

SB 193-1
(LC 975)
3/23/21 (MNJ/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION (at the request of Senator Floyd Prozanski)

**PROPOSED AMENDMENTS TO
SENATE BILL 193**

1 In line 2 of the printed bill, before the period insert “; creating new pro-
2 visions; and amending ORS 30.298, 30.650, 31.360, 31.705, 31.710, 31.715,
3 124.100, 136.450, 137.103 and 260.532”.

4 Delete lines 4 through 6 and insert:

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

6 “31.710. (1) Except for claims subject to ORS 30.260 to 30.300 and ORS
7 chapter 656, in any civil action [*seeking damages arising out of bodily injury,*
8 *including emotional injury or distress, death or property damage*] **for the**
9 **wrongful death** of any one person including claims for loss of care, comfort,
10 companionship and society and loss of consortium, the amount awarded for
11 noneconomic damages, **as defined in ORS 31.705**, shall not exceed \$500,000.

12 “[*(2) As used in this section:*]

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

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

6 “[*3*] (2) This section does not apply to punitive damages.

7 “[*4*] (3) The jury shall not be advised of the limitation set forth in this
8 section.

9 **“SECTION 2. (1) Except as provided in subsection (2) of this section,
10 the amendments to ORS 31.710 by section 1 of this 2021 Act apply to
11 all causes of action, whether arising before, on or after the effective
12 date of this 2021 Act.**

13 **“(2)(a) The amendments to ORS 31.710 by section 1 of this 2021 Act
14 do not apply to any award of noneconomic damages for which a final
15 judgment has been entered before the effective date of this 2021 Act.**

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

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

20 **“31.705. (1) A verdict shall set forth separately economic damages and
21 noneconomic damages[, if any, as defined in ORS 31.710].**

22 **“(2) As used in this section:**

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

1 **of property and reasonable costs incurred for repair or for replacement**
2 **of damaged property, whichever is less.**

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

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

9 “30.298. (1) Except as otherwise provided in this section, the Department
10 of Human Services is liable, without regard to fault, for injury to the person
11 of foster parents or damage to the property of foster parents caused by a
12 foster child if the foster child is residing in:

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

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

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

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

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

1 of ORS 30.260 to 30.300 for the purposes of ORS 278.120.

2 “(4) Notwithstanding ORS 30.260 to 30.300:

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

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

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

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

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

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

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

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

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

28 “(7) The liability imposed under this section is in addition to that imposed
29 for the intentional torts of a foster child or youth offender under ORS 30.297,
30 but any amounts paid under this section shall reduce any recovery that may

1 be made under ORS 30.297.

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

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

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

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

7 “(d) ‘Foster child’ has [*that*] **the meaning given that term** in ORS 30.297.

8 “(e) ‘Youth offender’ has the meaning given **that term** in ORS 419A.004.

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

10 “30.650. Noneconomic damages, as defined in ORS [*31.710*] **31.705**, may not
11 be awarded to an adult in custody in an action against a public body unless
12 the adult in custody has established that the adult in custody suffered eco-
13 nomic damages, as defined in ORS [*31.710*] **31.705.**

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

15 “31.360. (1) For the purpose of establishing a claim for economic damages,
16 as defined in ORS [*31.710*] **31.705**, in an action arising from an injury caused
17 by a dog:

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

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

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

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

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

28 “31.715. (1) Except as provided in this section, a plaintiff may not recover
29 noneconomic damages, as defined in ORS [*31.710*] **31.705**, in any action for
30 injury or death arising out of the operation of a motor vehicle if the plaintiff

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

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

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

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

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

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

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

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

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

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

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

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

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

19 “124.100. (1) As used in ORS 124.100 to 124.140:

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

21 “(b) ‘Financially incapable’ has the meaning given that term in ORS
22 125.005.

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

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

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

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

1 and circumstances of the person with the physical or mental impairment.

2 “(e) ‘Vulnerable person’ means:

3 “(A) An elderly person;

4 “(B) A financially incapable person;

5 “(C) An incapacitated person; or

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

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

14 “(a) An amount equal to three times all economic damages, as defined in
15 ORS [31.710] **30.705**, resulting from the physical or financial abuse, or \$500,
16 whichever amount is greater.

17 “(b) An amount equal to three times all noneconomic damages, as defined
18 [by ORS 31.710] **in ORS 30.705**, resulting from the physical or financial
19 abuse.

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

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

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

24 “(a) A vulnerable person;

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

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

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

30 “(4) An action may be brought under this section only for physical abuse

1 described in ORS 124.105 or for financial abuse described in ORS 124.110.

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

6 “(6) A person commencing an action under this section shall mail a copy
7 of the complaint or other initial pleading to the Attorney General at the time
8 the action commences. Failure to mail a copy of the complaint or pleading
9 is not a jurisdictional defect and may be cured at any time prior to entry
10 of judgment. A court may not enter judgment for the plaintiff until proof of
11 mailing is filed with the court. Proof of mailing may be by declaration or
12 by return receipt of mailing.

13 **“SECTION 9.** ORS 137.103 is amended to read:

14 “137.103. As used in ORS 137.101 to 137.109:

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

18 “(2) ‘Economic damages’:

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

22 “(b) In cases involving criminal activities described in ORS 163.263,
23 163.264 or 163.266, includes the greater of:

24 “(A) The value to the defendant of the victim’s services as defined in ORS
25 163.261; or

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

30 “(3) ‘Restitution’ means full, partial or nominal payment of economic

1 damages to a victim. Restitution is independent of and may be awarded in
2 addition to a compensatory fine awarded under ORS 137.101.

3 “(4) ‘Victim’ means:

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

7 “(b) Any person not described in paragraph (a) of this subsection whom
8 the court determines has suffered economic damages as a result of the
9 defendant’s criminal activities.

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

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

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

16 “(f) The estate, successor in interest, trust, trustee, successor trustee or
17 beneficiary of a trust against which the defendant committed the criminal
18 offense, if the court determines that the estate, successor in interest, trust,
19 trustee, successor trustee or beneficiary of a trust suffered economic damages
20 as a result of the offense.

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

23 **“SECTION 10.** ORS 260.532 is amended to read:

24 “260.532. (1) No person shall cause to be written, printed, published,
25 posted, communicated or circulated, any letter, circular, bill, placard, poster,
26 photograph or other publication, or cause any advertisement to be placed in
27 a publication, or singly or with others pay for any advertisement, with
28 knowledge or with reckless disregard that the letter, circular, bill, placard,
29 poster, photograph, publication or advertisement contains a false statement
30 of material fact relating to any candidate, political committee or measure.

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

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

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

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

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

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

25 “(6) A plaintiff who prevails in an action provided by subsection (5) of
26 this section may recover economic and noneconomic damages, as defined in
27 ORS [31.710] **31.705**, or \$2,500, whichever is greater. The court may award
28 such additional equitable relief as it considers necessary or proper. The eq-
29 uitable relief may include, but is not limited to, a requirement that a re-
30 traction of the false statement be disseminated in the manner directed by the

1 court. Proof of entitlement to economic and noneconomic damages must be
2 by a preponderance of evidence. The court shall award the prevailing party
3 reasonable attorney fees at trial and on appeal.

4 “(7) A political committee has standing to bring an action provided by
5 subsection (5) of this section as plaintiff in its own name, if its purpose as
6 evidenced by its preelection activities, solicitations and publications has
7 been injured by the violation and if it has fully complied with the provisions
8 of this chapter. In an action brought by a political committee as provided
9 by subsection (5) of this section, the plaintiff may recover economic and
10 noneconomic damages for all injury to the purpose of the committee as pro-
11 vided in subsection (6) of this section.

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

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

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

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

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

3 “**SECTION 11.** ORS 136.450 is amended to read:

4 “136.450. [*The verdict of a trial jury in a criminal action shall be by con-*
5 *currence of at least 10 of 12 jurors.*] **A jury in a criminal action may ren-**
6 **der a verdict of guilty or not guilty only by unanimous agreement.”.**

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