the members of the class.

13 M(1)(c) If the prevailing class recovers a judgment that can be divided for the purpose, the court
14 may order reasonable attorney fees and litigation expenses of the class to be paid from the recovery.

15 M(1)(d) The court may order the adverse party to pay to the prevailing class its reasonable at-
16 torney fees and litigation expenses if permitted by law in similar cases not involving a class.

17 M(1)(e) In determining the amount of attorney fees for a prevailing class the court shall consider
18 the following factors:

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 M(1)(e)(i) The time and effort expended by the attorney in the litigation, including the nature,
2 extent, and quality of the services rendered;

3 M(1)(e)(ii) Results achieved and benefits conferred upon the class, **not including damages that**
4 **are unclaimed as provided in section 2 of this 2014 Act;**

5 M(1)(e)(iii) The magnitude, complexity, and uniqueness of the litigation;

6 M(1)(e)(iv) The contingent nature of success; and

7 M(1)(e)(v) Appropriate criteria in Rule 1.5 of the Oregon Rules of Professional Conduct.

8 M(2) Before a hearing under section C of this rule or at any other time the court directs, the
9 representative parties and the attorney for the representative parties shall file with the court,
10 jointly or separately:

11 M(2)(a) A statement showing any amount paid or promised them by any person for the services
12 rendered or to be rendered in connection with the action or for the costs and expenses of the liti-
13 gation and the source of all of the amounts;

14 M(2)(b) A copy of any written agreement, or a summary of any oral agreement, between the
15 representative parties and their attorney concerning financial arrangement or fees; and

16 M(2)(c) A copy of any written agreement, or a summary of any oral agreement, by the repre-
17 sentative parties or the attorney to share these amounts with any person other than a member,
18 regular associate, or an attorney regularly of counsel with the law firm of the representative parties'
19 attorney. This statement shall be supplemented promptly if additional arrangements are made.

20 **M(3) If an agreement between the representative parties and their attorney provides for**
21 **the representative parties to pay to the attorney a percentage of damages recovered by the**
22 **class as attorney fees, the court may not award as attorney fees any percentage of damages**
23 **that are unclaimed as provided in section 2 of this 2014 Act.**

24 **SECTION 2. ORCP 32 is amended by adding a new section O to read:**

25 **O Payment of damages. If any amount awarded in a judgment in a class action, other**
26 **than a judgment approving a settlement, is not claimed within the time specified by the**
27 **court, the court shall order that:**

28 (1) **Fifty percent of the amounts not paid to class members be deposited in the Legal Aid**
29 **Account established in ORS 9.577; and**

30 (2) **Fifty percent of the amounts not paid to class members be deposited in the Domestic**
31 **Violence Programs Account established in section 4 of this 2014 Act.**

32 **SECTION 3. ORS 9.577 is amended to read:**

33 9.577. (1) The Legal Aid Account is established in the General Fund of the State Treasury. All
34 moneys in the account are continuously appropriated to the State Court Administrator for the pur-
35 pose of [*the distributions required by this section.*] **funding the Legal Services Program established**
36 **under ORS 9.572. Upon request of the State Court Administrator, the State Treasurer shall**
37 **create subaccounts within the account for the purposes of managing moneys in the account**
38 **and distributing moneys from the account as described in this section. The State Treasurer**
39 **may charge the account for actual costs associated with the administration of the account.**
40 Interest earned by the account shall be credited to the General Fund.

41 (2) Each month, the State Court Administrator shall transfer to the Legal Aid Account, from
42 amounts collected by the State Court Administrator as fees and charges in the circuit courts, the
43 amounts necessary to make the distributions required by subsection (3) of this section.

44 (3) Each biennium, the State Court Administrator shall distribute to the Oregon State Bar \$11.9
45 million from the Legal Aid Account, **using the amounts transferred to the account under sub-**

1 **section (2) of this section.** Distributions under this [section] **subsection** shall be made by the State
2 Court Administrator in eight quarterly installments of equal amounts[, *with the first distribution to*
3 *be made as soon as possible after July 1, 2011*]. Amounts distributed to the Oregon State Bar under
4 this subsection may be used only for the funding of the Legal Services Program established under
5 ORS 9.572.

6 (4) **The State Court Administrator may make further distributions to the Oregon State**
7 **Bar from the amounts deposited in the Legal Aid Account under section 2 of this 2014 Act.**
8 **Amounts distributed to the Oregon State Bar under this subsection may be used only for the**
9 **funding of legal services related to domestic violence offered by the Legal Services Program.**

10 **SECTION 4. The Domestic Violence Programs Account is established in the State**
11 **Treasury, separate and distinct from the General Fund. All moneys in the account are con-**
12 **tinuously appropriated to the Department of Justice and may be used only for distribution**
13 **to district attorneys for use in domestic violence programs. The State Treasurer may charge**
14 **the account for actual costs associated with the administration of the account. Interest**
15 **earned by the account shall be credited to the General Fund.**

16 **SECTION 5. At least once every five years for as long as the Legal Services Program**
17 **established under ORS 9.572 receives funding from the state or from local governments, the**
18 **Secretary of State shall conduct a financial audit of the Legal Services Program established**
19 **under ORS 9.572. The actual costs of conducting the audits shall be charged to the Oregon**
20 **State Bar.**

21 **SECTION 6. (1) On or before December 31 of every even-numbered year, the Oregon**
22 **State Bar shall prepare and submit to an appropriate interim committee of the Legislative**
23 **Assembly a detailed report on the Legal Services Program. The report must include, but need**
24 **not be limited to:**

25 (a) **A list of all legal services providers and individual attorneys that provided services**
26 **under the program during the previous two years.**

27 (b) **A financial report for each legal service provider that provided services through the**
28 **program during the previous two years, including sources of all revenues.**

29 (c) **The number of files opened during the previous two years in each of the following**
30 **subject areas:**

31 (A) **Domestic relations.**

32 (B) **Landlord and tenant.**

33 (C) **Employment law.**

34 (D) **Torts.**

35 (E) **Debtor and creditor.**

36 (d) **The number of actions filed during the previous two years in each of the subject areas**
37 **listed in paragraph (c) of this subsection.**

38 (e) **The number of cases resulting in a judgment during the previous two years in each**
39 **of the subject areas listed in paragraph (c) of this subsection.**

40 (f) **The number of cases that were filed as an action resulting in a settlement during the**
41 **previous two years in each of the subject areas listed in paragraph (c) of this subsection.**

42 (g) **The number of cases that were never filed as an action resulting in a settlement**
43 **during the previous two years in each of the subject areas listed in paragraph (c) of this**
44 **subsection.**

45 (h) **The number of administrative claims handled during the previous two years, broken**

1 **down by administrative agency.**

2 **(i) The number of administrative claims filed and subsequently withdrawn during the**
3 **previous two years.**

4 **(2) The information described in subsection (1)(c) to (g) of this section may not include**
5 **a miscellaneous category.**

6 **SECTION 7. Section 2 of this 2014 Act and the amendments to ORCP 32 M by section 1**
7 **of this 2014 Act apply only to class actions commenced on or after the effective date of this**
8 **2014 Act.**

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