

From the Desk of  
Senator Ted Ferrioli

HB 2700-8  
(LC 1730)  
2/18/15 (MNJ/ps)

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2700**

1 On page 1 of the printed bill, line 2, after “provisions;” delete the rest  
2 of the line and delete line 3 and insert “amending ORCP 32 A, 32 B, 32 C,  
3 32 D, 32 E, 32 G, 32 L and 32 M; and repealing ORS 41.815 and ORCP 32 F,  
4 32 H, 32 I, 32 J, 32 K and 32 N.”

5 Delete lines 5 through 29 and delete pages 2 and 3 and insert:

6 **“SECTION 1. ORS 41.815 and ORCP 32 F, 32 H, 32 I, 32 J, 32 K and**  
7 **32 N are repealed.**

8 **“SECTION 2.** ORCP 32 A is amended to read:

9 **“A** [*Requirement for class action*] **Prerequisites.** One or more members  
10 of a class may sue or be sued as representative parties on behalf of all  
11 **members** only if:

12 “A(1) The class is so numerous that joinder of all members is impracti-  
13 cable;

14 “A(2) There are questions of law or fact common to the class;

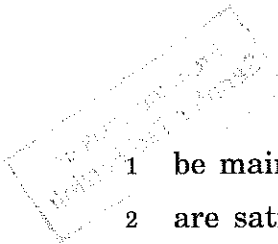
15 “A(3) The claims or defenses of the representative parties are typical of  
16 the claims or defenses of the class; **and**

17 “A(4) The representative parties will fairly and adequately protect the  
18 interests of the class.[: *and*]

19 “[A(5) *In an action for damages, the representative parties have complied*  
20 *with the prelitigation notice provisions of section H of this rule.*]

21 **“SECTION 3.** ORCP 32 B is amended to read:

22 **“B** [*Class action.*] **Types of class actions maintainable.** An action may



1 be maintained as a class action if the prerequisites of section A of this rule  
2 are satisfied, and in addition, [*the court finds that a class action is superior*  
3 *to other available methods for the fair and efficient adjudication of the con-*  
4 *troversy. The matters pertinent to this finding include*] **if:**

5 “B(1) [*The extent to which*] The prosecution of separate actions by or  
6 against individual members of the class [*creates*] **would create** a risk of:

7 “B(1)(a) Inconsistent or varying adjudications with respect to **individual**  
8 members of the class [*which*] **that** would establish incompatible standards  
9 of conduct for the party opposing the class; or

10 “B(1)(b) Adjudications with respect to members of the class [*which*] **that**  
11 would as a practical matter be dispositive of the interests of the other  
12 members not parties to the **individual** adjudications or substantially impair  
13 or impede their ability to protect their interests;

14 “B(2) [*The extent to which the relief sought would take the form of*] **The**  
15 **party opposing the class has acted or refused to act on grounds that**  
16 **apply generally to the class, so that final** injunctive relief or corre-  
17 sponding declaratory relief **is appropriate** with respect to the class as a  
18 whole; **or**

19 “B(3) [*The extent to which*] **The court finds that the** questions of law  
20 or fact common to the members of the class predominate over any questions  
21 affecting only individual members[;] **and that a class action is superior**  
22 **to other available methods for fairly and efficiently adjudicating the**  
23 **controversy. The matters pertinent to these findings include:**

24 “[B(4)] **B(3)(a)** The interest of members of the class in individually con-  
25 trolling the prosecution or defense of separate actions;

26 “[B(5)] **B(3)(b)** The extent and nature of any litigation concerning the  
27 controversy already commenced by or against members of the class;

28 “[B(6)] **B(3)(c)** The desirability or undesirability of concentrating the  
29 litigation of the claims in the particular forum; **and**

30 “[B(7)] **B(3)(d)** The difficulties likely to be encountered in the manage-

1 ment of a class action that will be eliminated or significantly reduced if the  
2 controversy is adjudicated by other available means.[; and]

3 *“[B(8) Whether or not the claims of individual class members are insuffi-*  
4 *cient in the amounts or interests involved, in view of the complexities of the*  
5 *issues and the expenses of the litigation, (D) the likely difficulties in managing*  
6 *a class actions.]*

7 **“SECTION 4. ORCP 32 C is amended to read:**

8 **“C Determination by order whether class action to be maintained; notice**  
9 **to class members.**

10 *“[C(1) As soon as practicable after the commencement of an action brought*  
11 *as a class action, the court shall determine by order whether and with respect*  
12 *to what claims or issues it is to be so maintained and shall find the facts*  
13 *specially and state separately its conclusions thereon. An order under this*  
14 *section may be conditional, and may be altered or amended before the decision*  
15 *on the merits.]*

16 *“[C(2) Where a party has relied upon a statute or law which another party*  
17 *seeks to have declared invalid, or where a party has in good faith relied upon*  
18 *any legislative, judicial, or administrative interpretation or regulation which*  
19 *would necessarily have to be voided or held inapplicable if another party is to*  
20 *prevail in the class action, the court may postpone a determination under*  
21 *subsection (1) of this section until the court has made a determination as to*  
22 *the validity or applicability of the statute, law, interpretation, or regulation.]*

23 **“C(1)(a) At an early practicable time after a person sues or is sued**  
24 **as a class representative, the court must determine by order whether**  
25 **to certify the action as a class action.**

26 **“C(1)(b) An order that certifies a class action must define the class**  
27 **and the class claims, issues, or defenses, and must appoint class**  
28 **counsel under section 10 of this 2015 Act.**

29 **“C(1)(c) An order that grants or denies class certification may be**  
30 **altered or amended before judgment.**

1       **“C(2)(a) For any class certified under subsection B(1) or B(2) of this**  
2 **rule, the court may direct appropriate notice to the class.**

3       **“C(2)(b) For any class certified under subsection B(3) of this rule,**  
4 **the court must direct to class members the best notice that is practi-**  
5 **cable under the circumstances, including individual notice to all**  
6 **members who can be identified through reasonable effort. The notice**  
7 **must clearly and concisely state in plain, easily understood language:**

8       **“C(2)(b)(A) The nature of the action;**

9       **“C(2)(b)(B) The definition of the class certified;**

10       **“C(2)(b)(C) The class claims, issues, or defenses;**

11       **“C(2)(b)(D) That a class member may enter an appearance through**  
12 **an attorney if the member so desires;**

13       **“C(2)(b)(E) That the court will exclude from the class any member**  
14 **who requests exclusion;**

15       **“C(2)(b)(F) The time and manner for requesting exclusion; and**

16       **“C(2)(b)(G) The binding effect of a class judgment on members un-**  
17 **der section G of this rule.**

18       **“SECTION 5. ORCP 32 D is amended to read:**

19       ***“[D Dismissal or compromise of class actions; court approval required;***  
20 ***when notice required. Any action filed as a class action in which there has***  
21 ***been no ruling under subsection C(1) of this rule and any action ordered***  
22 ***maintained as a class action shall not be voluntarily dismissed or compromised***  
23 ***without the approval of the court, and notice of the proposed dismissal or***  
24 ***compromise shall be given to some or all members of the class in such manner***  
25 ***as the court directs, except that if the dismissal is to be without prejudice or***  
26 ***with prejudice against the class representative only, then such dismissal may***  
27 ***be ordered without notice if there is a showing that no compensation in any***  
28 ***form has passed directly or indirectly from the party opposing the class to the***  
29 ***class representative or to the class representative’s attorney and that no prom-***  
30 ***ise of such compensation has been made. If the statute of limitations has run***

1 or may run against the claim of any class member, the court may require ap-  
2 propriate notice.]

3 **“D Settlement, voluntary dismissal, or compromise.** In any action  
4 ordered to be maintained as a class action, the claims, issues, or de-  
5 fenses of a certified class may not be voluntarily dismissed or com-  
6 promised without the approval of the court. The following procedures  
7 apply to a proposed settlement, voluntary dismissal, or compromise:

8 **“D(1)** The court shall direct notice of the proposed dismissal or  
9 compromise in a reasonable manner to all class members who would  
10 be bound by the proposal.

11 **“D(2)** If the proposal would bind class members, the court may ap-  
12 prove it only after a hearing and on finding that it is fair, reasonable  
13 and adequate.

14 **“D(3)** The parties seeking approval must file a statement identifying  
15 any agreement made in connection with the proposal.

16 **“D(4)** If the class action was previously certified under subsection  
17 B(3) of this rule, the court may refuse to approve a settlement unless  
18 it affords a new opportunity to request exclusion to individual class  
19 members who had an earlier opportunity to request exclusion but did  
20 not do so.

21 **“D(5)** Any class member may object to the proposal if it requires  
22 court approval under this rule. The objection may be withdrawn only  
23 with the court’s approval.

24 **“SECTION 6.** ORCP 32 E is amended to read:

25 **“E Court authority over conduct of class actions.** In the conduct of  
26 actions to which this rule applies, the court may make appropriate orders  
27 which may be altered or amended as may be desirable:

28 **“E(1)** Determining the course of proceedings or prescribing measures to  
29 prevent undue repetition or complication in the presentation of evidence or  
30 argument[, *including precertification determination of a motion made by any*

1 party pursuant to Rules 21 or 47 if the court concludes that such determination  
2 will promote the fair and efficient adjudication of the controversy and will not  
3 cause undue delay];

4 “E(2) Requiring, for the protection of class members [or otherwise] and  
5 for the fair conduct of the action, that notice be given in such manner as the  
6 court may direct to [some or all] class members of any step in the action,  
7 of the proposed extent of the judgment; of the opportunity of members to  
8 signify whether they consider the representation fair and adequate, to in-  
9 tervene and present claims or defenses or otherwise to come into the  
10 action[, or to be excluded from the class];

11 “E(3) Imposing conditions on the representative parties[, class members,]  
12 or intervenors;

13 “E(4) Requiring that the pleadings be amended to eliminate therefrom  
14 allegations as to representation of absent persons, and that the action pro-  
15 ceed accordingly; and

16 “E(5) Dealing with similar procedural matters.

17 “**SECTION 7.** ORCP 32 G is amended to read:

18 “[G] F Commencement or maintenance of class actions regarding partic-  
19 ular issues; subclasses.

20 “**F(1)** When appropriate an action may be brought or ordered maintained  
21 as a class action with respect to particular [*claims or issues or by or against*  
22 *multiple classes or subclasses. Each subclass must separately satisfy all re-*  
23 *quirements of this rule except for subsection A(1)*] **issues.**

24 “**F(2)** When appropriate a class may be divided into subclasses that  
25 are each treated as a class under this rule.

26 “**SECTION 8.** ORCP 32 L is amended to read:

27 “[L] G Form of judgment. The judgment in an action ordered maintained  
28 as a class action, whether or not favorable to the class, shall: [*specify or*  
29 *describe those found to be members of the class or who, as a condition of ex-*  
30 *clusion, have agreed to be bound by the judgment. If a judgment that includes*

1 *a money award is entered in favor of a class, the judgment must, when possi-*  
2 *ble, identify by name each member of the class and the amount to be recovered*  
3 *thereby.]*

4 **“G(1) For any class certified under subsection B(1) or B(2) of this**  
5 **rule, include and describe those found to be members of the class; and**

6 **“G(2) For any class certified under subsection B(3) of this rule, in-**  
7 **clude and specify or describe those to whom the notice requested ex-**  
8 **clusion, and whom the court finds to be class members.**

9 **“SECTION 9. ORCP 32 M is amended to read:**

10 **“[M Attorney fees, costs, disbursements, and litigation expenses.]**

11 ***“[M(1)(a) Attorney fees for representing a class are subject to control of the***  
12 ***court.]***

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

19 ***“[M(1)(c) If the prevailing class recovers a judgment that can be divided***  
20 ***for the purpose, the court may order reasonable attorney fees and litigation***  
21 ***expenses of the class to be paid from the recovery.]***

22 ***“[M(1)(d) The court may order the adverse party to pay to the prevailing***  
23 ***class its reasonable attorney fees and litigation expenses if permitted by law***  
24 ***in similar cases not involving a class.]***

25 ***“[M(1)(e) In determining the amount of attorney fees for a prevailing class***  
26 ***the court shall consider the following factors:]***

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

29 ***“[M(1)(e)(ii) Results achieved and benefits conferred upon the class;]***

30 ***“[M(1)(e)(iii) The magnitude, complexity, and uniqueness of the***

1 *litigation;]*

2 *“[M(1)(e)(iv) The contingent nature of success; and]*

3 *“[M(1)(e)(v) Appropriate criteria in Rule 1.5 of the Oregon Rules of Pro-*  
4 *fessional Conduct.]*

5 *“[M(2) Before a hearing under section C of this rule or at any other time*  
6 *the court directs, the representative parties and the attorney for the represen-*  
7 *tative parties shall file with the court, jointly or separately:]*

8 *“[M(2)(a) A statement showing any amount paid or promised them by any*  
9 *person for the services rendered or to be rendered in connection with the action*  
10 *or for the costs and expenses of the litigation and the source of all of the*  
11 *amounts;]*

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

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

21 **“H Attorney fees and costs. In a certified class action, the court**  
22 **may award reasonable attorney fees and costs that are authorized by**  
23 **law or by the parties’ agreement. The following procedures apply:**

24 **“H(1) A claim for an award must be made by motion under ORCP**  
25 **68, subject to the provisions of this section, at a time the court sets.**  
26 **Notice of the motion must be served on all parties and, for motions**  
27 **by class counsel, directed to class members in a reasonable manner.**

28 **“H(2) The court may hold a hearing and must find the facts and**  
29 **state its legal conclusions as provided in ORCP 68 C(4)(g).**

30 **“H(3) A class member, or a party from whom payment is sought,**



1 may object to the motion.

2 **"SECTION 10. ORCP 32 is amended by adding a new section I to**  
3 **read:**

4 **"I Class counsel.**

5 **"I(1) Unless a statute provides otherwise, a court that certifies a**  
6 **class must appoint class counsel. In appointing class counsel, the**  
7 **court:**

8 **"I(1)(a) Must consider:**

9 **"I(1)(a)(A) The work counsel has done in identifying or investigat-**  
10 **ing potential claims in the action;**

11 **"I(1)(a)(B) Counsel's experience in handling class actions, other**  
12 **complex litigation, and the types of claims asserted in the action;**

13 **"I(1)(a)(C) Counsel's knowledge of the applicable law; and**

14 **"I(1)(a)(D) The resources that counsel will commit to representing**  
15 **the class;**

16 **"I(1)(b) May consider any other matter pertinent to counsel's ability**  
17 **to fairly and adequately represent the interests of the class;**

18 **"I(1)(c) May order potential class counsel to provide information on**  
19 **any subject pertinent to the appointment and to propose terms for**  
20 **attorney fees and costs;**

21 **"I(1)(d) May include in the appointing order provisions about the**  
22 **award of attorney fees or costs under section H of this rule; and**

23 **"I(1)(e) May make further orders in connection with the appoint-**  
24 **ment.**

25 **"I(2) When one applicant seeks appointment as class counsel, the**  
26 **court may appoint that applicant only if the applicant is adequate**  
27 **under subsections I(1) and I(4) of this rule. If more than one adequate**  
28 **applicant seeks appointment, the court must appoint the applicant**  
29 **best able to represent the interests of the class.**

30 **"I(3) The court may designate interim counsel to act on behalf of**

1 a putative class before determining whether to certify the action as a  
2 class action.

3 “I(4) Class counsel must fairly and adequately represent the inter-  
4 ests of the class.

5 “SECTION 11. ORCP 32 is amended by adding a new section J to  
6 read:

7 “J Payment of damages.

8 “J(1) As used in this section, ‘residual funds’ means funds that re-  
9 main after the payment of all approved class member claims, attorney  
10 fees and costs.

11 “J(2) Any order entering a judgment or approving a settlement of  
12 a class action certified under this rule must provide for distribution  
13 of residual funds as follows:

14 “J(2)(a) At least 50 percent of the residual funds must be paid or  
15 delivered to the Oregon State Bar for the funding of legal services  
16 provided through the Legal Services Program established under ORS  
17 9.572.

18 “J(2)(b) The remainder of the residual funds must be paid or deliv-  
19 ered to any entity for purposes the court determines are directly re-  
20 lated to the class action or directly beneficial to the interests of class  
21 members.

22 “J(3) This rule does not prohibit the parties to a class action from  
23 suggesting, or the trial court from approving, a settlement that does  
24 not create residual funds.

25 “SECTION 12. All amounts paid or delivered to the Oregon State  
26 Bar under section 11 of this 2015 Act may be used only for the funding  
27 of legal services provided through the Legal Services Program estab-  
28 lished under ORS 9.572.

29 “SECTION 13. Sections 10 and 11 of this 2015 Act, the amendments  
30 to ORCP 32 A, 32 B, 32 C, 32 D, 32 E, 32 G, 32 L and 32 M by sections

1 **2 to 9 of this 2015 Act and the repeal of ORS 41.815 and ORCP 32 F, 32**  
2 **H, 32 I, 32 J, 32 K and 32 N by section 1 of this 2015 Act apply only to**  
3 **class actions commenced on or after the effective date of this 2015**  
4 **Act.”.**

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