

PRELIMINARY STAFF MEASURE SUMMARY**CARRIER:**

Senate Committee on Judiciary

REVENUE: No revenue impact, statement issued (Indeterminate Impact)**FISCAL: Fiscal statement issued****SUBSEQUENT REFERRAL TO:****Action:****Vote:****Yeas:****Nays:****Exc.:****Prepared By:** Channa Newell, Counsel**Meeting Dates:** 2/16

WHAT THE MEASURE DOES: Directs fifty percent of unclaimed or unpaid damages awarded in class action proceeding to Oregon State Bar for funding of Legal Services Program. Directs fifty percent of unclaimed or unpaid damages to entity that court determines has direct relationship to action or is directly beneficial to interest of class members. Specifies court may approve process for payment of damages, including use of claim forms. Removes requirement that class members affirmatively indicate desire for share of monetary award prior to determination of judgment amount. Requires court to specifically identify individuals who request exclusion from class and to generally describe remaining class. Applies only to actions in which appeals have not been exhausted or expired. Declares emergency; effective on passage.

ISSUES DISCUSSED:**EFFECT OF COMMITTEE AMENDMENT:**

BACKGROUND: The Oregon Rules of Civil Procedure provide the structure for conducting civil suits, including class actions. Rule 32 currently requires the use of claim forms or business records to determine the number of individuals who are entitled to receive a portion of a money award in a class action proceeding. Prior to the entry of judgment, the court has two methods to determine who will be receiving a portion of the judgment. 1) If a claim form is used, class individuals must affirmatively respond to the claim form to be included in the money award. If individuals do not respond to the claim form, they are not included in the judgment amount. This method is considered an “opt-in” system. 2) If business records exist that can reasonably identify class individuals, the court may order the defendant to notify those individuals of their right to recovery, and individuals must then notify the court if they do not wish to be included in the class. If the individuals do not respond to the notice, they will be included in the judgment award. This method is considered an “opt-out” system. In federal court and in many other states, an opt-out system is used to determine the judgment amount in most class actions; the judgment is based on the number of individuals who remain in the class after given the option to opt-out. In Oregon, however, the first method of notice is often used. The number of affirmative responses received from a claims notice will determine the judgment award.

After a judgment has been entered and award distributed, there may be money remaining from uncashed checks or unclaimed funds. In many courts, this money is directed to another entity or purpose, and is not returned to the defendant. This principle is called “cy pres.” Oregon does not have a cy pres rule and any unclaimed moneys at the conclusion of a class action are returned to the defendant.

House Bill 2700 establishes a cy pres rule within ORCP 32. HB 2700 directs 50 percent of unclaimed or unpaid moneys to the Oregon State Bar for the sole purpose of funding the Legal Services Program. The remaining 50 percent is distributed to any entity that the court determines is directly related to the class action or is directly beneficial to the class. It also changes ORCP 32 so that courts may determine the claims process on a case by case basis and removes the “opt-in” mechanism for individual recovery from the judgment.

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This summary has not been adopted or officially endorsed by action of the committee.