

SB 737-1
(LC 3410)
4/4/17 (MNJ/ps)

Requested by SENATE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
SENATE BILL 737**

1 In line 2 of the printed bill, after the semicolon delete the rest of the line
2 and insert “creating new provisions; amending ORS 30.298, 30.650, 31.360,
3 31.705, 31.710, 31.715, 124.100, 137.103 and 260.532; and declaring an emer-
4 gency.”.

5 Delete lines 4 through 21 and insert:

6 **“SECTION 1.** ORS 31.710 is amended to read:

7 “31.710. (1) Except for claims subject to ORS 30.260 to 30.300 and ORS
8 chapter 656, in any civil action [*seeking damages arising out of bodily injury,*
9 *including emotional injury or distress, death or property damage*] **for the**
10 **wrongful death** of any one person including claims for loss of care, comfort,
11 companionship and society and loss of consortium, the amount awarded for
12 noneconomic damages, **as defined in ORS 31.705**, shall not exceed \$500,000.

13 “[*(2) As used in this section:*]

14 “[*(a) ‘Economic damages’ means objectively verifiable monetary losses in-*
15 *cluding but not limited to reasonable charges necessarily incurred for medical,*
16 *hospital, nursing and rehabilitative services and other health care services,*
17 *burial and memorial expenses, loss of income and past and future impairment*
18 *of earning capacity, reasonable and necessary expenses incurred for substitute*
19 *domestic services, recurring loss to an estate, damage to reputation that is*
20 *economically verifiable, reasonable and necessarily incurred costs due to loss*
21 *of use of property and reasonable costs incurred for repair or for replacement*”

1 *of damaged property, whichever is less.]*

2 “[*(b) ‘Noneconomic damages’ means subjective, nonmonetary losses, includ-*
3 *ing but not limited to pain, mental suffering, emotional distress, humiliation,*
4 *injury to reputation, loss of care, comfort, companionship and society, loss of*
5 *consortium, inconvenience and interference with normal and usual activities*
6 *apart from gainful employment.]*

7 “[~~(3)~~ **(2)** This section does not apply to punitive damages.

8 “[~~(4)~~ **(3)** The jury shall not be advised of the limitation set forth in this
9 section.

10 **“SECTION 2. (1) Except as provided in subsection (2) of this section,**
11 **the amendments to ORS 31.710 by section 1 of this 2017 Act apply to**
12 **all causes of action, whether arising before, on or after the effective**
13 **date of this 2017 Act.**

14 **“(2)(a) The amendments to ORS 31.710 by section 1 of this 2017 Act**
15 **do not apply to any award of noneconomic damages for which a final**
16 **judgment has been entered before the effective date of this 2017 Act.**

17 **“(b) As used in this subsection, ‘final judgment’ means a judgment**
18 **for which the time to appeal has expired without any party filing an**
19 **appeal or that is not subject to further appeal or review.**

20 **“SECTION 3. ORS 31.705 is amended to read:**

21 **“31.705. (1) A verdict shall set forth separately economic damages and**
22 **noneconomic damages[, if any, as defined in ORS 31.710].**

23 **“(2) As used in this section:**

24 **“(a) ‘Economic damages’ means objectively verifiable monetary**
25 **losses including but not limited to reasonable charges necessarily in-**
26 **curring for medical, hospital, nursing and rehabilitative services and**
27 **other health care services, burial and memorial expenses, loss of in-**
28 **come and past and future impairment of earning capacity, reasonable**
29 **and necessary expenses incurred for substitute domestic services, re-**
30 **curring loss to an estate, damage to reputation that is economically**

1 **verifiable, reasonable and necessarily incurred costs due to loss of use**
2 **of property and reasonable costs incurred for repair or for replacement**
3 **of damaged property, whichever is less.**

4 **“(b) ‘Noneconomic damages’ means subjective, nonmonetary losses,**
5 **including but not limited to pain, mental suffering, emotional distress,**
6 **humiliation, injury to reputation, loss of care, comfort, companionship**
7 **and society, loss of consortium, inconvenience and interference with**
8 **normal and usual activities apart from gainful employment.**

9 **“SECTION 4.** ORS 30.298 is amended to read:

10 “30.298. (1) Except as otherwise provided in this section, the Department
11 of Human Services is liable, without regard to fault, for injury to the person
12 of foster parents or damage to the property of foster parents caused by a
13 foster child if the foster child is residing in:

14 “(a) A foster home that is maintained by the foster parents and that has
15 been certified by the department under the provisions of ORS 418.625 to
16 418.645;

17 “(b) An approved home that is maintained by the foster parents and that
18 is receiving payment from the department under the provisions of ORS
19 418.027 or under the provisions of ORS 420.810 and 420.815; or

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

22 “(2) Except as otherwise provided in this section, the Oregon Youth Au-
23 thority is liable, without regard to fault, for injury to the person of foster
24 parents or damage to the property of foster parents caused by a youth
25 offender if the youth offender resides in a youth offender foster home that
26 is maintained by the foster parents and that has been certified by the au-
27 thority under the provisions of ORS 420.888 to 420.892.

28 “(3) Except as otherwise provided in this section, the liability of the de-
29 partment and of the authority under this section is subject to the same re-
30 quirements and limitations provided in ORS 30.260 to 30.300, and a claim

1 under this section shall be treated as a claim for damages within the scope
2 of ORS 30.260 to 30.300 for the purposes of ORS 278.120.

3 “(4) Notwithstanding ORS 30.260 to 30.300:

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

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

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

12 “(d) No claim shall be allowed under this section unless written notice
13 of the claim is delivered to the Oregon Department of Administrative Ser-
14 vices within 90 days after the alleged loss or injury.

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

17 “(a) Damage to or destruction of currency, securities or any other intan-
18 gible property;

19 “(b) The unexplained disappearance of any property; or

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

22 “(6) In no event does the liability of the department or the authority un-
23 der this section for damage to property exceed the difference between the fair
24 market value of the property immediately before its damage or destruction
25 and its fair market value immediately thereafter. The department and the
26 authority are not liable for the costs of any betterments to the property that
27 may be required by code, statute or other law as a condition of repair, re-
28 placement or reconstruction.

29 “(7) The liability imposed under this section is in addition to that imposed
30 for the intentional torts of a foster child or youth offender under ORS 30.297,

1 but any amounts paid under this section shall reduce any recovery that may
2 be made under ORS 30.297.

3 “(8) For the purposes of this section:

4 “(a) ‘Authority’ means the Oregon Youth Authority.

5 “(b) ‘Department’ means the Department of Human Services.

6 “(c) ‘Economic damages’ and ‘noneconomic damages’ have those meanings
7 given in ORS [31.710] **31.705**.

8 “(d) ‘Foster child’ has that meaning given in ORS 30.297.

9 “(e) ‘Youth offender’ has the meaning given in ORS 419A.004.

10 **“SECTION 5.** ORS 30.650 is amended to read:

11 “30.650. Noneconomic damages, as defined in ORS [31.710] **31.705**, may not
12 be awarded to an inmate in an action against a public body unless the in-
13 mate has established that the inmate suffered economic damages, as defined
14 in ORS [31.710] **31.705**.

15 **“SECTION 6.** ORS 31.360 is amended to read:

16 “31.360. (1) For the purpose of establishing a claim for economic damages,
17 as defined in ORS [31.710] **31.705**, in an action arising from an injury caused
18 by a dog:

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

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

23 “(2) This section does not prevent the owner of a dog that caused an in-
24 jury from asserting that the dog was provoked, or from asserting any other
25 defense that may be available to the owner.

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

28 **“SECTION 7.** ORS 31.715 is amended to read:

29 “31.715. (1) Except as provided in this section, a plaintiff may not recover
30 noneconomic damages, as defined in ORS [31.710] **31.705**, in any action for

1 injury or death arising out of the operation of a motor vehicle if the plaintiff
2 was in violation of ORS 806.010 or 813.010 at the time the act or omission
3 causing the death or injury occurred. A claim for noneconomic damages shall
4 not be considered by the jury if the jury determines that the limitation on
5 liability established by this section applies to the claim for noneconomic
6 damages.

7 “(2) For the purpose of the limitation on liability established by this
8 section, a person is conclusively presumed to have been in violation of ORS
9 806.010 or 813.010 if the person is convicted in a criminal proceeding of one
10 or both of those offenses. If the person has not been convicted of violating
11 ORS 806.010 or 813.010, the defendant in the civil action may establish in the
12 civil action, by a preponderance of the evidence, that the plaintiff was in
13 violation of ORS 806.010 or 813.010 at the time the act or omission causing
14 the death or injury occurred.

15 “(3) The court shall abate a civil action upon the motion of any defendant
16 in the civil action against whom a plaintiff has asserted a claim for none-
17 conomic damages if the defendant alleges that the claim of the plaintiff is
18 subject to the limitation on liability established by this section and:

19 “(a) A criminal proceeding for a violation of ORS 813.010 has been com-
20 menced against the plaintiff in the civil action at the time the motion is
21 made; or

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

26 “(4) The court may order that only the claim that is subject to the limi-
27 tation on liability established by this section be abated under subsection (3)
28 of this section. An abatement under subsection (3) of this section shall re-
29 main in effect until the conclusion of the criminal proceedings.

30 “(5) The limitation on liability established by this section does not apply

1 if:

2 “(a) The defendant in the civil action was also in violation of ORS 806.010
3 or 813.010 at the time the act or omission causing the death or injury oc-
4 curred;

5 “(b) The death or injury resulted from acts or omissions of the defendant
6 that constituted an intentional tort;

7 “(c) The defendant was engaged in conduct that would constitute a vio-
8 lation of ORS 811.140 at the time the act or omission causing the death or
9 injury occurred; or

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

12 “(6) The limitation on liability established by this section based on a vi-
13 olation of ORS 806.010 does not apply if the plaintiff in the civil action was
14 insured under a motor vehicle liability insurance policy within 180 days be-
15 fore the act or omission occurred, and the plaintiff has not operated a motor
16 vehicle in violation of ORS 806.010 within the one-year period immediately
17 preceding the date on which coverage under the motor vehicle liability in-
18 surance policy lapsed.

19 **“SECTION 8.** ORS 124.100 is amended to read:

20 “124.100. (1) As used in ORS 124.100 to 124.140:

21 “(a) ‘Designee’ means a person designated by the Department of Human
22 Services to conduct investigations under ORS 430.731 in a county with a
23 population of 650,000 or more persons.

24 “(b) ‘Elderly person’ means a person 65 years of age or older.

25 “(c) ‘Financially incapable’ has the meaning given that term in ORS
26 125.005.

27 “(d) ‘Incapacitated’ has the meaning given that term in ORS 125.005.

28 “(e) ‘Person with a disability’ means a person with a physical or mental
29 impairment that:

30 “(A) Is likely to continue without substantial improvement for no fewer

1 than 12 months or to result in death; and

2 “(B) Prevents performance of substantially all the ordinary duties of oc-
3 cupations in which an individual not having the physical or mental impair-
4 ment is capable of engaging, having due regard to the training, experience
5 and circumstances of the person with the physical or mental impairment.

6 “(f) ‘Type B area agency’ means a type B area agency, as defined in ORS
7 410.040, that is designated to operate in a geographic area with a population
8 of 650,000 or more persons.

9 “(g) ‘Vulnerable person’ means:

10 “(A) An elderly person;

11 “(B) A financially incapable person;

12 “(C) An incapacitated person; or

13 “(D) A person with a disability who is susceptible to force, threat, duress,
14 coercion, persuasion or physical or emotional injury because of the person’s
15 physical or mental impairment.

16 “(2) A vulnerable person who suffers injury, damage or death by reason
17 of physical abuse or financial abuse may bring an action against any person
18 who has caused the physical or financial abuse or who has permitted another
19 person to engage in physical or financial abuse. The court shall award the
20 following to a plaintiff who prevails in an action under this section:

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

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

26 “(c) Reasonable attorney fees incurred by the plaintiff.

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

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

30 “(a) A vulnerable person;

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

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

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

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

8 “(5) An action may be brought under this section against a person for
9 permitting another person to engage in physical or financial abuse if the
10 person knowingly acts or fails to act under circumstances in which a rea-
11 sonable person should have known of the physical or financial abuse.

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

15 **“SECTION 9.** ORS 124.100, as amended by section 5, chapter 568, Oregon
16 Laws 2015, is amended to read:

17 “124.100. (1) As used in ORS 124.100 to 124.140:

18 “(a) ‘Elderly person’ means a person 65 years of age or older.

19 “(b) ‘Financially incapable’ has the meaning given that term in ORS
20 125.005.

21 “(c) ‘Incapacitated’ has the meaning given that term in ORS 125.005.

22 “(d) ‘Person with a disability’ means a person with a physical or mental
23 impairment that:

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

26 “(B) Prevents performance of substantially all the ordinary duties of oc-
27 cupations in which an individual not having the physical or mental impair-
28 ment is capable of engaging, having due regard to the training, experience
29 and circumstances of the person with the physical or mental impairment.

30 “(e) ‘Vulnerable person’ means:

1 “(A) An elderly person;
2 “(B) A financially incapable person;
3 “(C) An incapacitated person; or
4 “(D) A person with a disability who is susceptible to force, threat, duress,
5 coercion, persuasion or physical or emotional injury because of the person’s
6 physical or mental impairment.

7 “(2) A vulnerable person who suffers injury, damage or death by reason
8 of physical abuse or financial abuse may bring an action against any person
9 who has caused the physical or financial abuse or who has permitted another
10 person to engage in physical or financial abuse. The court shall award the
11 following to a plaintiff who prevails in an action under this section:

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

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

17 “(c) Reasonable attorney fees incurred by the plaintiff.

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

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

21 “(a) A vulnerable person;

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

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

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

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

29 “(5) An action may be brought under this section against a person for
30 permitting another person to engage in physical or financial abuse if the

1 person knowingly acts or fails to act under circumstances in which a rea-
2 sonable person should have known of the physical or financial abuse.

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

6 **“SECTION 10.** ORS 137.103 is amended to read:

7 “137.103. As used in ORS 137.101 to 137.109:

8 “(1) ‘Criminal activities’ means any offense with respect to which the
9 defendant is convicted or any other criminal conduct admitted by the de-
10 fendant.

11 “(2) ‘Economic damages’:

12 “(a) Has the meaning given that term in ORS [31.710] **31.705**, except that
13 ‘economic damages’ does not include future impairment of earning capacity;
14 and

15 “(b) In cases involving criminal activities described in ORS 163.263,
16 163.264 or 163.266, includes the greater of:

17 “(A) The value to the defendant of the victim’s services as defined in ORS
18 163.261; or

19 “(B) The value of the victim’s services, as defined in ORS 163.261, com-
20 puted using the minimum wage established under ORS 653.025 and the over-
21 time provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C.
22 201 et seq.).

23 “(3) ‘Restitution’ means full, partial or nominal payment of economic
24 damages to a victim. Restitution is independent of and may be awarded in
25 addition to a compensatory fine awarded under ORS 137.101.

26 “(4) ‘Victim’ means:

27 “(a) The person or decedent against whom the defendant committed the
28 criminal offense, if the court determines that the person or decedent has
29 suffered or did suffer economic damages as a result of the offense.

30 “(b) Any person not described in paragraph (a) of this subsection whom

1 the court determines has suffered economic damages as a result of the
2 defendant's criminal activities.

3 “(c) The Criminal Injuries Compensation Account, if it has expended
4 moneys on behalf of a victim described in paragraph (a) of this subsection.

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

7 “(e) Upon the death of a victim described in paragraph (a) or (b) of this
8 subsection, the estate of the victim.

9 “(f) The estate, successor in interest, trust, trustee, successor trustee or
10 beneficiary of a trust against which the defendant committed the criminal
11 offense, if the court determines that the estate, successor in interest, trust,
12 trustee, successor trustee or beneficiary of a trust suffered economic damages
13 as a result of the offense.

14 “(5) ‘Victim’ does not include any coparticipant in the defendant’s crimi-
15 nal activities.

16 **“SECTION 11.** ORS 260.532 is amended to read:

17 “260.532. (1) No person shall cause to be written, printed, published,
18 posted, communicated or circulated, any letter, circular, bill, placard, poster,
19 photograph or other publication, or cause any advertisement to be placed in
20 a publication, or singly or with others pay for any advertisement, with
21 knowledge or with reckless disregard that the letter, circular, bill, placard,
22 poster, photograph, publication or advertisement contains a false statement
23 of material fact relating to any candidate, political committee or measure.

24 “(2) As used in subsection (1) of this section, ‘cause’ does not include the
25 broadcast of an advertisement by a radio or television station or cable tele-
26 vision company unless the advertisement is for:

27 “(a) The candidacy of the owner, licensee or operator of the station or
28 company; or

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

1 “(3) A candidate who knows of and consents to a publication or adver-
2 tisement prohibited by this section with knowledge or with reckless disre-
3 gard that it contains a false statement of material fact, violates this section
4 regardless of whether the candidate has participated directly in the publica-
5 tion or advertisement.

6 “(4) There is a rebuttable presumption that a candidate knows of and
7 consents to any publication or advertisement prohibited by this section
8 caused by a political committee over which the candidate exercises any di-
9 rection and control.

10 “(5) Any candidate or political committee aggrieved by a violation of this
11 section shall have a right of action against the person alleged to have com-
12 mitted the violation. The aggrieved party may file the action in the circuit
13 court for any county in this state in which a defendant resides or can be
14 found or, if the defendant is a nonresident of this state, in the circuit court
15 for any county in which the publication occurred. To prevail in such an
16 action, the plaintiff must show by clear and convincing evidence that the
17 defendant violated subsection (1) of this section.

18 “(6) A plaintiff who prevails in an action provided by subsection (5) of
19 this section may recover economic and noneconomic damages, as defined in
20 ORS [31.710] **31.705**, or \$2,500, whichever is greater. The court may award
21 such additional equitable relief as it considers necessary or proper. The eq-
22 uitable relief may include, but is not limited to, a requirement that a re-
23 traction of the false statement be disseminated in the manner directed by the
24 court. Proof of entitlement to economic and noneconomic damages must be
25 by a preponderance of evidence. The court shall award the prevailing party
26 reasonable attorney fees at trial and on appeal.

27 “(7) A political committee has standing to bring an action provided by
28 subsection (5) of this section as plaintiff in its own name, if its purpose as
29 evidenced by its preelection activities, solicitations and publications has
30 been injured by the violation and if it has fully complied with the provisions

1 of this chapter. In an action brought by a political committee as provided
2 by subsection (5) of this section, the plaintiff may recover economic and
3 noneconomic damages for all injury to the purpose of the committee as pro-
4 vided in subsection (6) of this section.

5 “(8) If a judgment is rendered in an action under this section against a
6 defendant who has been nominated to public office or elected to a public
7 office other than state Senator or state Representative, and it is established
8 by clear and convincing evidence that the false statement was deliberately
9 made or caused to be made by the defendant, the finder of fact shall deter-
10 mine whether the false statement reversed the outcome of the election. If the
11 finder of fact finds by clear and convincing evidence that the false statement
12 reversed the outcome of the election, the defendant shall be deprived of the
13 nomination or election and the nomination or office shall be declared vacant.

14 “(9) An action under this section must be filed not later than the 30th
15 day after the election relating to which a publication or advertisement in
16 violation of this section was made. Proceedings on a complaint filed under
17 this section shall have precedence over all other business on the docket. The
18 courts shall proceed in a manner which will ensure that:

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

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

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

26 **“SECTION 12. This 2017 Act being necessary for the immediate**
27 **preservation of the public peace, health and safety, an emergency is**
28 **declared to exist, and this 2017 Act takes effect on its passage.”.**

29
