

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 4143**

1 On page 1 of the printed A-engrossed bill, delete lines 5 through 24.

2 On page 2, delete lines 1 through 38 and insert:

3 **SECTION 1.** ORCP 32 F is amended to read:

4 **F Notice and exclusion.**

5 “F(1) When [*ordering*] **a class meets the prerequisites of section A of**
6 **this rule and the court orders** that an action be maintained as a class
7 action under **sections B and C of** this rule, the court shall direct that notice
8 be given to some or all members of the class under subsection E(2) of this
9 rule, shall determine when and how this notice should be given and shall
10 determine whether, when, how, and under what conditions putative members
11 may elect to be excluded from the class. The matters pertinent to these de-
12 terminations ordinarily include: (a) the nature of the controversy and the
13 relief sought; (b) the extent and nature of any member’s injury or liability;
14 (c) the interest of the party opposing the class in securing a final resolution
15 of the matters in controversy; (d) the inefficiency or impracticality of sepa-
16 rately maintained actions to resolve the controversy; (e) the cost of notifying
17 the members of the class; and (f) the possible prejudice to members to whom
18 notice is not directed. When appropriate, exclusion may be conditioned on
19 a prohibition against institution or maintenance of a separate action on some
20 or all of the matters in controversy in the class action or a prohibition
21 against use in a separately maintained action of any judgment rendered in
22 favor of the class from which exclusion is sought.

1 “[F(2)(i) *Prior to the entry of a judgment against a defendant the court*
2 *shall request members of the class who may be entitled to individual monetary*
3 *recovery to submit a statement in a form prescribed by the court requesting*
4 *affirmative relief which may also, where appropriate, require information re-*
5 *garding the nature of the loss, injury, claim, transactional relationship, or*
6 *damage.*]

7 “[F(2)(ii) *The form of the statement shall be designed to meet the ends of*
8 *justice. In determining the language and form of the documents to be sent class*
9 *members under subsection F(2)(i) or (iii), the court shall consider at least: (a)*
10 *the nature of the acts of the defendant; (b) the amount of knowledge a class*
11 *member would have about the extent of such member’s damages; (c) the nature*
12 *of the class including the probable degree of sophistication of its members and*
13 *any special needs created by class members’ disabilities; (d) whether it is ap-*
14 *propriate for the statement to be prepared in alternative formats, such as large*
15 *type, Braille, or in languages in addition to English; and (e) the availability*
16 *of relevant information from sources other than the individual class*
17 *members.*]

18 “[F(2)(iii) *When the names and addresses of the class members can rea-*
19 *sonably be determined from the defendant’s business records and individual*
20 *monetary recoveries are capable of calculation without the need for individ-*
21 *ualized adjudications, the court, instead of requiring the statement referred to*
22 *in subsection F(2)(i), may direct the defendant to send each class member no-*
23 *tice of (a) the amount of the monetary recovery that has been calculated for that*
24 *person and (b) that person’s right to request exclusion from the class. All class*
25 *members who do not request exclusion within the time specified by the court*
26 *shall be deemed to have requested affirmative relief in the calculated*
27 *amount.*]

28 “[F(2)(iv) *The amount of damages assessed against the defendant shall not*
29 *exceed the total amount of damages determined to be allowable by the court*
30 *for all individual class members who have filed the statement required by the*

1 court under subsection F(2)(i) or who are deemed to have requested affirmative
2 relief under subsection F(2)(iii), assessable court costs, and an award of at-
3 torney fees, if any, as determined by the court.]

4 “[F(2)(v) If the parties agree and the court approves, any of the procedures
5 set forth in subsection F(2)(i) to subsection F(2)(iv) may be waived in a par-
6 ticular case.]

7 “[F(3) If a class member fails to file the statement required by the court
8 under subsection F(2)(i) or if a class member requests exclusion under sub-
9 section F(2)(iii) within the time specified by the court, that person’s claim for
10 monetary recovery shall be dismissed without prejudice to the right to maintain
11 an individual, but not a class, action for such claim.]

12 “[F(4) Nothing in subsections F(2) or F(3) is intended to allow the court
13 to award any monetary recovery that is not claimed either because a class
14 member failed to file the statement required by the court under subsection
15 F(2)(i), or because a class member requested exclusion under subsection
16 F(2)(iii) within the time specified by the court.]

17 “[F(5)] **F(2)** Plaintiffs shall bear costs of any notice ordered prior to a
18 determination of liability. The court may, however, order that defendant bear
19 all or a specified part of the costs of any notice included with a regular
20 mailing by defendant to its current customers or employees. The court may
21 hold a hearing to determine how the costs of such notice shall be appor-
22 tioned.

23 “[F(6)] **F(3)** No duty of compliance with due process notice requirements
24 is imposed on a defendant by reason of the defendant including notice with
25 a regular mailing by the defendant to current customers or employees of the
26 defendant under this section.

27 “[F(7)] **F(4)** As used in this section, ‘customer’ includes a person, includ-
28 ing but not limited to a student, who has purchased services or goods from
29 a defendant.”.

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