

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

1 On page 1 of the printed A-engrossed bill, line 2, delete “and 32 L” and
2 insert “, 32 L and 32 M”.

3 On page 3, delete lines 2 through 26 and insert:

4 **“SECTION 3.** ORCP 32 M is amended to read:

5 “M Attorney fees, costs, disbursements, and litigation expenses.

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

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

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

18 “M(1)(d) The court may order the adverse party to pay to the prevailing
19 class its reasonable attorney fees and litigation expenses if permitted by law
20 in similar cases not involving a class.

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

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

3 “M(1)(e)(ii) Results achieved and benefits conferred upon the class, **not**
4 **including damages that are found by the court to be unclaimed or**
5 **impracticable to be paid to class members under section O of this**
6 **rule;**

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

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

9 “M(1)(e)(v) Appropriate criteria in Rule 1.5 of the Oregon Rules of Pro-
10 fessional Conduct.

11 “M(2) Before a hearing under section C of this rule or at any other time
12 the court directs, the representative parties and the attorney for the repre-
13 sentative parties shall file with the court, jointly or separately:

14 “M(2)(a) A statement showing any amount paid or promised them by any
15 person for the services rendered or to be rendered in connection with the
16 action or for the costs and expenses of the litigation and the source of all
17 of the amounts;

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

21 “M(2)(c) A copy of any written agreement, or a summary of any oral
22 agreement, by the representative parties or the attorney to share these
23 amounts with any person other than a member, regular associate, or an at-
24 torney regularly of counsel with the law firm of the representative parties’
25 attorney. This statement shall be supplemented promptly if additional ar-
26 rangements are made.

27 **“M(3) If an agreement between the representative parties and their**
28 **attorney provides for the representative parties to pay to the attorney**
29 **a percentage of damages recovered by the class as attorney fees, the**
30 **court may not award as attorney fees any percentage of damages that**

1 are found by the court to be unclaimed or impracticable to be paid to
2 class members under section 4 of this 2014 Act.

3 **“SECTION 4. ORCP 32 is amended by adding a new section O to**
4 **read:**

5 **“O Payment of damages. As part of the settlement or judgment in**
6 **a class action, the court may approve a process for the payment of**
7 **damages. The process may include the use of claim forms. If any**
8 **amount awarded as damages is not claimed within the time specified**
9 **by the court, or if the court finds that payment of all or part of the**
10 **damages to class members is not practicable, the court shall order**
11 **that any amounts not paid to class members be deposited in the Legal**
12 **Aid Supplementary Account established under section 5 of this 2014**
13 **Act.**

14 **“SECTION 5. (1) The Legal Aid Supplementary Account is estab-**
15 **lished in the State Treasury, separate and distinct from the General**
16 **Fund. All moneys in the account are continuously appropriated to the**
17 **Oregon Department of Administrative Services for the purpose of the**
18 **distributions required by this section. Interest earned by the account**
19 **shall be credited to the account.**

20 **“(2) Moneys deposited in the account under section 4 of this 2014**
21 **Act may not be expended for any purpose and shall be retained in the**
22 **account.**

23 **“(3) As soon as possible after the end of each calendar quarter, the**
24 **department shall distribute the interest earned by the account in the**
25 **previous calendar quarter to the Oregon State Bar. Amounts distrib-**
26 **uted to the Oregon State Bar under this subsection may be used only**
27 **for the funding of the Legal Services Program established under ORS**
28 **9.572.**

29 **“SECTION 6. Section 4 of this 2014 Act and the amendments to**
30 **ORCP 32 F, 32 L and 32 M by sections 1 to 3 of this 2014 Act apply only**

1 to class actions in which a judgment has not been entered before the
2 effective date of this 2014 Act.

3 **“SECTION 7. This 2014 Act being necessary for the immediate
4 preservation of the public peace, health and safety, an emergency is
5 declared to exist, and this 2014 Act takes effect on its passage.”.**

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