Chapter 31

2017 EDITION

Tort Actions

31.010 [Repealed by 1981 c.898 §53]

31.020 [Repealed by 1981 c.898 §53]

31.030 [Repealed by 1981 c.898 §53]

31.040 [Repealed by 1981 c.898 §53]

31.050 [Renumbered 652.500]

SPECIAL MOTION TO STRIKE

31.150 Special motion to strike; when available; burden of proof. (1) A defendant may make a special motion to strike against a claim in a civil action described in subsection (2) of this section. The court shall grant the motion unless the plaintiff establishes in the manner provided by subsection (3) of this section that there is a probability that the plaintiff will prevail on the claim. The special motion to strike shall be treated as a motion to dismiss under ORCP 21 A but shall not be subject to ORCP 21 F. Upon granting the special motion to strike, the court shall enter a judgment of dismissal without prejudice. If the court denies a special motion to strike, the court shall enter a limited judgment denying the motion.

(2) A special motion to strike may be made under this section against any claim in a civil action that arises out of:

(a) Any oral statement made, or written statement or other document submitted, in a legislative, executive or judicial proceeding or other proceeding authorized by law;

(b) Any oral statement made, or written statement or other document submitted, in connection with an issue under consideration or review by a legislative, executive or judicial body or other proceeding authorized by law;

(c) Any oral statement made, or written statement or other document presented, in a place open to the public or a public forum in connection with an issue of public interest; or

(d) Any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(3) A defendant making a special motion to strike under the provisions of this section has the initial burden of making a prima facie showing that the claim against which the motion is made arises out of a statement, document or conduct described in subsection (2) of this section. If the defendant meets this burden, the burden shifts to the plaintiff in the action to establish that there is a probability that the plaintiff will prevail on the claim by presenting substantial evidence to support a prima facie case. If the plaintiff meets this burden, the court shall deny the motion.

(4) In making a determination under subsection (1) of this section, the court shall consider pleadings and supporting and opposing affidavits stating the facts upon which the liability or defense is based.

(5) If the court determines that the plaintiff has established a probability that the plaintiff will prevail on the claim:

(a) The fact that the determination has been made and the substance of the determination may not be admitted in evidence at any later stage of the case; and

(b) The determination does not affect the burden of proof or standard of proof that is applied in the proceeding. [Formerly 30.142; 2009 c.449 §1]

31.152 Time for filing special motion to strike; discovery; attorney fees. (1) A special motion to strike under ORS 31.150 must be filed within 60 days after the service of the complaint or, in the court's discretion, at any later time. A hearing shall be held on the motion not more than 30 days after the filing of the motion unless the docket conditions of the court require a later hearing.

(2) All discovery in the proceeding shall be stayed upon the filing of a special motion to strike under ORS 31.150. The stay of discovery shall remain in effect until entry of the judgment. The court, on motion and for good cause shown, may order that specified discovery be conducted notwithstanding the stay imposed by this subsection.

(3) A defendant who prevails on a special motion to strike made under ORS 31.150 shall be awarded reasonable attorney fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney fees to a plaintiff who prevails on a special motion to strike.

(4) The purpose of the procedure established by this section and ORS 31.150 and 31.155 is to provide a defendant with the right to not proceed to trial in cases in which the plaintiff does not meet the burden specified in ORS 31.150 (3). This section and ORS 31.150 and 31.155 are to be liberally construed in favor of the exercise of the rights of expression described in ORS 31.150 (2). [Formerly 30.144; 2009 c.449 §3]

31.155 Exempt actions; substantive law not affected. (1) ORS 31.150 and 31.152 do not apply to an action brought by the Attorney General, a district attorney, a county counsel or a city attorney acting in an official capacity.

(2) ORS 31.150 and 31.152 create a procedure for seeking dismissal of claims described in ORS 31.150 (2) and do not affect

the substantive law governing those claims. [Formerly 30.146]

DEFENSES GENERALLY

31.180 Certain felonious conduct of plaintiff complete defense in tort actions; proof; exceptions. (1) It is a complete defense in any civil action for personal injury or wrongful death that:

(a) The person damaged was engaged in conduct at the time that would constitute aggravated murder, murder or a Class A or a Class B felony; and

(b) The felonious conduct was a substantial factor contributing to the injury or death.

(2) To establish the defense described in this section, the defendant must prove by a preponderance of the evidence the fact that the person damaged was engaged in conduct that would constitute aggravated murder, murder or a Class A or a Class B felony.

(3) Nothing in this section affects any right of action under 42 U.S.C. 1983.

(4) The defense established by this section is not available if the injury or death resulted from a springgun or other device described in ORS 166.320 and the plaintiff establishes by a preponderance of the evidence that the use of the springgun or other device constituted a violation of ORS 166.320.

(5) The defense established by this section is not available if the injury or death resulted from the use of physical force that was not justifiable under the standards established by ORS 161.195 to 161.275. [Formerly 30.698]

RULES GOVERNING PARTICULAR CLAIMS FOR RELIEF

(Defamation)

31.200 Liability of radio or television station personnel for defamation. (1) The owner, licensee or operator of a radio or television broadcasting station, and the agents or employees of the owner, licensee or operator, shall not be liable for any damages for any defamatory statement published or uttered in a radio or television broadcast, by one other than the owner, licensee or operator, or agent or employee thereof, unless it is alleged and proved by the complaining party that the owner, licensee, operator, agent or employee failed to exercise due care to prevent the publication or utterance of such statement in such broadcast.

(2) In no event shall any owner, licensee or operator of a radio or television broadcasting station, or any agent or employee thereof, be liable for any damages for any defamatory statement published or uttered by one other than such owner, licensee, operator, agent or employee, in or as part of a radio or television broadcast by any candidate for public office, which broadcast cannot be censored by reason of federal statute or regulations of the Federal Communications Commission. [Formerly 30.150]

31.205 Damages recoverable for defamation by radio, television, motion pictures, newspaper or printed periodical. Except as provided in ORS 31.210, in an action for damages on account of a defamatory statement published or broadcast in a newspaper, magazine, other printed periodical, or by radio, television or motion pictures, the plaintiff may recover any general and special damages which, by competent evidence, the plaintiff can prove to have suffered as a direct and proximate result of the publication of the defamatory statement. [Formerly 30.155]

31.210 When general damages allowed. (1) In an action for damages on account of a defamatory statement published or broadcast in a newspaper, magazine, other printed periodical, or by radio, television or motion pictures, the plaintiff shall not recover general damages unless:

(a) A correction or retraction is demanded but not published as provided in ORS 31.215; or

(b) The plaintiff proves by a preponderance of the evidence that the defendant actually intended to defame the plaintiff.

(2) Where the plaintiff is entitled to recover general damages, the publication of a correction or retraction may be considered in mitigation of damages. [Formerly 30.160]

31.215 Publication of correction or retraction upon demand. (1) The demand for correction or retraction shall be in writing, signed by the defamed person or the attorney of the person and be delivered to the publisher of the defamatory statement, either personally, by registered mail or by certified mail with return receipt at the publisher's place of business or residence within 20 days after the defamed person receives actual knowledge of the defamatory statement. The demand shall specify which statements are false and defamatory and request that they be corrected or retracted. The demand may also refer to the sources from which the true facts may be ascertained with accuracy.

(2) The publisher of the defamatory statement shall have not more than two weeks after receipt of the demand for correction or retraction in which to investigate the demand; and, after making such investigation, the publisher shall publish the correction or retraction in:

(a) The first issue thereafter published, in the case of newspapers, magazines or other printed periodicals.

(b) The first broadcast or telecast thereafter made, in the case of radio or television stations.

(c) The first public exhibition thereafter made, in the case of motion picture theaters.

(3) The correction or retraction shall consist of a statement by the publisher substantially to the effect that the defamatory statements previously made are not factually supported and that the publisher regrets the original publication thereof.

(4) The correction or retraction shall be published in substantially as conspicuous a manner as the defamatory statement. [Formerly 30.165]

31.220 Effect of publication of correction or retraction prior to demand. A correction or retraction published prior to notice of demand therefor shall have the same effect as a correction or retraction after demand, if the requirements of ORS 31.215 (2), (3) and (4) are substantially complied with. [Formerly 30.170]

31.225 Publisher's defenses and privileges not affected. Nothing in ORS 31.205 to 31.220 shall be deemed to affect any defense or privilege which the publisher may possess by virtue of existing law. [Formerly 30.175]

(Wrongful Use of Civil Proceeding)

31.230 Wrongful use of civil proceeding; pleading; procedure. (1) In order to bring a claim for wrongful use of a civil proceeding against another, a person shall not be required to plead or prove special injury beyond the expense and other consequences normally associated with defending against unfounded legal claims.

(2) The filing of a civil action within 60 days of the running of the statute of limitations for the purpose of preserving and evaluating the claim when the action is dismissed within 120 days after the date of filing shall not constitute grounds for a claim for wrongful use of a civil proceeding under subsection (1) of this section.

(3) A claim for damages for wrongful use of a civil proceeding shall be brought in an original action after the proceeding which is the subject matter of the claim is concluded. [Formerly 30.895]

(Actions Against Health Practitioners and Health Care Facilities)

31.250 Mandatory dispute resolution for certain actions against health practitioners and health care facilities. (1) In any action described in subsection (6) of this section, all parties to the action and their attorneys must participate in some form of dispute resolution within 270 days after the action is filed unless:

(a) The action is settled or otherwise resolved within 270 days after the action is filed; or

(b) All parties to the action agree in writing to waive dispute resolution under this section.

(2) Dispute resolution under this section may consist of arbitration, mediation or a judicial settlement conference.

(3) Within 270 days after filing an action described in subsection (6) of this section, the parties or their attorneys must file a certificate indicating that the parties and attorneys have complied with the requirements of this section.

(4) The court may impose appropriate sanctions against any party or attorney who:

(a) Fails to attend an arbitration hearing, mediation session or judicial settlement conference conducted for the purposes of the requirements of this section;

(b) Fails to act in good faith in any arbitration, mediation or judicial settlement conference conducted for the purposes of the requirements of this section;

(c) Fails to timely submit any documents required for an arbitration, mediation or judicial settlement conference conducted for the purposes of the requirements of this section; or

(d) Fails to have a person with authority to approve a resolution of the action available at the time of any arbitration hearing, mediation session or judicial settlement conference conducted for the purposes of the requirements of this section, unless the party or attorney receives from the court, before the hearing, session or conference commences, an exemption from the requirements of this paragraph.

(5) This section does not apply to parties to an action described in subsection (6) of this section that have participated in a discussion and mediation under sections 3 and 5, chapter 5, Oregon Laws 2013.

(6) The provisions of this section apply to any action in which a claim for damages is made against a health practitioner, as described in ORS 31.740, or against a health care facility, as defined in ORS 442.015, based on negligence, unauthorized rendering

of health care or product liability under ORS 30.900 to 30.920. [2003 c.598 §54; 2013 c.5 §13]

Note: The amendments to 31.250 by section 14, chapter 5, Oregon Laws 2013, become operative December 31, 2023. See section 22, chapter 5, Oregon Laws 2013. The text that is operative on and after December 31, 2023, is set forth for the user's convenience.

31.250. (1) In any action described in subsection (5) of this section, all parties to the action and their attorneys must participate in some form of dispute resolution within 270 days after the action is filed unless:

(a) The action is settled or otherwise resolved within 270 days after the action is filed; or

(b) All parties to the action agree in writing to waive dispute resolution under this section.

(2) Dispute resolution under this section may consist of arbitration, mediation or a judicial settlement conference.

(3) Within 270 days after filing an action described in subsection (5) of this section, the parties or their attorneys must file a certificate indicating that the parties and attorneys have complied with the requirements of this section.

(4) The court may impose appropriate sanctions against any party or attorney who:

(a) Fails to attend an arbitration hearing, mediation session or judicial settlement conference conducted for the purposes of the requirements of this section;

(b) Fails to act in good faith in any arbitration, mediation or judicial settlement conference conducted for the purposes of the requirements of this section;

(c) Fails to timely submit any documents required for an arbitration, mediation or judicial settlement conference conducted for the purposes of the requirements of this section; or

(d) Fails to have a person with authority to approve a resolution of the action available at the time of any arbitration hearing, mediation session or judicial settlement conference conducted for the purposes of the requirements of this section, unless the party or attorney receives from the court, before the hearing, session or conference commences, an exemption from the requirements of this paragraph.

(5) The provisions of this section apply to any action in which a claim for damages is made against a health practitioner, as described in ORS 31.740, or against a health care facility, as defined in ORS 442.015, based on negligence, unauthorized rendering of health care or product liability under ORS 30.900 to 30.920.

(Resolution of Adverse Health Care Incidents)

Note: Sections 1 to 10, 17 to 19 and 23, chapter 5, Oregon Laws 2013, provide:

Sec. 1. Definitions. As used in sections 1 to 10 of this 2013 Act:

(1) "Adverse health care incident" means an objective, definable and unanticipated consequence of patient care that is usually preventable and results in the death of or serious physical injury to the patient.

(2) "Health care facility" has the meaning given that term in ORS 442.015.

(3) "Health care provider" means a person practicing within the scope of the person's license, registration or certification to practice as:

(a) A psychologist under ORS 675.030 to 675.070, 675.085 and 675.090;

(b) An occupational therapist under ORS 675.230 to 675.300;

(c) A physician under ORS 677.100 to 677.228;

(d) An emergency medical services provider under ORS chapter 682;

(e) A podiatric physician and surgeon under ORS 677.820 to 677.840;

(f) A registered nurse under ORS 678.010 to 678.410;

(g) A dentist under ORS 679.060 to 679.180;

(h) A dental hygienist under ORS 680.040 to 680.100;

(i) A denturist under ORS 680.515 to 680.535;

(j) An audiologist or speech-language pathologist under ORS 681.250 to 681.350;

(k) An optometrist under ORS 683.040 to 683.155 and 683.170 to 683.220;

(L) A chiropractor under ORS 684.040 to 684.105;

(m) A naturopath under ORS 685.060 to 685.110, 685.125 and 685.135;

(n) A massage therapist under ORS 687.011 to 687.250;

(o) A direct entry midwife under ORS 687.405 to 687.495;

(p) A physical therapist under ORS 688.040 to 688.145;

(q) A medical imaging licensee under ORS 688.445 to 688.525;

(r) A pharmacist under ORS 689.151 and 689.225 to 689.285;

(s) A physician assistant under ORS 677.505 to 677.525; or

(t) A professional counselor or marriage and family therapist under ORS 675.715 to 675.835.

(4) "Patient" means the patient or, if the patient is a minor, is deceased or has been medically confirmed by the patient's treating physician to be incapable of making decisions for purposes of sections 1 to 10 of this 2013 Act, the patient's representative as provided in section 8 of this 2013 Act. [2013 c.5 §1]

Sec. 2. Notice of adverse health care incident. (1)(a) When an adverse health care incident occurs in a health care facility or a location operated by a health care facility, the health care facility may file a notice of adverse health care incident with the Oregon Patient Safety Commission in the form and manner provided by the commission by rule.

(b) If a health care facility files a notice of adverse health care incident under this subsection, the health care facility shall provide a copy of the notice to the patient.

(c) A notice filed under this subsection may not include the name of a health care provider, but the health care facility filing the notice shall notify any health care providers involved in the adverse health care incident of the notice.

(2)(a) When an adverse health care incident occurs outside of a health care facility or a location operated by a health care facility, the health care provider treating the patient or the employer of the health care provider may file a notice of adverse health care incident with the commission in the form and manner provided by the commission by rule.

(b) If a health care provider or employer files a notice of adverse health care incident under this subsection, the health care provider or employer shall provide a copy of the notice to the patient.

(c) If an employer files the notice under this subsection, the notice may not include the name of the health care provider, but the employer shall notify each health care provider involved in the adverse health care incident of the notice.

(3) A patient may file a notice of adverse health care incident with the commission in the form and manner provided by the commission by rule. When the commission receives a notice of adverse health care incident from a patient under this subsection, the commission shall notify all health care facilities and health care providers named in the notice within seven days after receiving the notice.

(4) A notice of adverse health care incident filed under this section is not:

(a) A written claim or demand for payment.

(b) A claim for purposes of ORS 742.400.

(5) The filing of a notice of adverse health care incident as provided in this section satisfies the notice requirements of ORS 30.275.

(6) An inmate as defined in ORS 30.642 may not file a notice of adverse health care incident under this section. [2013 c.5 §2]

Sec. 3. Discussion of adverse health care incident. (1) A health care facility or health care provider who files or is named in a notice of adverse health care incident filed under section 2 of this 2013 Act and the patient involved in the incident may engage in a discussion regarding the incident within the time established by the Oregon Patient Safety Commission by rule.

(2) The health care facility or health care provider who files or is named in the notice shall notify the patient and all health care facilities and health care providers involved in the adverse health care incident of the date, time and location of the discussion and shall reasonably accommodate all persons that wish to attend.

(3) The patient and the health care facility or health care provider who files or is named in the notice may include other persons in the discussion.

(4) Within the time established by the commission by rule, the health care facility or health care provider who files or is named in the notice may:

(a) Communicate to the patient the steps the health care facility or health care provider will take to prevent future occurrences of the adverse health care incident; and

(b)(A) Determine that no offer of compensation for the adverse health care incident is warranted and communicate that determination to the patient orally or in writing; or

(B) Determine that an offer of compensation for the adverse health care incident is warranted and extend that offer in writing to the patient.

(5) If a health care facility or health care provider makes an offer of compensation under subsection (4) of this section, the facility or provider shall advise the patient of the patient's right to seek legal advice before accepting the offer.

(6) Except for offers of compensation extended under subsection (4) of this section, discussions between the health care facility or health care provider and the patient about the amount of compensation offered under subsection (4) of this section must remain oral.

(7) The health care facility or health care provider and the patient may agree to extend the time limit established by rule of the commission under this section, but a time limit may not be extended to more than 180 days after the notice of adverse health care incident is filed under section 2 of this 2013 Act unless the health care facility or health care provider and the patient also agree to extend the statute of limitations applicable to a negligence claim.

(8) If the patient accepts an offer of compensation made under subsection (4) of this section, the health care facility or health care provider who made the offer shall notify the commission.

(9) The commission shall request a report indicating the status of the matter from the person that filed the notice of adverse health care incident under section 2 of this 2013 Act within 180 days after the date the notice was filed. If the matter is not resolved 180 days after the notice was filed, the commission may request additional reports from the person that filed the notice as necessary. [2013 c.5 §3]

Sec. 4. Discussion communications. (1) As used in this section, "discussion communication" means:

(a) All communications, written and oral, that are made in the course of a discussion under section 3 of this 2013 Act; and

(b) All memoranda, work products, documents and other materials that are prepared for or submitted in the course of or in connection with a discussion under section 3 of this 2013 Act.

(2) Discussion communications and offers of compensation made under section 3 of this 2013 Act:

(a) Do not constitute an admission of liability.

(b) Are confidential and may not be disclosed.

(c) Except as provided in subsection (3) of this section, are not admissible as evidence in any subsequent adjudicatory proceeding and may not be disclosed by the parties in any subsequent adjudicatory proceeding.

(3)(a) A party may move the court or other decision maker to admit as evidence in a subsequent adjudicatory proceeding a discussion communication that contradicts a statement made during the subsequent adjudicatory proceeding. The court or other decision maker shall allow a discussion communication that contradicts a statement made at a subsequent adjudicatory proceeding into evidence only if the discussion communication is material to the claims presented in the subsequent adjudicatory proceeding.

(b) A party may not move to admit expressions of regret or apology that are inadmissible under ORS 677.082.

(4) Communications, memoranda, work products, documents and other materials, otherwise subject to discovery, that were not prepared specifically for use in a discussion under section 3 of this 2013 Act, are not confidential.

(5) Any communication, memorandum, work product or document that, before its use in a discussion under section 3 of this 2013 Act, was a public record as defined in ORS 192.410 [renumbered 192.311] remains subject to disclosure to the extent provided by ORS 192.410 to 192.505 [series became 192.311 to 192.478].

(6) The limitations on admissibility and disclosure in subsequent adjudicatory proceedings imposed by this section apply to any subsequent judicial proceeding, administrative proceeding or arbitration proceeding. The limitations on disclosure imposed by this section include disclosure during any discovery conducted as part of a subsequent adjudicatory proceeding, and a person that is prohibited from disclosing information under the provisions of this section may not be compelled to reveal confidential communications or agreements in any discovery conducted as part of a subsequent adjudicatory proceeding. [2013 c.5 §4]

Sec. 5. Mediation. (1) If a discussion under section 3 of this 2013 Act does not result in the resolution of an adverse health care incident, the patient and the health care facility or health care provider who files or is named in a notice of adverse health care incident filed under section 2 of this 2013 Act may enter into mediation.

(2) The Oregon Patient Safety Commission shall develop and maintain a panel of qualified individuals to serve as mediators. The parties, by mutual agree-

ment, may choose any mediator from within or outside the panel.

(3) The parties shall bear the cost of mediation equally unless otherwise mutually agreed.

(4) Other persons that may participate in the mediation include, but are not limited to:

(a) Members of the patient's family, at the discretion of the patient;

(b) Attorneys for the patient, the health care facility and the health care provider;

(c) Professional liability insurance carriers;

(d) Risk management personnel; and

(e) Any lien holder with an interest in the dispute.

(5) If a health care facility or health care provider makes an offer of compensation as part of a mediation under this section, the facility or provider shall advise the patient of the patient's right to seek legal advice before accepting the offer.

(6) Mediation under this section is subject to ORS 36.210, 36.220, 36.222, 36.224, 36.226, 36.232, 36.234, 36.236 and 36.238. [2013 c.5 §5]

Sec. 6. Payment and resolution. (1) A payment made to a patient under section 3 of this 2013 Act or as a result of a mediation under section 5 of this 2013 Act is not a payment resulting from a written claim or demand for payment.

(2) A health care provider or health care facility may require the patient to execute all documents and obtain any necessary court approval to resolve an adverse health care incident. The parties shall negotiate the form of such documents or court approval as necessary. [2013 c.5 §6]

Sec. 7. Statute of limitations; evidence of offers and payments. (1) The provisions of sections 3 and 5 of this 2013 Act relating to discussion and mediation do not prevent a patient from bringing a civil action for negligence unless the patient signed a release of the claim.

(2) The statute of limitations applicable to a negligence claim is tolled for 180 days, or another period agreed upon by the patient and the health care facility or health care provider who files or is named in the notice of adverse health care incident filed under section 2 of this 2013 Act, from the date the notice is filed.

(3) If a civil action based on an adverse health care incident is commenced, the court shall inform the parties of the opportunity to participate in the notice, discussion and mediation process under sections 2, 3 and 5 of this 2013 Act.

(4) Except as provided in section 4 of this 2013 Act, evidence that a party participated or did not participate in the notice, discussion and mediation process under sections 2, 3 and 5 of this 2013 Act is inadmissible in any adjudicatory proceeding.

(5) Evidence of an offer of compensation, and the amount, payment or acceptance of any compensation, under section 3 or 5 of this 2013 Act is inadmissible in any adjudicatory proceeding. However, any judgment in favor of the patient must be reduced by the amount of any compensation paid under sections 3 and 5 of this 2013 Act. [2013 c.5 §7]

Sec. 8. Patient representatives. (1) A patient who is a minor, is deceased or has been medically confirmed by the patient's treating physician to be incapable of making decisions for purposes of sections 1 to 10 of this 2013 Act may be represented for purposes of sections 1 to 10 of this 2013 Act by the first of the persons, in the following order of priority, who can be located upon reasonable effort by the health care facility or health care provider and who is willing to serve as the patient's representative:

(a) A guardian of the patient who is authorized to make health care decisions for the patient.

(b) The spouse of the patient.

(c) A parent of the patient.

(d) A majority of the adult children of the patient who can be located.

(e) A majority of the adult siblings of the patient who can be located.

(f) An adult friend of the patient.

(g) A person, other than a health care provider who files or is named in a notice of adverse health care incident under section 2 of this 2013 Act, appointed by a hospital under ORS 127.760.

(2) The conservator of the patient appointed under ORS chapter 125 may serve as a patient's representative with the patient's representative designated under subsection (1) of this section if the conservator's representation is necessary to consider an offer of compensation under section 3 or 5 of this 2013 Act. [2013 c.5 §8]

Sec. 9. Duties of Oregon Patient Safety Commission. (1) The Oregon Patient Safety Commission shall make rules establishing requirements and procedures as necessary to implement sections 1 to 10 of this 2013 Act, including, but not limited to:

(a) Procedures for filing a notice of adverse health care incident under section 2 of this 2013 Act and for conducting discussions and mediations under sections 3 and 5 of this 2013 Act.

(b) The form of the notice of adverse health care incident under section 2 of this 2013 Act.

(2) The commission shall use notices of adverse health care incidents filed under section 2 of this 2013 Act to:

(a) Establish quality improvement techniques to reduce patient care errors that contribute to adverse health care incidents.

(b) Develop evidence-based prevention practices to improve patient outcomes and disseminate information about those practices.

(c) Upon the request of a health care facility or health care provider, assist the facility or provider in reducing the frequency of a particular adverse health care incident, including, but not limited to, determining the underlying cause of the incident and providing advice regarding preventing reoccurrence of the incident. [2013 c.5 §9]

Sec. 10. Use of information by Oregon Patient Safety Commission. (1) The Oregon Patient Safety Commission may disseminate information relating to a notice of adverse health care incident filed under section 2 of this 2013 Act to the public and to health care providers and health care facilities not involved in the adverse health care incident as necessary to meet the goals described in section 9 of this 2013 Act. Information disclosed under this subsection may not identify a health care facility, health care provider or patient involved in the adverse health care incident.

(2) The commission may not disclose any information provided pursuant to a discussion under section 3 of this 2013 Act to a regulatory agency or licensing board.

(3) The commission may use and disclose information provided pursuant to a discussion under section 3 of this 2013 Act as necessary to assist a health care facility or health care provider involved in an adverse health care incident in determining the cause of and potential mitigation of the incident. If the commission discloses information under this subsection to a person not involved in the incident, the information may not identify a health care facility, health care provider or patient involved in the incident.

(4) A regulatory agency, licensing board, health care facility, health insurer or credentialing entity may not ask the commission, a health care facility, a health care provider or other person whether a facility or provider has filed a notice of adverse health care incident or use the fact that a notice of adverse health care incident was filed as the basis of disciplinary, regulatory, licensure or credentialing action. This subsection does not prevent a person from using information, if the information is otherwise available, to engage in quality review of patient care or as the basis of imposing a restriction, limitation, loss or denial of privileges on a health care provider or other action against a health care provider based on a finding of medical incompetence, unprofessional conduct, physical incapacity or impairment. [2013 c.5 §10]

Sec. 17. Task Force on Resolution of Adverse Health Care Incidents. (1) The Task Force on Resolution of Adverse Health Care Incidents is established, consisting of 14 members appointed as follows:

(a) The President of the Senate shall appoint two members from among members of the Senate as follows:

(A) One member from the Democratic party.

(B) One member from the Republican party.

(b) The Speaker of the House of Representatives shall appoint two members from among members of the House of Representatives as follows:

(A) One member from the Democratic party.

(B) One member from the Republican party.

(c) The Governor shall appoint 10 members, including:

(A) At least three members who are physicians licensed under ORS chapter 677 and in active practice;

(B) At least three members who are trial lawyers;

(C) One member who is a representative of the hospital industry; and

(D) One member who is an advocate for patient safety.

(2) The task force shall:

(a) Evaluate the implementation and effects of sections 1 to 10 of this 2013 Act; and

(b) Before December 31 of each year, report to an appropriate committee or interim committee of the Legislative Assembly on the implementation and effects of sections 1 to 10 of this 2013 Act.

(3) The task force may recommend legislation to be introduced to improve the resolution of adverse health care incidents.

(4) A majority of the voting members of the task force constitutes a quorum for the transaction of business.

(5) Official action by the task force requires the approval of a majority of the voting members of the task force.

(6) The Governor shall select one member of the task force to serve as chairperson and another to serve as vice chairperson, for the terms and with the duties and powers necessary for the performance of the functions of such offices as the Governor determines.

(7) The term of a member of the task force is four years, but a member serves at the pleasure of the appointing authority. A member may be reappointed. Before the expiration of the term of a member, the appointing authority shall appoint a successor or reappoint the member. If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(8) Members of the Legislative Assembly appointed to the task force are nonvoting members of the task force and may act in an advisory capacity only.

(9) The task force shall meet at times and places specified by the call of the chairperson or of a majority of the voting members of the task force.

(10) The task force may adopt rules necessary for the operation of the task force.

(11) The Oregon Patient Safety Commission shall provide staff support to the task force.

(12) Members of the task force who are not members of the Legislative Assembly are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses incurred in performing functions of the task force shall be paid out of funds appropriated to the commission for purposes of the task force.

(13) All agencies of state government, as defined in ORS 174.111, are directed to assist the task force in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the task force consider necessary to perform their duties. [2013 c.5 §17]

Sec. 18. Report. On or before October 1, 2018, the Task Force on Resolution of Adverse Health Care Incidents shall report to an appropriate committee or interim committee of the Legislative Assembly. The report must evaluate whether any improvements to the process are necessary. [2013 c.5 §18]

Sec. 19. Notwithstanding the terms of office specified in section 17 of this 2013 Act, of the members first appointed by the Governor to the Task Force on Resolution of Adverse Health Care Incidents:

(1) Three shall serve for a term ending June 30, 2014.

(2) Four shall serve for a term ending June 30, 2015.

(3) Three shall serve for a term ending June 30, 2016. [2013 c.5 §19]

Sec. 23. Sections 1 to 10 of this 2013 Act and the amendments to ORS 30.278, 31.250 and 743.056 [renumbered 742.407] by sections 11, 13 and 15 of this 2013 Act apply only to adverse health care incidents that occur on or after the operative date specified in section 21 of this 2013 Act [July 1, 2014]. [2013 c.5 §23]

Note: Section 20, chapter 5, Oregon Laws 2013, provides:

Sec. 20. Sections 1 to 10 and 17 to 19 of this 2013 Act are repealed on December 31, 2023. [2013 c.5 §20]

(Actions Against Design Professionals)

31.300 Pleading requirements for actions against design professionals. (1) As used in this section, "design professional" means an architect, landscape architect, professional engineer or professional land surveyor registered under ORS chapter 671 or 672 or licensed to practice as an architect, landscape architect, professional engineer or professional land surveyor in another state.

(2) A complaint, cross-claim, counterclaim or third-party complaint asserting a claim against a design professional that arises out of the provision of services within the course and scope of the activities for which the person is registered or licensed may not be filed unless the claimant's attorney certifies that the attorney has consulted a design professional with similar credentials who is qualified, available and willing to

testify to admissible facts and opinions sufficient to create a question of fact as to the liability of the design professional. The certification must contain a statement that a design professional with similar credentials who is qualified to testify as to the standard of professional skill and care applicable to the alleged facts, is available and willing to testify that:

(a) The alleged conduct of the design professional failed to meet the standard of professional skill and care ordinarily provided by other design professionals with similar credentials, experience and expertise and practicing under the same or similar circumstances; and

(b) The alleged conduct was a cause of the claimed damages, losses or other harm.

(3) In lieu of providing the certification described in subsection (2) of this section, the claimant's attorney may file with the court at the time of filing a complaint, cross-claim, counterclaim or third-party complaint an affidavit that states:

(a) The applicable statute of limitations is about to expire;

(b) The certification required under subsection (2) of this section will be filed within 30 days after filing the complaint, cross-claim, counterclaim or third-party complaint or such longer time as the court may allow for good cause shown; and

(c) The attorney has made such inquiry as is reasonable under the circumstances and has made a good faith attempt to consult with at least one registered or licensed design professional who is qualified to testify as to the standard of professional skill and care applicable to the alleged facts, as required by subsection (2) of this section.

(4) Upon motion of the design professional, the court shall enter judgment dismissing any complaint, cross-claim, counterclaim or third-party complaint against any design professional that fails to comply with the requirements of this section.

(5) This section applies only to a complaint, cross-claim, counterclaim or third-party complaint against a design professional by any plaintiff who:

(a) Is a design professional, contractor, subcontractor or other person providing labor, materials or services for the real property improvement that is the subject of the claim;

(b) Is the owner, lessor, lessee, renter or occupier of the real property improvement that is the subject of the claim;

(c) Is involved in the operation or management of the real property improvement that is the subject of the claim;

(d) Has contracted with or otherwise employed the design professional; or

(e) Is a person for whose benefit the design professional performed services. [2003 c.418 §1; 2015 c.610 §1]

(Actions Against Real Estate Licensees)

31.350 Pleading requirements for actions against real estate licensees. (1) As used in this section, "real estate licensee" has the meaning given that term in ORS 696.010.

(2) A complaint, cross-claim, counterclaim or third-party complaint asserting a claim of professional negligence against a real estate licensee for conduct occurring within the course and scope of the professional real estate activity for which the individual is licensed may not be filed unless the claimant's attorney certifies that the attorney has consulted a real estate licensee who is qualified, available and willing to testify to admissible facts and opinions sufficient to create a question of fact as to the liability of the real estate licensee. The certification required by this section must be filed with or be made part of the original complaint, cross-claim, counterclaim or third-party complaint. The certification must contain a statement that a real estate licensee who is qualified to testify as to the standard of care applicable to the alleged facts, is available and willing to testify that:

(a) The alleged conduct of the real estate licensee failed to meet the standard of professional care applicable to the real estate licensee in the circumstances alleged; and

(b) The alleged conduct was a cause of the claimed damages, losses or other harm.

(3) In lieu of providing the certification described in subsection (2) of this section, the claimant's attorney may file with the court at the time of filing a complaint, cross-claim, counterclaim or third-party complaint an affidavit that states:

(a) The applicable statute of limitations is about to expire;

(b) The certification required under subsection (2) of this section will be filed within 30 days after filing the complaint, cross-claim, counterclaim or third-party complaint or such longer time as the court may allow for good cause shown; and

(c) The attorney has made such inquiry as is reasonable under the circumstances and has made a good faith attempt to consult with at least one real estate licensee who is qualified to testify as to the standard of care applicable to the alleged facts, as required by subsection (2) of this section.

(4) Upon motion of the real estate licensee, the court shall enter judgment dismissing any complaint, cross-claim, counterclaim or third-party complaint against any real estate licensee who fails to comply with the requirements of this section.

(5) This section applies only to a complaint, cross-claim, counterclaim or third-party complaint against a real estate licensee by any plaintiff who:

(a) Has contracted with or otherwise employed the real estate licensee; or

(b) Is a person for whose benefit the real estate licensee performed services. [2005 c.277 §1; 2007 c.319 §25]

(Actions Arising From Injuries Caused by Dogs)

31.360 Proof required for claim of economic damages in action arising from injury caused by dog. (1) For the purpose of establishing a claim for economic damages, as defined in ORS 31.710, in an action arising from an injury caused by a dog:

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

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

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

(3) This section does not affect the requirements for an award of punitive damages provided in ORS 31.730 (1). [2007 c.402 §1]

ADVANCE PAYMENTS

31.550 "Advance payment" defined. As used in ORS 12.155 and 31.550 to 31.565, "advance payment" means compensation for the injury or death of a person or the injury or destruction of property prior to the determination of legal liability therefor. [Formerly 18.500]

31.555 Effect of advance payment; payment as satisfaction of judgment. (1) If judgment is entered against a party on whose behalf an advance payment referred to in ORS 31.560 or 31.565 has been made and in favor of a party for whose benefit any such advance payment has been received, the amount of the judgment shall be reduced by the amount of any such payments in the manner provided in subsection (3) of this section. However, nothing in ORS 12.155, 31.560 and 31.565 and this section authorizes the person making such payments to recover such advance payment if no damages are awarded or to recover any amount by which the advance payment exceeds the award of damages.

(2) If judgment is entered against a party who is insured under a policy of liability insurance against such judgment and in favor of a party who has received benefits that have been the basis for a reimbursement payment by such insurer under ORS 742.534, the amount of the judgment shall be reduced by reason of such benefits in the manner provided in subsection (3) of this section.

(3)(a) The amount of any advance payment referred to in subsection (1) of this section may be submitted by the party making the payment, in the manner provided in ORCP 68 C(4) for the submission of disbursements.

(b) The amount of any benefits referred to in subsection (2) of this section, diminished in proportion to the amount of negligence attributable to the party in favor of whom the judgment was entered and diminished to an amount no greater than the reimbursement payment made by the insurer under ORS 742.534, may be submitted by the insurer which has made the reimbursement payment, in the manner provided in ORCP 68 C(4) for the submission of disbursements.

(c) Unless timely objections are filed as provided in ORCP 68 C(4), the court clerk shall apply the amounts claimed pursuant to this subsection in partial satisfaction of the judgment. Such partial satisfaction shall be allowed without regard to whether the party claiming the reduction is otherwise entitled to costs and disbursements in the action. [Formerly 18.510]

31.560 Advance payment for death or personal injury not admission of liability; when advance payment made. (1) Advance payment made for damages arising from the death or injury of a person is not an admission of liability for the death or injury by the person making the payment unless the parties to the payment agree to the contrary in writing.

(2) For the purpose of subsection (1) of this section, advance payment is made when payment is made with or to:

(a) The injured person;

(b) A person acting on behalf of the injured person with the consent of the injured person; or

(c) Any other person entitled to recover damages on account of the injury or death of the injured or deceased person. [Formerly 18.520]

31.565 Advance payment for property damage not admission of liability. Any advance payment made for damages arising

from injury or destruction of property is not an admission of liability for the injury or destruction by the person making the payment unless the parties to the payment agree to the contrary in writing. [Formerly 18.530]

COLLATERAL BENEFITS

31.580 Effect of collateral benefits. (1) In a civil action, when a party is awarded damages for bodily injury or death of a person which are to be paid by another party to the action, and the party awarded damages or person injured or deceased received benefits for the injury or death other than from the party who is to pay the damages, the court may deduct from the amount of damages awarded, before the entry of a judgment, the total amount of those collateral benefits other than:

(a) Benefits which the party awarded damages, the person injured or that person's estate is obligated to repay;

(b) Life insurance or other death benefits;

(c) Insurance benefits for which the person injured or deceased or members of that person's family paid premiums; and

(d) Retirement, disability and pension plan benefits, and federal Social Security benefits.

(2) Evidence of the benefit described in subsection (1) of this section and the cost of obtaining it is not admissible at trial, but shall be received by the court by affidavit submitted after the verdict by any party to the action. [Formerly 18.580]

COMPARATIVE NEGLIGENCE

31.600 Contributory negligence not bar to recovery; comparative negligence standard; third party complaints. (1) Contributory negligence shall not bar recovery in an action by any person or the legal representative of the person to recover damages for death or injury to person or property if the fault attributable to the claimant was not greater than the combined fault of all persons specified in subsection (2) of this section, but any damages allowed shall be diminished in the proportion to the percentage of fault attributable to the claimant. This section is not intended to create or abolish any defense.

(2) The trier of fact shall compare the fault of the claimant with the fault of any party against whom recovery is sought, the fault of third party defendants who are liable in tort to the claimant, and the fault of any person with whom the claimant has settled. The failure of a claimant to make a direct claim against a third party defendant does not affect the requirement that the fault of the third party defendant be considered by the trier of fact under this subsection. Except for persons who have settled with the claimant, there shall be no comparison of fault with any person:

(a) Who is immune from liability to the claimant;

(b) Who is not subject to the jurisdiction of the court; or

(c) Who is not subject to action because the claim is barred by a statute of limitation or statute of ultimate repose.

(3) A defendant who files a third party complaint against a person alleged to be at fault in the matter, or who alleges that a person who has settled with the claimant is at fault in the matter, has the burden of proof in establishing:

(a) The fault of the third party defendant or the fault of the person who settled with the claimant; and

(b) That the fault of the third party defendant or the person who settled with the claimant was a contributing cause to the injury or death under the law applicable in the matter.

(4) Any party to an action may seek to establish that the fault of a person should not be considered by the trier of fact by reason that the person does not meet the criteria established by subsection (2) of this section for the consideration of fault by the trier of fact.

(5) This section does not prevent a party from alleging that the party was not at fault in the matter because the injury or death was the sole and exclusive fault of a person who is not a party in the matter. [Formerly 18.470]

31.605 Special questions to trier of fact; jury not to be informed of settlement. (1) When requested by any party the trier of fact shall answer special questions indicating:

(a) The amount of damages to which a party seeking recovery would be entitled, assuming that party not to be at fault.

(b) The degree of fault of each person specified in ORS 31.600 (2). The degree of each person's fault so determined shall be expressed as a percentage of the total fault attributable to all persons considered by the trier of fact pursuant to ORS 31.600.

(2) A jury shall be informed of the legal effect of its answer to the questions listed in subsection (1) of this section.

(3) The jury shall not be informed of any settlement made by the claimant for damages arising out of the injury or death that is the subject of the action.

(4) For the purposes of subsection (1) of this section, the court may order that two or more persons be considered a single person for the purpose of determining the degree of fault of the persons specified in ORS 31.600 (2). [Formerly 18.480]

31.610 Liability of defendants several only; determination of defendants' shares of monetary obligation; reallocation of uncollectible obligation; parties exempt from reallocation. (1) Except as otherwise provided in this section, in any civil action arising out of bodily injury, death or property damage, including claims for emotional injury or distress, loss of care, comfort, companionship and society, and loss of consortium, the liability of each defendant for damages awarded to plaintiff shall be several only and shall not be joint.

(2) In any action described in subsection (1) of this section, the court shall determine the award of damages to each claimant in accordance with the percentages of fault determined by the trier of fact under ORS 31.605 and shall enter judgment against each party determined to be liable. The court shall enter a judgment in favor of the plaintiff against any third party defendant who is found to be liable in any degree, even if the plaintiff did not make a direct claim against the third party defendant. The several liability of each defendant and third party defendant shall be set out separately in the judgment, based on the percentages of fault determined by the trier of fact under ORS 31.605. The court shall calculate and state in the judgment a monetary amount reflecting the share of the obligation of each person specified in ORS 31.600 (2). Each person's share of the obligation shall be equal to the total amount of the damages found by the trier of fact, with no reduction for amounts paid in settlement of the claim or by way of contribution, multiplied by the percentage of fault determined for the person by the trier of fact under ORS 31.605.

(3) Upon motion made not later than one year after judgment has become final by lapse of time for appeal or after appellate review, the court shall determine whether all or part of a party's share of the obligation determined under subsection (2) of this section is uncollectible. If the court determines that all or part of any party's share of the obligation is uncollectible, the court shall reallocate any uncollectible share among the other parties. The reallocation shall be made on the basis of each party's respective percentage of fault determined by the trier of fact under ORS 31.605. The claimant's share of the reallocation shall be based on any percentage of fault determined to be attributable to the claimant by the trier of fact under ORS 31.605, plus any percentage of fault attributable to a person who has settled with the claimant. Reallocation of obligations under this subsection does not affect any right to contribution from the party whose share of the obligation is determined to be uncollectible. Unless the party has entered into a covenant not to sue or not to enforce a judgment with the claimant, reallocation under this subsection does not affect continuing liability on the judgment to the claimant by the party whose share of the obligation is determined to be uncollectible.

(4) Notwithstanding subsection (3) of this section, a party's share of the obligation to a claimant may not be increased by reason of reallocation under subsection (3) of this section if:

(a) The percentage of fault of the claimant is equal to or greater than the percentage of fault of the party as determined by the trier of fact under ORS 31.605; or

(b) The percentage of fault of the party is 25 percent or less as determined by the trier of fact under ORS 31.605.

(5) If any party's share of the obligation to a claimant is not increased by reason of the application of subsection (4) of this section, the amount of that party's share of the reallocation shall be considered uncollectible and shall be reallocated among all other parties who are not subject to subsection (4) of this section, including the claimant, in the same manner as otherwise provided for reallocation under subsection (3) of this section.

(6) This section does not apply to:

(a) A civil action resulting from the violation of a standard established by Oregon or federal statute, rule or regulation for the spill, release or disposal of any hazardous waste, as defined in ORS 466.005, hazardous substance, as defined in ORS 453.005 or radioactive waste, as defined in ORS 469.300.

(b) A civil action resulting from the violation of Oregon or federal standards for air pollution, as defined in ORS 468A.005 or water pollution, as defined in ORS 468B.005. [Formerly 18.485]

31.615 Setoff of damages not allowed. Setoff of damages shall not be granted in actions subject to ORS 31.600 to 31.620. [Formerly 18.490]

31.620 Doctrines of last clear chance and implied assumption of risk abolished. (1) The doctrine of last clear chance is abolished.

(2) The doctrine of implied assumption of the risk is abolished. [Formerly 18.475]

DAMAGES

(Economic Damages)

31.700 Right to include medical expenses paid by parent or conservator in action to recover for damages to child; effect of consent to inclusion. (1) When the guardian ad litem or conservator of the estate of a child maintains a cause of action for recovery of damages to the child caused by a wrongful act, the parent, parents, or conservator of the estate of the child may file a consent accompanying the complaint of the guardian ad litem or conservator to include in the cause of action the damages as, in all the circumstances of the case, may be just, and will reasonably and fairly compensate for the doctor, hospital and medical expenses caused by the injury.

(2)(a) If the consent is filed as provided in subsection (1) of this section and the court allows the filing by a guardian ad litem, no court shall entertain a cause of action by the parent, parents or conservator for doctor, hospital or medical expenses caused by the injury.

(b) If the consent is filed as provided in subsection (1) of this section and the filing is by a conservator, no court shall entertain a cause of action by the parent or parents for doctor, hospital or medical expenses caused by the injury. [Formerly 30.810; 2015 c.213 §1]

(Verdict Form)

31.705 Economic and noneconomic damages separately set forth in verdict. A verdict shall set forth separately economic damages and noneconomic damages, if any, as defined in ORS 31.710. [Formerly 18.570]

(Noneconomic Damages)

31.710 Noneconomic damages; award; limit; "economic damages" and "noneconomic damages" defined. (1) Except for claims subject to ORS 30.260 to 30.300 and ORS chapter 656, in any civil action seeking damages arising out of bodily injury, including emotional injury or distress, death or property damage of any one person including claims for loss of care, comfort, companionship and society and loss of consortium, the amount awarded for noneconomic damages shall not exceed $500,000.

(2) As used in this section:

(a) "Economic damages" means objectively verifiable monetary losses including but not limited to reasonable charges necessarily incurred for medical, hospital, nursing and rehabilitative services and other health care services, burial and memorial expenses, loss of income and past and future impairment of earning capacity, reasonable and necessary expenses incurred for substitute domestic services, recurring loss to an estate, damage to reputation that is economically verifiable, reasonable and necessarily incurred costs due to loss of use of property and reasonable costs incurred for repair or for replacement of damaged property, whichever is less.

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

(3) This section does not apply to punitive damages.

(4) The jury shall not be advised of the limitation set forth in this section. [Formerly 18.560]

31.715 Limitation on recovery of noneconomic damages arising out of operation of motor vehicle; uninsured plaintiff; plaintiff driving under influence of intoxicants. (1) Except as provided in this section, a plaintiff may not recover noneconomic damages, as defined in ORS 31.710, in any action for injury or death arising out of the operation of a motor vehicle if the plaintiff was in violation of ORS 806.010 or 813.010 at the time the act or omission causing the death or injury occurred. A claim for noneconomic damages shall not be considered by the jury if the jury determines that the limitation on liability established by this section applies to the claim for noneconomic damages.

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

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

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

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

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

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

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

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

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

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

(6) The limitation on liability established by this section based on a violation of ORS 806.010 does not apply if the plaintiff in the civil action was insured under a motor vehicle liability insurance policy within 180 days before the act or omission occurred, and the plaintiff has not operated a motor vehicle in violation of ORS 806.010 within the one-year period immediately preceding the date on which coverage under the motor vehicle liability insurance policy lapsed. [Formerly 18.592]

(Punitive Damages)

31.725 Pleading punitive damages; motion to amend pleading to assert claim for punitive damages; hearing. (1) A pleading in a civil action may not contain a request for an award of punitive damages except as provided in this section.

(2) At the time of filing a pleading with the court, the pleading may not contain a request for an award of punitive damages. At any time after the pleading is filed, a party may move the court to allow the party to amend the pleading to assert a claim for punitive damages. The party making the motion may submit affidavits and documentation supporting the claim for punitive damages. The party or parties opposing the motion may submit opposing affidavits and documentation.

(3) The court shall deny a motion to amend a pleading made under the provisions of this section if:

(a) The court determines that the affidavits and supporting documentation submitted by the party seeking punitive damages fail to set forth specific facts supported by admissible evidence adequate to avoid the granting of a motion for a directed verdict to the party opposing the motion on the issue of punitive damages in a trial of the matter; or

(b) The party opposing the motion establishes that the timing of the motion to amend prejudices the party's ability to defend against the claim for punitive damages.

(4) The court may grant a continuance on a motion under this section to allow a party opposing the motion to conduct such discovery as is necessary to establish one of the grounds for denial of the motion specified in subsection (3) of this section. If the court grants the motion, the court may continue the action to allow such discovery as the defendant may require to defend against the claim for punitive damages.

(5) Subject to subsection (4) of this section, the court shall conduct a hearing on a motion filed under this section not more than 30 days after the motion is filed and served. The court shall issue a decision within 10 days after the hearing. If no decision is issued within 10 days, the motion shall be considered denied.

(6) Discovery of evidence of a defendant's ability to pay shall not be allowed by a court unless and until the court grants a motion to amend a pleading under this section. [Formerly 18.535]

31.730 Standards for award of punitive damages; required review of award by court; additional reduction of award for remedial measures. (1) Punitive damages are not recoverable in a civil action unless it is proven by clear and convincing evidence that the party against whom punitive damages are sought has acted with malice or has shown a reckless and outrageous indifference to a highly unreasonable risk of harm and has acted with a conscious indifference to the health, safety and welfare of others.

(2) If an award of punitive damages is made by a jury, the court shall review the award to determine whether the award is within the range of damages that a rational juror would be entitled to award based on the record as a whole, viewing the statutory and common-law factors that allow an award of punitive damages for the specific type of claim at issue in the proceeding.

(3) In addition to any reduction that may be made under subsection (2) of this section, upon the motion of a defendant the court

may reduce the amount of any judgment requiring the payment of punitive damages entered against the defendant if the defendant establishes that the defendant has taken remedial measures that are reasonable under the circumstances to prevent reoccurrence of the conduct that gave rise to the claim for punitive damages. In reducing awards of punitive damages under the provisions of this subsection, the court shall consider the amount of any previous judgment for punitive damages entered against the same defendant for the same conduct giving rise to a claim for punitive damages. [Formerly 18.537]

31.735 Distribution of punitive damages; notice to Department of Justice; order of application. (1) Upon the entry of a verdict including an award of punitive damages, the Department of Justice becomes a judgment creditor as to the amounts payable under paragraphs (b) and (c) of this section, and the punitive damage portion of an award shall be allocated as follows:

(a) Thirty percent is payable to the prevailing party. The attorney for the prevailing party shall be paid out of the amount allocated under this paragraph, in the amount agreed upon between the attorney and the prevailing party. However, in no event may more than 20 percent of the amount awarded as punitive damages be paid to the attorney for the prevailing party.

(b) Sixty percent is payable to the Attorney General for deposit in the Criminal Injuries Compensation Account of the Department of Justice Crime Victims' Assistance Section, and may be used only for the purposes set forth in ORS chapter 147. However, if the prevailing party is a public entity, the amount otherwise payable to the Criminal Injuries Compensation Account shall be paid to the general fund of the public entity.

(c) Ten percent is payable to the Attorney General for deposit in the State Court Facilities and Security Account established under ORS 1.178, and may be used only for the purposes specified in ORS 1.178 (2)(d).

(2) The party preparing the proposed judgment shall assure that the judgment identifies the judgment creditors specified in subsection (1) of this section.

(3) Upon the entry of a verdict including an award of punitive damages, the prevailing party shall provide notice of the verdict to the Department of Justice. In addition, upon entry of a judgment based on a verdict that includes an award of punitive damages, the prevailing party shall provide notice of the judgment to the Department of Justice. The notices required under this subsection must be in writing and must be delivered to the Department of Justice Crime Victims' Assistance Section in Salem, Oregon within five days after the entry of the verdict or judgment.

(4) Whenever a judgment includes both compensatory and punitive damages, any payment on the judgment by or on behalf of any defendant, whether voluntary or by execution or otherwise, shall be applied first to compensatory damages, costs and court-awarded attorney fees awarded against that defendant and then to punitive damages awarded against that defendant unless all affected parties, including the Department of Justice, expressly agree otherwise, or unless that application is contrary to the express terms of the judgment.

(5) Whenever any judgment creditor of a judgment which includes punitive damages governed by this section receives any payment on the judgment by or on behalf of any defendant, the judgment creditor receiving the payment shall notify the attorney for the other judgment creditors and all sums collected shall be applied as required by subsections (1) and (4) of this section, unless all affected parties, including the Department of Justice, expressly agree otherwise, or unless that application is contrary to the express terms of the judgment. [Formerly 18.540; 2011 c.597 §311; 2011 c.689 §1]

Note: Section 3, chapter 689, Oregon Laws 2011, provides:

Sec. 3. The amendments to ORS 31.735 by section 1 of this 2011 Act apply only to causes of action that arise on or after the effective date of this 2011 Act [August 2, 2011]. [2011 c.689 §3]

31.740 When award of punitive damages against health practitioner prohibited. Punitive damages may not be awarded against a health practitioner if:

(1) The health practitioner is licensed, registered or certified as:

(a) A psychologist under ORS 675.030 to 675.070, 675.085 and 675.090;

(b) An occupational therapist under ORS 675.230 to 675.300;

(c) A regulated social worker under ORS 675.510 to 675.600;

(d) A physician under ORS 677.100 to 677.228 or 677.805 to 677.840;

(e) An emergency medical services provider under ORS chapter 682;

(f) A nurse under ORS 678.040 to 678.101;

(g) A nurse practitioner under ORS 678.375 to 678.390;

(h) A dentist under ORS 679.060 to 679.180;

(i) A dental hygienist under ORS 680.040 to 680.100;

(j) A denturist under ORS 680.515 to 680.535;

(k) An audiologist or speech-language pathologist under ORS 681.250 to 681.350;

(L) An optometrist under ORS 683.040 to 683.155 and 683.170 to 683.220;

(m) A chiropractor under ORS 684.040 to 684.105;

(n) A naturopath under ORS 685.060 to 685.110, 685.125 and 685.135;

(o) A massage therapist under ORS 687.011 to 687.250;

(p) A physical therapist under ORS 688.040 to 688.145;

(q) A medical imaging licensee under ORS 688.445 to 688.525;

(r) A pharmacist under ORS 689.151 and 689.225 to 689.285;

(s) A physician assistant as provided by ORS 677.505 to 677.525; or

(t) A professional counselor or marriage and family therapist under ORS 675.715 to 675.835; and

(2) The health practitioner was engaged in conduct regulated by the license, registration or certificate issued by the appropriate governing body and was acting within the scope of practice for which the license, registration or certificate was issued and without malice. [Formerly 18.550; 2005 c.366 §4; 2009 c.442 §27; 2009 c.833 §26; 2011 c.396 §1; 2011 c.703 §20; 2013 c.129 §20]

Note: Section 2, chapter 396, Oregon Laws 2011, provides:

Sec. 2. The amendments to ORS 31.740 by section 1 of this 2011 Act apply only to causes of action that arise on or after the effective date of this 2011 Act [January 1, 2012]. [2011 c.396 §2]

(Mitigation of Damages)

31.760 Evidence of nonuse of safety belt or harness to mitigate damages. (1) In an action brought to recover damages for personal injuries arising out of a motor vehicle accident, evidence of the nonuse of a safety belt or harness may be admitted only to mitigate the injured party's damages. The mitigation shall not exceed five percent of the amount to which the injured party would otherwise be entitled.

(2) Subsection (1) of this section shall not apply to:

(a) Actions brought under ORS 30.900 to 30.920; or

(b) Actions to recover damages for personal injuries arising out of a motor vehicle accident when nonuse of a safety belt or harness is a substantial contributing cause of the accident itself. [Formerly 18.590]

CONTRIBUTION

31.800 Right of contribution among joint tortfeasors; limitations; subrogation of insurer; effect on indemnity right. (1) Except as otherwise provided in this section, where two or more persons become jointly or severally liable in tort for the same injury to person or property or for the same wrongful death, there is a right of contribution among them even though judgment has not been recovered against all or any of them. There is no right of contribution from a person who is not liable in tort to the claimant.

(2) The right of contribution exists only in favor of a tortfeasor who has paid more than a proportional share of the common liability, and the total recovery of the tortfeasor is limited to the amount paid by the tortfeasor in excess of the proportional share. No tortfeasor is compelled to make contribution beyond the proportional share of the tortfeasor of the entire liability.

(3) A tortfeasor who enters into a settlement with a claimant is not entitled to recover contribution from another tortfeasor whose liability for the injury or wrongful death is not extinguished by the settlement nor in respect to any amount paid in a settlement which is in excess of what is reasonable.

(4) A liability insurer, who by payment has discharged in full or in part the liability of a tortfeasor and has thereby discharged in full its obligation as insurer, is subrogated to the tortfeasor's right of contribution to the extent of the amount it has paid in excess of the tortfeasor's proportional share of the common liability. This subsection does not limit or impair any right of subrogation arising from any other relationship.

(5) This section does not impair any right of indemnity under existing law. Where one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of the indemnity obligation.

(6) This section shall not apply to breaches of trust or of other fiduciary obligation. [Formerly 18.440]

31.805 Basis for proportional shares of tortfeasors. (1) The proportional shares of tortfeasors in the entire liability shall be based upon their relative degrees of fault or responsibility. In contribution actions arising out of liability under ORS 31.600, the proportional share of a tortfeasor in the entire liability shall be based upon the tortfeasor's percentage of the common negligence of all tortfeasors.

(2) If equity requires, the collective liability of some as a group shall constitute a single share. Principles of equity applicable to contribution generally shall apply. [Formerly 18.445]

31.810 Enforcement of right of contribution; commencement of separate action; barring right of contribution; effect of satisfaction of judgment. (1) Whether or not judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced by separate action.

(2) Where a judgment has been entered in an action against two or more tortfeasors for the same injury or wrongful death, contribution may be enforced in that action by judgment in favor of one against other judgment defendants by motion upon notice to all parties to the action.

(3) If there is a judgment for the injury or wrongful death against the tortfeasor seeking contribution, any separate action by the tortfeasor to enforce contribution must be commenced within two years after the judgment has become final by lapse of time for appeal or after appellate review.

(4) If there is no judgment for the injury or wrongful death against the tortfeasor seeking contribution, the right of contribution of that tortfeasor is barred unless the tortfeasor has either:

(a) Discharged by payment the common liability within the statute of limitations period applicable to claimant's right of action against the tortfeasor and has commenced action for contribution within two years after payment; or

(b) Agreed while action is pending against the tortfeasor to discharge the common liability and has within two years after the agreement paid the liability and commenced action for contribution.

(5) The running of the statute of limitations applicable to a claimant's right of recovery against a tortfeasor shall not operate to bar recovery of contribution against the tortfeasor or the claimant's right of recovery against a tortfeasor specified in ORS 31.600 (2) who has been made a party by another tortfeasor.

(6) The recovery of a judgment for an injury or wrongful death against one tortfeasor does not of itself discharge the other tortfeasors from liability for the injury or wrongful death unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution.

(7) The judgment of the court in determining the liability of the several defendants to the claimant for an injury or wrongful death shall be binding as among such defendants in determining their right to contribution. [Formerly 18.450]

31.815 Covenant not to sue; effect; notice. (1) When a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury to person or property or the same wrongful death or claimed to be liable in tort for the same injury or the same wrongful death:

(a) It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide; but the claimant's claim against all other persons specified in ORS 31.600 (2) for the injury or wrongful death is reduced by the share of the obligation of the tortfeasor who is given the covenant, as determined under ORS 31.605 and 31.610; and

(b) It discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

(2) When a covenant described in subsection (1) of this section is given, the claimant shall give notice of all of the terms of the covenant to all persons against whom the claimant makes claims. [Formerly 18.455]

31.820 Severability. If any provision of ORS 31.800 to 31.820 or the application thereof to any person is held invalid, the invalidity shall not affect other provisions or applications of ORS 31.800 to 31.820 which can be given effect without the invalid provision or application and to this end the provisions of ORS 31.800 to 31.820 are severable. [Formerly 18.460]

ASSIGNMENT OF CAUSE OF ACTION AGAINST INSURER

31.825 Assignment of cause of action against insurer. A defendant in a tort action against whom a judgment has been rendered may assign any cause of action that defendant has against the defendant's insurer as a result of the judgment to the plaintiff in whose favor the judgment has been entered. That assignment and any release or covenant given for the assignment shall not extinguish the cause of action against the insurer unless the assignment specifically so provides. [Formerly 17.100]

31.850 [2009 c.451 §1; renumbered 15.400 in 2011]

31.855 [2009 c.451 §2; renumbered 15.405 in 2011]

31.860 [2009 c.451 §3; renumbered 15.410 in 2011]

31.862 [2009 c.451 §4; renumbered 15.415 in 2011]

31.865 [2009 c.451 §5; renumbered 15.420 in 2011]

31.870 [2009 c.451 §6; renumbered 15.430 in 2011]

31.872 [2009 c.451 §7; renumbered 15.435 in 2011]

31.875 [2009 c.451 §8; renumbered 15.440 in 2011]

31.878 [2009 c.451 §9; renumbered 15.445 in 2011]

31.880 [2009 c.451 §10; renumbered 15.450 in 2011]

31.885 [2009 c.451 §11; renumbered 15.455 in 2011]

31.890 [2009 c.451 §12; renumbered 15.460 in 2011]

ABOLISHED COMMON LAW ACTIONS

31.980 Action for alienation of affections abolished. There shall be no civil cause of action for alienation of affections. [Formerly 30.840]

31.982 Action for criminal conversation abolished. There shall be no civil cause of action for criminal conversation. [Formerly 30.850]