

Seventy-Eighth Oregon Legislative Assembly - 2015 Regular Session
STAFF MEASURE SUMMARY
Senate Committee On Judiciary

MINORITY REPORT
MEASURE: HB 2700 MRA
CARRIER: Sen. Kruse

Fiscal: Fiscal impact issued
Revenue: Revenue impact issued

Action Date: 02/19/15
Action: Do Pass With Amendments. (Printed A-Eng.) Minority
Meeting Dates: 02/16, 02/19
Signers of the Report: Sen. Jeff Kruse, Sen. Kim Thatcher

Prepared By: Channa Newell, Counsel

WHAT THE MEASURE DOES:

Requires any order entering judgment or approving settlement of class action suit to provide for distribution of any funds remaining--after payment of all approved member claims, attorney fees, and costs--to Oregon State Bar for funding of domestic violence and family law legal assistance through the Legal Services Program. Allows settlement plan approval in cases when settlement does not create residual funds. Requires order to maintain action as class action to identify the class. Allows reasonable efforts in notification of class. Removes claims form process. Allows maintenance of class action when at least one of three risk factors is found: 1) separate actions would lead to inconsistent results or impair other separate claims; 2) the party opposing action has acted or refused to act on grounds that apply generally to class; and, 3) common questions of law or fact apply to entire class so that class action is superior to other available methods of adjudicating controversy. Specifies findings pertinent to maintaining class action. Applies only to class actions commenced on or after effective date.

ISSUES DISCUSSED:

- Claim form procedures in class action law suits
- Federal rules on class action suits
- Determination of next-best purpose for residual funds
- Oregon system compared to other states
- Effect on judgments under appeal
- Current funding stream for Legal Aid Services

EFFECT OF MINORITY AMENDMENT:

Replaces measure.

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.

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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-MRA establishes a cy pres rule within ORCP 32 by directing any money remaining after payment to class members, attorney fees, and costs to the Oregon State Bar for the purpose of funding domestic violence and family law legal assistance through the Legal Services Program. It also changes ORCP 32B to modify the method by which courts determine if a class action is maintainable. The measure removes the claims form process and requires the court to give notice of the maintainability of the class action to all members who can be identified through reasonable efforts. The measure would only apply to suits commenced on or after the effective date of the act.