

**PROPOSED MINORITY REPORT 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 “and amending ORCP 32 B, 32 C, 32
3 E and 32 F.”.

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

5 **“SECTION 1. ORCP 32 B is amended to read:**

6 **“B Class action maintainable. An action may be maintained as a class
7 action if the prerequisites of section A of this rule are satisfied[,] and [*in*
8 *addition, the court finds that a class action is superior to other available*
9 *methods for the fair and efficient adjudication of the controversy. The matters*
10 *pertinent to this finding include*]:**

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

13 **“B(1)(a) Inconsistent or varying adjudications with respect to members
14 of the class which would establish incompatible standards of conduct for the
15 party opposing the class; or**

16 **“B(1)(b) Adjudications with respect to members of the class which would
17 as a practical matter be dispositive of the interests of the other members not
18 parties to the adjudications or substantially impair or impede their ability
19 to protect their interests;**

20 **“B(2) The [*extent to which the relief sought would take the form of*] **party**
21 **opposing the class has acted or refused to act on grounds that apply**
22 **generally to the class, so that** injunctive relief or corresponding**

1 declaratory relief **is appropriate** with respect to the class as a whole; **or**

2 “B(3) The [*extent to which*] **court finds that the** questions of law or fact
3 common to the members of the class predominate over any questions affect-
4 ing only individual members[;] **and that a class action is superior to**
5 **other available methods for fairly and efficiently adjudicating the**
6 **controversy. The matters pertinent to these findings include:**

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

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

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

13 “[B(7)] **B(3)(d)** The difficulties likely to be encountered in the manage-
14 ment of a class action that will be eliminated or significantly reduced if the
15 controversy is adjudicated by other available means; and

16 “[B(8)] **B(3)(e)** Whether or not the claims of individual class members are
17 insufficient in the amounts or interests involved, in view of the complexities
18 of the issues and the expenses of the litigation, to afford significant relief
19 to the members of the class.

20 **“SECTION 2.** ORCP 32 C is amended to read:

21 “C Determination by order whether class action to be maintained.

22 “C(1) As soon as practicable after the commencement of an action brought
23 as a class action, the court shall determine by order whether and with re-
24 spect to what claims or issues [*it*] **the action** is to be so maintained and
25 shall find the facts specially and state separately its conclusions thereon. **If**
26 **the court orders the action to be maintained as a class action, the**
27 **order must define the class.** An order under this section may be condi-
28 tional, and may be altered or amended before the decision on the merits.

29 “C(2) Where a party has relied upon a statute or law which another party
30 seeks to have declared invalid, or where a party has in good faith relied upon

1 any legislative, judicial, or administrative interpretation or regulation which
2 would necessarily have to be voided or held inapplicable if another party is
3 to prevail in the class action, the court may postpone a determination under
4 subsection (1) of this section until the court has made a determination as to
5 the validity or applicability of the statute, law, interpretation, or regulation.

6 **SECTION 3.** ORCP 32 E is amended to read:

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

10 “E(1) Determining the course of proceedings or prescribing measures to
11 prevent undue repetition or complication in the presentation of evidence or
12 argument, including precertification determination of a motion made by any
13 party pursuant to Rules 21 or 47 if the court concludes that such determi-
14 nation will promote the fair and efficient adjudication of the controversy and
15 will not cause undue delay;

16 “E(2) Requiring, for the protection of class members or otherwise for the
17 fair conduct of the action, that notice be given in such manner as the court
18 may direct to [*some or all*] class members of any step in the action, of the
19 proposed extent of the judgment; of the opportunity of members to signify
20 whether they consider the representation fair and adequate, to intervene and
21 present claims or defenses or otherwise to come into the action, or to be
22 excluded from the class;

23 “E(3) Imposing conditions on the representative parties, class members,
24 or intervenors;

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

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

29 **SECTION 4.** ORCP 32 F is amended to read:

30 “F Notice and exclusion.

1 “F(1) When ordering that an action be maintained as a class action under
2 this rule, the court shall direct that notice be given [*to some or all members*
3 *of the class*] under subsection E(2) of this rule **to all members of the class**
4 **who can be identified through reasonable effort**, shall determine when
5 and how this notice should be given and shall determine whether, when, how,
6 and under what conditions putative members may elect to be excluded from
7 the class. The matters pertinent to these determinations ordinarily include:
8 (a) the nature of the controversy and the relief sought; (b) the extent and
9 nature of any member’s injury or liability; (c) the interest of the party op-
10 posing the class in securing a final resolution of the matters in controversy;
11 (d) the inefficiency or impracticality of separately maintained actions to re-
12 solve the controversy; (e) the cost of notifying the members of the class; and
13 (f) the possible prejudice to members to whom notice is not directed. **If a**
14 **class member requests exclusion from the class within the time spec-**
15 **ified by the court, that person’s claim for monetary recovery shall be**
16 **dismissed without prejudice to the right to maintain an individual, but**
17 **not a class, action for such claim.** When appropriate, exclusion may be
18 conditioned on a prohibition against institution or maintenance of a separate
19 action on some or all of the matters in controversy in the class action or a
20 prohibition against use in a separately maintained action of any judgment
21 rendered in favor of the class from which exclusion is sought.

22 “[F(2)(i) *Prior to the entry of a judgment against a defendant the court*
23 *shall request members of the class who may be entitled to individual monetary*
24 *recovery to submit a statement in a form prescribed by the court requesting*
25 *affirmative relief which may also, where appropriate, require information re-*
26 *garding the nature of the loss, injury, claim, transactional relationship, or*
27 *damage.*]

28 “[F(2)(ii) *The form of the statement shall be designed to meet the ends of*
29 *justice. In determining the language and form of the documents to be sent class*
30 *members under subsection F(2)(i) or (iii), the court shall consider at least: (a)*

1 *the nature of the acts of the defendant; (b) the amount of knowledge a class*
2 *member would have about the extent of such member's damages; (c) the nature*
3 *of the class including the probable degree of sophistication of its members and*
4 *any special needs created by class members' disabilities; (d) whether it is ap-*
5 *propriate for the statement to be prepared in alternative formats, such as large*
6 *type, Braille, or in languages in addition to English; and (e) the availability*
7 *of relevant information from sources other than the individual class*
8 *members.]*

9 *“[F(2)(iii) When the names and addresses of the class members can rea-*
10 *sonably be determined from the defendant's business records and individual*
11 *monetary recoveries are capable of calculation without the need for individ-*
12 *ualized adjudications, the court, instead of requiring the statement referred to*
13 *in subsection F(2)(i), may direct the defendant to send each class member no-*
14 *tice of (a) the amount of the monetary recovery that has been calculated for that*
15 *person and (b) that person's right to request exclusion from the class. All class*
16 *members who do not request exclusion within the time specified by the court*
17 *shall be deemed to have requested affirmative relief in the calculated*
18 *amount.]*

19 *“[F(2)(iv) The amount of damages assessed against the defendant shall not*
20 *exceed the total amount of damages determined to be allowable by the court*
21 *for all individual class members who have filed the statement required by the*
22 *court under subsection F(2)(i) or who are deemed to have requested affirmative*
23 *relief under subsection F(2)(iii), assessable court costs, and an award of at-*
24 *torney fees, if any, as determined by the court.]*

25 *“[F(2)(v) If the parties agree and the court approves, any of the procedures*
26 *set forth in subsection F(2)(i) to subsection F(2)(iv) may be waived in a par-*
27 *ticular case.]*

28 *“[F(3) If a class member fails to file the statement required by the court*
29 *under subsection F(2)(i) or if a class member requests exclusion under sub-*
30 *section F(2)(iii) within the time specified by the court, that person's claim for*

1 *monetary recovery shall be dismissed without prejudice to the right to maintain*
2 *an individual, but not a class, action for such claim.]*

3 “[F(4) *Nothing in subsections F(2) or F(3) is intended to allow the court*
4 *to award any monetary recovery that is not claimed either because a class*
5 *member failed to file the statement required by the court under subsection*
6 *F(2)(i), or because a class member requested exclusion under subsection*
7 *F(2)(iii) within the time specified by the court.]*

8 “[F(5)] **F(2)** Plaintiffs shall bear costs of any notice ordered prior to a
9 determination of liability. The court may, however, order that defendant bear
10 all or a specified part of the costs of any notice included with a regular
11 mailing by defendant to its current customers or employees. The court may
12 hold a hearing to determine how the costs of such notice shall be appor-
13 tioned.

14 “[F(6)] **F(3)** No duty of compliance with due process notice requirements
15 is imposed on a defendant by reason of the defendant including notice with
16 a regular mailing by the defendant to current customers or employees of the
17 defendant under this section.

18 “[F(7)] **F(4)** As used in this section, ‘customer’ includes a person, includ-
19 ing but not limited to a student, who has purchased services or goods from
20 a defendant.

21 **“SECTION 5. ORCP 32 is amended by adding a new section O to**
22 **read:**

23 **“O Payment of damages. O(1) As used in this section, ‘residual**
24 **funds’ means funds that remain after the payment of all approved**
25 **class member claims, attorney fees and costs.**

26 **“O(2) Any order entering a judgment or approving a settlement of**
27 **a class action certified under this rule must provide for distribution**
28 **of residual funds to the Oregon State Bar for the funding of legal**
29 **services provided through the Legal Services Program established un-**
30 **der ORS 9.572.**

1 **“O(3) This rule does not prohibit the parties to a class action from**
2 **suggesting, or the trial court from approving, a settlement that does**
3 **not create residual funds.**

4 **“SECTION 6. All amounts distributed to the Oregon State Bar un-**
5 **der section 5 of this 2015 Act are continuously appropriated to the**
6 **Oregon State Bar, and may be used only for the funding of legal ser-**
7 **vices provided through the Legal Services Program established under**
8 **ORS 9.572.**

9 **“SECTION 7. Section 5 of this 2015 Act and the amendments to**
10 **ORCP 32 B, 32 C, 32 E and 32 F by sections 1 to 4 of this 2015 Act apply**
11 **only to class actions commenced on or after the effective date of this**
12 **2015 Act.”**

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