

Senate Bill 409

Sponsored by Senator DEVLIN (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Repeals \$500,000 limit on noneconomic damages recoverable in wrongful death actions and other statutorily created causes of action.

A BILL FOR AN ACT

1
2 Relating to noneconomic damages; creating new provisions; amending ORS 30.269, 30.298, 30.650,
3 31.360, 31.705, 31.715, 124.100, 137.103, 260.532 and 742.544; and repealing ORS 31.710.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. ORS 31.710 is repealed.**

6 **SECTION 2.** ORS 31.705 is amended to read:

7 31.705. (1) A verdict shall set forth separately economic damages and noneconomic damages[, *if*
8 *any, as defined in ORS 31.710*].

9 **(2) As used in this section:**

10 (a) **“Economic damages” means objectively verifiable monetary losses, including but not**
11 **limited to reasonable charges necessarily incurred for medical, hospital, nursing and**
12 **rehabilitative services and other health care services, burial and memorial expenses, loss of**
13 **income and past and future impairment of earning capacity, reasonable and necessary ex-**
14 **penditures incurred for substitute domestic services, recurring loss to an estate, damage to**
15 **reputation that is economically verifiable, reasonable and necessarily incurred costs due to**
16 **loss of use of property and reasonable costs incurred for repair or for replacement of dam-**
17 **aged property, whichever is less.**

18 (b) **“Noneconomic damages” means subjective, nonmonetary losses, including but not**
19 **limited to pain, mental suffering, emotional distress, humiliation, injury to reputation, loss**
20 **of care, comfort, companionship and society, loss of consortium, inconvenience and inter-**
21 **ference with normal and usual activities apart from gainful employment.**

22 **SECTION 3.** ORS 30.269 is amended to read:

23 30.269. (1) Punitive damages may not be awarded on any claim subject to ORS 30.260 to 30.300.

24 [(2) *Claims subject to ORS 30.260 to 30.300 are not subject to the limitation imposed by ORS*
25 *31.710.*]

26 [(3)] (2) A court may not apply the limitations imposed on recovery under ORS 30.271, 30.272
27 and 30.273 until after the entry of a verdict or a stipulation by the parties to the amount of the
28 damages.

29 [(4)] (3) The limitations imposed under ORS 30.271 (2) and 30.272 (2) on single claimants include
30 damages claimed for loss of services or loss of support arising out of the same tort.

31 [(5)] (4) If two or more claimants recover on a claim that arises out of a single accident or oc-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 currence, and the recovery is subject to a limitation imposed by ORS 30.271 (3), 30.272 (3) or 30.273
 2 (2)(b), any party to the action in which the claim is made may apply to the court to apportion to
 3 each claimant the proper share of the amount allowed by ORS 30.271 (3), 30.272 (3) or 30.273 (2)(b).
 4 The share apportioned to each claimant shall be in the proportion that the ratio of the award or
 5 settlement made to the claimant bears to the aggregate awards and settlements for all claims arising
 6 out of the accident or occurrence.

7 [(6)] (5) Liability of any public body and one or more of its officers, employees or agents, or two
 8 or more officers, employees or agents of a public body, on claims arising out of a single accident
 9 or occurrence, may not exceed in the aggregate the amounts allowed by ORS 30.271, 30.272 and
 10 30.273.

11 [(7)] (6) ORS 30.271, 30.272 and 30.273 do not apply to a claim arising in connection with a nu-
 12 clear incident covered by an insurance or indemnity agreement under 42 U.S.C. 2210.

13 [(8)] (7) For the purposes of the limitations imposed by ORS 30.271, 30.272 and 30.273, events
 14 giving rise to a proclamation of a state of emergency under ORS 401.165, or a proclamation of a
 15 public health emergency under ORS 433.441, do not constitute a single accident or occurrence.

16 **SECTION 4.** ORS 30.298 is amended to read:

17 30.298. (1) Except as otherwise provided in this section, the Department of Human Services is
 18 liable, without regard to fault, for injury to the person of foster parents or damage to the property
 19 of foster parents caused by a foster child if the foster child is residing in:

20 (a) A foster home that is maintained by the foster parents and that has been certified by the
 21 department under the provisions of ORS 418.625 to 418.645;

22 (b) An approved home that is maintained by the foster parents and that is receiving payment
 23 from the department under the provisions of ORS 418.027 or under the provisions of ORS 420.810
 24 and 420.815; or

25 (c) A developmental disability child foster home that has been certified by the department under
 26 the provisions of ORS 443.830 and 443.835.

27 (2) Except as otherwise provided in this section, the Oregon Youth Authority is liable, without
 28 regard to fault, for injury to the person of foster parents or damage to the property of foster parents
 29 caused by a youth offender if the youth offender resides in a youth offender foster home that is
 30 maintained by the foster parents and that has been certified by the authority under the provisions
 31 of ORS 420.888 to 420.892.

32 (3) Except as otherwise provided in this section, the liability of the department and of the au-
 33 thority under this section is subject to the same requirements and limitations provided in ORS
 34 30.260 to 30.300, and a claim under this section shall be treated as a claim for damages within the
 35 scope of ORS 30.260 to 30.300 for the purposes of ORS 278.120.

36 (4) Notwithstanding ORS 30.260 to 30.300:

37 (a) In no event shall the liability of the department or the authority under this section exceed
 38 \$5,000 for any number of claims arising out of a single occurrence;

39 (b) The liability of the department and the authority under this section is limited to economic
 40 damages, and in no event shall the department or the authority be liable for noneconomic damages;

41 (c) The department and the authority are liable under this section only to the extent the loss
 42 is not covered by other insurance; and

43 (d) No claim shall be allowed under this section unless written notice of the claim is delivered
 44 to the Oregon Department of Administrative Services within 90 days after the alleged loss or injury.

45 (5) The department and the authority are not liable under this section for:

1 (a) Damage to or destruction of currency, securities or any other intangible property;

2 (b) The unexplained disappearance of any property; or

3 (c) Loss or damage that is due to wear and tear, inherent vice or gradual deterioration.

4 (6) In no event does the liability of the department or the authority under this section for
 5 damage to property exceed the difference between the fair market value of the property immediately
 6 before its damage or destruction and its fair market value immediately thereafter. The department
 7 and the authority are not liable for the costs of any betterments to the property that may be re-
 8 quired by code, statute or other law as a condition of repair, replacement or reconstruction.

9 (7) The liability imposed under this section is in addition to that imposed for the intentional
 10 torts of a foster child or youth offender under ORS 30.297, but any amounts paid under this section
 11 shall reduce any recovery that may be made under ORS 30.297.

12 (8) For the purposes of this section:

13 (a) "Authority" means the Oregon Youth Authority.

14 (b) "Department" means the Department of Human Services.

15 (c) "Economic damages" and "noneconomic damages" have those meanings given in ORS
 16 ~~[31.710]~~ **31.705**.

17 (d) "Foster child" has that meaning given in ORS 30.297.

18 (e) "Youth offender" has the meaning given in ORS 419A.004.

19 **SECTION 5.** ORS 30.650 is amended to read:

20 30.650. Noneconomic damages, as defined in ORS ~~[31.710]~~ **31.705**, may not be awarded to an in-
 21 mate in an action against a public body unless the inmate has established that the inmate suffered
 22 economic damages, as defined in ORS ~~[31.710]~~ **31.705**.

23 **SECTION 6.** ORS 31.360 is amended to read:

24 31.360. (1) For the purpose of establishing a claim for economic damages, as defined in ORS
 25 ~~[31.710]~~ **31.705**, in an action arising from an injury caused by a dog:

26 (a) The plaintiff need not prove that the owner of the dog could foresee that the dog would
 27 cause the injury; and

28 (b) The owner of the dog may not assert as a defense that the owner could not foresee that the
 29 dog would cause the injury.

30 (2) This section does not prevent the owner of a dog that caused an injury from asserting that
 31 the dog was provoked, or from asserting any other defense that may be available to the owner.

32 (3) This section does not affect the requirements for an award of punitive damages provided in
 33 ORS 31.730 (1).

34 **SECTION 7.** ORS 31.715 is amended to read:

35 31.715. (1) Except as provided in this section, a plaintiff may not recover noneconomic damages,
 36 as defined in ORS ~~[31.710]~~ **31.705**, in any action for injury or death arising out of the operation of
 37 a motor vehicle if the plaintiff was in violation of ORS 806.010 or 813.010 at the time the act or
 38 omission causing the death or injury occurred. A claim for noneconomic damages shall not be con-
 39 sidered by the jury if the jury determines that the limitation on liability established by this section
 40 applies to the claim for noneconomic damages.

41 (2) For the purpose of the limitation on liability established by this section, a person is conclu-
 42 sively presumed to have been in violation of ORS 806.010 or 813.010 if the person is convicted in a
 43 criminal proceeding of one or both of those offenses. If the person has not been convicted of vio-
 44 lating ORS 806.010 or 813.010, the defendant in the civil action may establish in the civil action, by
 45 a preponderance of the evidence, that the plaintiff was in violation of ORS 806.010 or 813.010 at the

1 time the act or omission causing the death or injury occurred.

2 (3) The court shall abate a civil action upon the motion of any defendant in the civil action
 3 against whom a plaintiff has asserted a claim for noneconomic damages if the defendant alleges that
 4 the claim of the plaintiff is subject to the limitation on liability established by this section and:

5 (a) A criminal proceeding for a violation of ORS 813.010 has been commenced against the
 6 plaintiff in the civil action at the time the motion is made; or

7 (b) The district attorney for the county in which the conduct occurred informs the court at the
 8 time the motion is made that criminal proceedings for a violation of ORS 813.010 will be commenced
 9 against the plaintiff in the civil action.

10 (4) The court may order that only the claim that is subject to the limitation on liability estab-
 11 lished by this section be abated under subsection (3) of this section. An abatement under subsection
 12 (3) of this section shall remain in effect until the conclusion of the criminal proceedings.

13 (5) The limitation on liability established by this section does not apply if:

14 (a) The defendant in the civil action was also in violation of ORS 806.010 or 813.010 at the time
 15 the act or omission causing the death or injury occurred;

16 (b) The death or injury resulted from acts or omissions of the defendant that constituted an in-
 17 tentional tort;

18 (c) The defendant was engaged in conduct that would constitute a violation of ORS 811.140 at
 19 the time the act or omission causing the death or injury occurred; or

20 (d) The defendant was engaged in conduct that would constitute a felony at the time the act or
 21 omission causing the death or injury occurred.

22 (6) The limitation on liability established by this section based on a violation of ORS 806.010
 23 does not apply if the plaintiff in the civil action was insured under a motor vehicle liability insur-
 24 ance policy within 180 days before the act or omission occurred, and the plaintiff has not operated
 25 a motor vehicle in violation of ORS 806.010 within the one-year period immediately preceding the
 26 date on which coverage under the motor vehicle liability insurance policy lapsed.

27 **SECTION 8.** ORS 124.100 is amended to read:

28 124.100. (1) As used in ORS 124.100 to 124.140:

29 (a) "Elderly person" means a person 65 years of age or older.

30 (b) "Financially incapable" has the meaning given that term in ORS 125.005.

31 (c) "Incapacitated" has the meaning given that term in ORS 125.005.

32 (d) "Person with a disability" means a person with a physical or mental impairment that:

33 (A) Is likely to continue without substantial improvement for no fewer than 12 months or to
 34 result in death; and

35 (B) Prevents performance of substantially all the ordinary duties of occupations in which an
 36 individual not having the physical or mental impairment is capable of engaging, having due regard
 37 to the training, experience and circumstances of the person with the physical or mental impairment.

38 (e) "Vulnerable person" means:

39 (A) An elderly person;

40 (B) A financially incapable person;

41 (C) An incapacitated person; or

42 (D) A person with a disability who is susceptible to force, threat, duress, coercion, persuasion
 43 or physical or emotional injury because of the person's physical or mental impairment.

44 (2) A vulnerable person who suffers injury, damage or death by reason of physical abuse or fi-
 45 nancial abuse may bring an action against any person who has caused the physical or financial

1 abuse or who has permitted another person to engage in physical or financial abuse. The court shall
 2 award the following to a plaintiff who prevails in an action under this section:

3 (a) An amount equal to three times all economic damages, as defined in ORS [31.710] **31.705**,
 4 resulting from the physical or financial abuse, or \$500, whichever amount is greater.

5 (b) An amount equal to three times all noneconomic damages, as defined by ORS [31.710]
 6 **31.705**, resulting from the physical or financial abuse.

7 (c) Reasonable attorney fees incurred by the plaintiff.

8 (d) Reasonable fees for the services of a conservator or guardian ad litem incurred by reason
 9 of the litigation of a claim brought under this section.

10 (3) An action may be brought under this section only by:

11 (a) A vulnerable person;

12 (b) A guardian, conservator or attorney-in-fact for a vulnerable person;

13 (c) A personal representative for the estate of a decedent who was a vulnerable person at the
 14 time the cause of action arose; or

15 (d) A trustee for a trust on behalf of the trustor or the spouse of the trustor who is a vulnerable
 16 person.

17 (4) An action may be brought under this section only for physical abuse described in ORS
 18 124.105 or for financial abuse described in ORS 124.110.

19 (5) An action may be brought under this section against a person for permitting another person
 20 to engage in physical or financial abuse if the person knowingly acts or fails to act under circum-
 21 stances in which a reasonable person should have known of the physical or financial abuse.

22 (6) A person commencing an action under this section must serve a copy of the complaint on the
 23 Attorney General within 30 days after the action is commenced.

24 **SECTION 9.** ORS 137.103 is amended to read:

25 137.103. As used in ORS 137.101 to 137.109, 161.675 and 161.685:

26 (1) "Criminal activities" means any offense with respect to which the defendant is convicted or
 27 any other criminal conduct admitted by the defendant.

28 (2) "Economic damages":

29 (a) Has the meaning given that term in ORS [31.710] **31.705**, except that "economic damages"
 30 does not include future impairment of earning capacity; and

31 (b) In cases involving criminal activities described in ORS 163.263, 163.264 or 163.266, includes
 32 the greater of:

33 (A) The value to the defendant of the victim's services as defined in ORS 163.261; or

34 (B) The value of the victim's services, as defined in ORS 163.261, computed using the minimum
 35 wage established under ORS 653.025 and the overtime provisions of the federal Fair Labor Standards
 36 Act of 1938 (29 U.S.C. 201 et seq.).

37 (3) "Restitution" means full, partial or nominal payment of economic damages to a victim.
 38 Restitution is independent of and may be awarded in addition to a compensatory fine awarded under
 39 ORS 137.101.

40 (4) "Victim" means:

41 (a) The person against whom the defendant committed the criminal offense, if the court deter-
 42 mines that the person has suffered economic damages as a result of the offense.

43 (b) Any person not described in paragraph (a) of this subsection whom the court determines has
 44 suffered economic damages as a result of the defendant's criminal activities.

45 (c) The Criminal Injuries Compensation Account, if it has expended moneys on behalf of a victim

1 described in paragraph (a) of this subsection.

2 (d) An insurance carrier, if it has expended moneys on behalf of a victim described in paragraph
3 (a) of this subsection.

4 (5) "Victim" does not include any coparticipant in the defendant's criminal activities.

5 **SECTION 10.** ORS 260.532 is amended to read:

6 260.532. (1) No person shall cause to be written, printed, published, posted, communicated or
7 circulated, any letter, circular, bill, placard, poster, photograph or other publication, or cause any
8 advertisement to be placed in a publication, or singly or with others pay for any advertisement, with
9 knowledge or with reckless disregard that the letter, circular, bill, placard, poster, photograph,
10 publication or advertisement contains a false statement of material fact relating to any candidate,
11 political committee or measure.

12 (2) As used in subsection (1) of this section, "cause" does not include the broadcast of an ad-
13 vertisement by a radio or television station or cable television company unless the advertisement
14 is for:

15 (a) The candidacy of the owner, licensee or operator of the station or company; or

16 (b) A ballot measure of which a chief petitioner is the owner, licensee or operator of the station
17 or company.

18 (3) A candidate who knows of and consents to a publication or advertisement prohibited by this
19 section with knowledge or with reckless disregard that it contains a false statement of material fact,
20 violates this section regardless of whether the candidate has participated directly in the publication
21 or advertisement.

22 (4) There is a rebuttable presumption that a candidate knows of and consents to any publication
23 or advertisement prohibited by this section caused by a political committee over which the candi-
24 date exercises any direction and control.

25 (5) Any candidate or political committee aggrieved by a violation of this section shall have a
26 right of action against the person alleged to have committed the violation. The aggrieved party may
27 file the action in the circuit court for any county in this state in which a defendant resides or can
28 be found or, if the defendant is a nonresident of this state, in the circuit court for any county in
29 which the publication occurred. To prevail in such an action, the plaintiff must show by clear and
30 convincing evidence that the defendant violated subsection (1) of this section.

31 (6) A plaintiff who prevails in an action provided by subsection (5) of this section may recover
32 economic and noneconomic damages, as defined in ORS [31.710] **31.705**, or \$2,500, whichever is
33 greater. The court may award such additional equitable relief as it considers necessary or proper.
34 The equitable relief may include, but is not limited to, a requirement that a retraction of the false
35 statement be disseminated in the manner directed by the court. Proof of entitlement to economic and
36 noneconomic damages must be by a preponderance of evidence. The court shall award the prevailing
37 party reasonable attorney fees at trial and on appeal.

38 (7) A political committee has standing to bring an action provided by subsection (5) of this sec-
39 tion as plaintiff in its own name, if its purpose as evidenced by its preelection activities, solicitations
40 and publications has been injured by the violation and if it has fully complied with the provisions
41 of this chapter. In an action brought by a political committee as provided by subsection (5) of this
42 section, the plaintiff may recover economic and noneconomic damages for all injury to the purpose
43 of the committee as provided in subsection (6) of this section.

44 (8) If a judgment is rendered in an action under this section against a defendant who has been
45 nominated to public office or elected to a public office other than state Senator or state Represen-

1 tative, and it is established by clear and convincing evidence that the false statement was delib-
 2 erately made or caused to be made by the defendant, the finder of fact shall determine whether the
 3 false statement reversed the outcome of the election. If the finder of fact finds by clear and con-
 4 vincing evidence that the false statement reversed the outcome of the election, the defendant shall
 5 be deprived of the nomination or election and the nomination or office shall be declared vacant.

6 (9) An action under this section must be filed not later than the 30th day after the election re-
 7 lating to which a publication or advertisement in violation of this section was made. Proceedings
 8 on a complaint filed under this section shall have precedence over all other business on the docket.
 9 The courts shall proceed in a manner which will ensure that:

10 (a) Final judgment on a complaint which relates to a primary election or nominating election is
 11 rendered before the 30th day before the general election; and

12 (b) Final judgment on a complaint which relates to an election to an office is rendered before
 13 the term of that office begins.

14 (10) The remedy provided by this section is the exclusive remedy for a violation of this section.

15 **SECTION 11.** ORS 742.544 is amended to read:

16 742.544. (1) A provider of personal injury protection benefits shall be reimbursed for personal
 17 injury protection payments made on behalf of any person only to the extent that the total amount
 18 of benefits paid exceeds the economic damages as defined in ORS [31.710] **31.705** suffered by that
 19 person. As used in this section, “total amount of benefits” means the amount of money recovered
 20 by a person from:

21 (a) Applicable underinsured motorist benefits described in ORS 742.502 (2);

22 (b) Liability insurance coverage available to the person receiving the personal injury protection
 23 benefits from other parties to the accident;

24 (c) Personal injury protection payments; and

25 (d) Any other payments by or on behalf of the party whose fault caused the damages.

26 (2) Nothing in this section requires a person to repay more than the amount of personal injury
 27 protection benefits actually received.

28 **SECTION 12. (1) Except as provided in subsection (2) of this section, the repeal of ORS**
 29 **31.710 by section 1 of this 2015 Act applies to all causes of action, whether arising before, on**
 30 **or after the effective date of this 2015 Act.**

31 **(2) The repeal of ORS 31.710 by section 1 of this 2015 Act does not apply to a cause of**
 32 **action for which a judgment was entered before the effective date of this 2015 Act.**