

## Chapter 18

### 1999 EDITION

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**Note:** The name of the Department of Human Resources has been changed to the Department of Human Services and the title of the Director of Human Resources to the Director of Human Services. The name and title changes become operative on July 1, 2000. See sections 10 and 11, chapter 421, Oregon Laws 1999. References to the department and the director in this chapter use the name and the title that become operative on July 1, 2000.

**18.010** [Amended by 1977 c.208 s.1; 1979 c.284 s.50; repealed by 1981 c.898 s.53]

**18.020** [Repealed by 1979 c.284 s.199]

**18.030** [Amended by 1973 c.207 s.1; 1977 c.616 s.1; repealed by 1981 c.898 s.53]

**18.040** [Repealed by 1981 c.898 s.53]

**18.050** [Amended by 1959 c.638 s.6; repealed by 1981 c.898 s.53]

**18.060** [Amended by 1979 c.284 s.51; repealed by 1981 c.898 s.53]

**18.070** [Repealed by 1981 c.898 s.53]

**18.080** [Amended by 1971 c.365 s.1; repealed by 1981 c.898 s.53]

**18.090** [Amended by 1979 c.284 s.52; repealed by 1981 c.898 s.53]

**18.100** [Repealed by 1981 c.898 s.53]

**18.105** [1975 c.106 s.1; 1977 c.208 s.2; repealed by 1979 c.284 s.199]

**18.110** [Repealed by 1981 c.898 s.53]

**18.115** [1975 c.623 s.12; 1979 c.284 s.53; repealed by 1981 c.898 s.53]

**18.120** [Repealed by 1981 c.898 s.53]

**18.125** [1977 c.208 s.3; repealed by 1981 c.898 s.53]

**18.130** [Repealed by 1977 c.208 s.5]

**18.135** [Formerly 15.100; repealed by 1981 c.898 s.53]

**18.140** [Amended by 1957 c.348 s.1; 1973 c.207 s.2; repealed by 1979 c.284 s.199]

**18.160** [Repealed by 1981 c.898 s.53]

**18.210** [Repealed by 1979 c.284 s.199]

**18.220** [Repealed by 1979 c.284 s.199]

**18.230** [Amended by 1967 c.466 s.1; 1975 c.134 s.1; repealed by 1979 c.284 s.199]

**18.240** [Repealed by 1979 c.284 s.199]

**18.250** [Repealed by 1979 c.284 s.199]

**18.260** [Amended by 1971 c.224 s.1; repealed by 1979 c.284 s.199]

**18.310** [Amended by 1967 c.471 s.1; repealed by 1979 c.284 s.199]

## DOCKETING; RECORD; LIEN; SATISFACTION

**18.315 Application to circuit, justice and municipal courts.** Except as otherwise specifically provided in ORS 18.315 to 18.425 and 221.344, the provisions of ORS 18.315 to 18.425 apply to circuit courts, justice courts and municipal courts. [1999 c.788 s.15]

**Note:** Section 62 (2) and (7), chapter 788, Oregon Laws 1999, provides:

**Sec. 62.** (2) Any judgment rendered by a justice court before the effective date of this 1999 Act [October 23, 1999] that was not docketed in the circuit court under the provisions of ORS 52.630 (1997 Edition) before the effective date of this 1999 Act may become a lien on real property only in the manner provided by section 4 of this 1999 Act

[52.635]. Any judgment rendered in a justice court on or after the effective date of this 1999 Act may become a lien on real property only in the manner provided by section 4 of this 1999 Act.

(7) Except as provided in subsection (2) of this section, sections 15, 16 and 17 of this 1999 Act [18.315, 18.355 and 18.365] apply to all judgments of justice and municipal courts, whether those judgments were rendered before, on or after the effective date of this 1999 Act. [1999 c.788 s.62(2),(7)]

**18.320 Docketing of judgment or lien record abstract.** (1) Except as provided in ORS 46.488, immediately after the entry in the register of judgment for the payment of money in any action in circuit court, the clerk shall docket the judgment in the judgment docket, noting thereon the day, hour and minute of such docketing. The clerk shall rely on the existence of a separate section within the judgment for those judgments subject to ORCP 70 A(2) in determining whether the judgment is a judgment for the payment of money and shall only docket therefrom.

(2) With respect to any judgment docketed in a circuit court judgment docket, or a judgment for unpaid child or spousal support recognized in another state, the following apply:

(a) At any time thereafter, so long as the original judgment remains in force under ORS 18.360, or if a judgment for unpaid child or spousal support recognized in another state remains in force under that state's law, and is unsatisfied in whole or part, the judgment creditor, or the agent of the judgment creditor, may have recorded a certified copy of the judgment or a lien record abstract in the County Clerk Lien Record for any county in this state.

(b) A certified copy or a lien record abstract of any judgment renewed pursuant to ORS 18.360 or a judgment for unpaid child or spousal support recognized in another state and in force under that state's law may likewise be recorded in the County Clerk Lien Record in any county.

(c) A certified copy of the judgment, or a certified copy of any renewed judgment under ORS 18.360 or a judgment for unpaid child or spousal support recognized in another state and in force under that state's law, or lien record abstract of either, shall be recorded in any county other than in the county where a judgment is originally docketed in order for that judgment to be a lien upon the real property and, if the judgment is for unpaid child or spousal support, the personal property of the judgment debtor in that county.

(3) Liens arising by operation of law in another state against real property for amounts of overdue payments under a support order, as defined in ORS 110.303, shall be accorded full faith and credit if the state agency, party or other entity seeking to enforce the lien follows the applicable procedures for recording and service of notice of claim of lien as required by this section and ORS 18.325. A state agency, party or other entity may not file an action to enforce a lien described in this section until the underlying judgment has been filed in Oregon as provided in ORS 110.303 to 110.452.

(4) This section does not apply to justice and municipal court judgments. [Amended by 1961 c.151 s.1; 1983 c.405 s.1; 1983 c.696 s.3; 1985 c.343 s.1; 1987 c.586 s.3; 1989 c.768 s.5; 1993 c.223 s.2; 1997 c.801 s.59; 1999 c.80 s.31; 1999 c.788 s.18]

**Note:** See second note following 18.360.

**18.325 Form for lien record abstract.** (1) Unless otherwise prescribed by law, a person recording a lien record abstract shall use substantially the following form:

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LIEN RECORD ABSTRACT

The undersigned states:

A. Creditor/Prevailing Party Information:

\_\_\_ 1. The creditor/prevailing party is:

\_\_\_\_\_ and the address of the creditor is:

\_\_\_\_\_

\_\_\_\_\_ under judgment, decree, order or petition entered on \_\_\_\_\_ (date) in the \_\_\_\_\_ Court for \_\_\_\_\_ (County) of \_\_\_\_\_ (State) under Case No. \_\_\_\_\_.

\_\_\_ 2. The Creditor's attorney's name is \_\_\_\_\_  
Attorney's Address is: \_\_\_\_\_  
Attorney's Phone No. is: \_\_\_\_\_

**B. Debtor/Losing Party Information:**

\_\_\_ 1. The Debtor/losing party is: \_\_\_\_\_

\_\_\_ 2. Debtor's address (if known):  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ 3. Debtor's Social Security No. or  
Taxpayer Identification No.  
(if known):  
\_\_\_\_\_

\_\_\_ 4. Debtor's driver license no. and  
state of issuance for the license  
(if known):  
\_\_\_\_\_

\_\_\_ 5. Name of debtor's attorney  
(if known):  
\_\_\_\_\_

**C. Judgment Information:**

\_\_\_ 1. The amount of the judgment is:  
\_\_\_\_\_

\_\_\_ 2. The amount of the costs is:  
\_\_\_\_\_

\_\_\_ 3. The amount of attorney fees, if any  
is: \_\_\_\_\_

**D. The Real or Personal Property to be Affected**

(Check appropriate box):

\_\_\_ All real property of the debtor/losing party, now or hereafter acquired, in \_\_\_\_\_ County as provided under  
ORS 18.320 and 18.350.

\_\_\_ The following described real or personal property of debtor (legal description as set forth or on attached  
Exhibit):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the undersigned person or persons have executed this abstract this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

State of Oregon    )  
                          ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon

My commission expires: \_\_\_\_\_

State of Oregon    )  
                          ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, by \_\_\_\_\_ and by \_\_\_\_\_ of \_\_\_\_\_, a corporation on behalf of the corporation.

\_\_\_\_\_  
Notary Public for Oregon

My commission expires: \_\_\_\_\_

\_\_\_\_\_

(2) A lien record abstract that is the result of a judgment for unpaid child or spousal support entered in another state shall be on the form prescribed by rules adopted by the Department of Human Services in lieu of the form required by subsection (1) of this section. [1987 c.586 s.2b; 1989 c.171 s.2; 1999 c.59 s.6; 1999 c.80 s.32; 1999 c.195 s.5]

**Note:** 18.325 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 18 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**18.330** [Repealed by 1959 c.558 s.29 (18.335 enacted in lieu of 18.330)]

**18.335 Trial court file; authority to issue**

**post-judgment process against personal property.** (1) In every proceeding, the clerk shall attach together, file and maintain in the office of the clerk the following documents in the order in which they are filed until all actions in such proceeding have been completed and thereafter for such period of time as may be required under the minimum retention schedule prescribed by the State Court Administrator pursuant to ORS 8.125:

(a) The original papers filed in the court, whether before or after judgment, including but not limited to the summons and proof of service, pleadings, motions, affidavits, depositions, stipulations and orders.

(b) The judgment.

(c) The notice of appeal and the undertaking on appeal, if any.

(2) Except as provided in ORS 23.030, the court in which the judgment was originally entered is the only court with authority to issue post-judgment process under ORS chapter 23 or 29 against personal property involving that judgment. Except as provided in ORS 23.030, the court in this state where a foreign judgment is first filed is the only



court with authority to issue post-judgment process against personal property involving that judgment.

(3) Subsection (2) of this section does not apply to justice courts. [1959 c.558 s.30 (enacted in lieu of 18.330); 1979 c.284 s.54; 1983 c.405 s.2; 1987 c.873 s.21; 1997 c.340 s.5; 1997 c.872 s.16]

**18.340** [Repealed by 1959 c.558 s.51]

**18.350 Judgment lien; undertaking in lieu of lien; filing satisfaction of judgment.** (1) Subject to the requirements of this section, from the time of docketing an original or renewed circuit court judgment as provided in ORS 18.320, such judgment shall be a lien upon all the real property of the judgment debtor within the county where the same is docketed, or which the judgment debtor may afterwards acquire therein, during the time prescribed in ORS 18.360. Such judgment shall not be a lien upon any real property of the judgment debtor acquired after the effective date of the discharge of the judgment under federal bankruptcy laws. All docketed judgments shall be presumed to have not been discharged until the judgment debtor establishes that the judgment has been discharged.

(2) A judgment lien expires if an appeal is taken from any circuit court judgment and a supersedeas undertaking, as defined in ORS 19.005, is filed by the judgment debtor. The clerk shall note the expiration of the lien in the judgment docket. The lien expires when the time expires for the filing of objections to the undertaking, or upon approval of the undertaking by the court, whichever is later.

(3) When the lien of a circuit court judgment ceases in the county in which the judgment was originally docketed, it shall cease in every other county in which a certified copy of the judgment or a lien record abstract has been recorded. When such judgment has been fully satisfied, it shall be the responsibility of the judgment creditor to file a full satisfaction in the county in which the judgment was originally docketed. The clerk of the circuit court shall not charge a fee for filing a satisfaction of judgment. Upon satisfaction in full of the judgment, the judgment creditor shall deliver to the judgment debtor an executed satisfaction of the judgment for every county where a certified copy of the judgment or a lien record abstract has been recorded.

(4) A judgment entered in the small claims department of a circuit court in an amount of less than \$3,000, exclusive of costs, may become a lien on the real property of the judgment debtor only as provided in ORS 46.488.

(5) The provisions of this section apply only to circuit court judgments. [Amended by 1961 c.151 s.2; 1983 c.405 s.3; 1983 c.696 s.3a; 1985 c.343 s.2; 1987 c.586 s.4; 1993 c.523 s.1; 1997 c. 71 s.13; 1997 c.801 s.66; 1999 c.195 s.1; 1999 c.788 s.21a]

**Note:** Section 8 (1) and (2), chapter 195, Oregon Laws 1999, provides:

**Sec. 8.** (1) The amendments to ORS 18.350 by section 1 of this 1999 Act, and the amendments to ORS 46.488 by section 58, chapter 801, Oregon Laws 1997, and by section 3 of this 1999 Act, do not affect any judgment docketed in the circuit court under the provisions of ORS 46.488 (1997 Edition) before the effective date of this 1999 Act [October 23, 1999]. Notwithstanding the amendments to ORS 46.488 by section 58, chapter 801, Oregon Laws 1997, and by section 3 of this 1999 Act, any judgment entered in the small claims department of a circuit court before the effective date of this 1999 Act that was not docketed in the circuit court under the provisions of ORS 46.488 (1997 Edition) before the effective date of this 1999 Act may become a lien on real property only in the manner provided by ORS 46.488 (1997 Edition).

(2) Any judgment docketed before the effective date of this 1999 Act, including judgments docketed under the provisions of ORS 46.488 (1997 Edition), that did not become a lien on real property by reason of failure of the judgment creditor to file a lien certificate with the court in the manner required by ORS 18.350 (4) to (9) (1997 Edition) shall automatically become a lien on real property to the extent described in ORS 18.350, as amended by section 1 of this 1999 Act, on January 1, 2000, and shall be considered in all respects as though the judgment had been docketed on January 1, 2000. [1999 c.195 s.8(1),(2); 1999 c.195 s.8a(1),(2)]

**Note:** Section 13, chapter 71, Oregon Laws 1997, amended 18.350. Section 22, chapter 71, Oregon laws 1997, provides:

**Sec. 22.** (1) Except as provided by subsection (2) of this section, the provisions of this Act apply only to appeals commenced by the filing of a notice of appeal on or after the effective date of this Act [October 4, 1997]. Except as provided in subsection (2) of this section, and notwithstanding the amendment and repeal of statutory provisions by this Act, any appeal commenced before the effective date of this Act shall continue to be governed by the provisions

of ORS chapter 19 in effect immediately before the effective date of this Act.

(2) The provisions of section 10 of this Act [19.355], and the amendments to ORS 107.105 by section 19 of this Act, apply only to appeals pending on the effective date of this Act and to appeals commenced by the filing of a notice of appeal on or after the effective date of this Act. [1997 c.71 s.22]

**18.355 Liens based on justice and municipal court judgments.** (1) Subject to the requirements of this section and ORS 221.344, from the time that an original or renewed judgment of a justice or municipal court is transcribed or recorded as provided in ORS 52.635 or 221.351, the judgment is a lien upon all the real property of the judgment debtor within the county where the judgment is transcribed or recorded, and upon any real property that the judgment debtor may thereafter acquire in that county during the time prescribed in ORS 18.365. The judgment is not a lien upon any real property of the judgment debtor acquired after the effective date of the discharge of the judgment under federal bankruptcy laws. All transcribed or recorded judgments of justice and municipal courts are presumed to be in force until the judgment debtor has established that the judgment has been discharged.

(2) A judgment lien based on a justice or municipal court judgment expires if an appeal is taken from any judgment and a supersedeas undertaking, as defined in ORS 19.005, is filed by the judgment debtor. The clerk of the justice or municipal court shall note the expiration of the lien in the judgment docket. The lien expires when the time expires for the filing of objections to the undertaking, or upon approval of the undertaking by the court, whichever is later.

(3) When the lien of a justice or municipal court judgment ceases in the county in which the judgment was originally recorded, the lien shall cease in every other county in which a certified copy of the judgment or a lien record abstract has been recorded. When the judgment has been fully satisfied, it is the responsibility of the judgment creditor to file a full satisfaction in any circuit court to which the judgment has been transcribed under ORS 52.635, and to record the satisfaction in the County Clerk Lien Record for the county in which the court is located if a certified copy of the judgment or a lien record abstract for the judgment was recorded in that County Clerk Lien Record. Upon satisfaction in full of the judgment, the judgment creditor shall deliver to the judgment debtor an executed satisfaction of the judgment for any other county where a certified copy of the judgment or a lien record abstract has been recorded. The county clerk shall charge a fee as provided in ORS 205.320 for filing a satisfaction of judgment. [1999 c.788 s.16]

**Note:** See note under 18.315.

**18.360 Expiration of judgment and lien; renewal; judgment in criminal action; judgments for property division.** (1) Except as provided in this section and ORS 25.700, whenever a period of 10 years elapses after the entry of a judgment in a circuit court, the judgment and any docketed or recorded lien thereof shall expire. However, before the expiration of 10 years the circuit court for the county in which the judgment originally was entered, on motion, may renew the judgment and cause a notation in the register and the judgment docket indicating the renewal of the judgment to be made. The renewed judgment and any lien thereof expire 10 years after entry of the renewed judgment. If the judgment is renewed, the judgment creditor or the agent of the judgment creditor may cause to be recorded in the County Clerk Lien Record of any other county in this state a certified copy of the renewed judgment or a lien record abstract. Execution may issue upon the renewed judgment until the judgment expires or is fully satisfied.

(2) Notwithstanding subsection (1) of this section, a judgment in a criminal action, as defined in ORS 131.005, and any lien created by the docketing or recording of the judgment expire 20 years after entry of the judgment, and may not be renewed.

(3) Notwithstanding subsection (1) of this section, whenever a judgment under ORS 107.105 (1)(f) provides for the future payment of money in gross or in installments and when the future gross payment or any installment does not become due for 10 or more years from the date of entry of the judgment, that part of the judgment and the lien thereof shall not expire until 10 years after the date on which the future gross payment or installment becomes due. However, before the expiration of 10 years after the date on which the future gross payment or installment becomes due, the circuit court for the county in which the judgment was entered, may renew, on motion, that part of the judgment that has become due within the preceding 10 years and cause a new entry and docketing of that part of the judgment to be made. A judgment renewed under this subsection and any lien thereof expire 10 years after entry of the renewed judgment. If the judgment is renewed, the judgment creditor or the agent of the judgment creditor may cause to be recorded in the County Clerk Lien Record of any other county of the state a certified copy of the renewed judgment or a lien record abstract. Execution may issue upon the renewed judgment until the judgment expires or is fully satisfied.

(4) The provisions of this section do not apply to justice and municipal courts. [Amended by 1983 c.405 s.4; 1983

c.696 s.32a; 1985 c.343 s.3; 1987 c.586 s.5; 1993 c.716 s.1; 1993 c.763 s.6; 1995 c.79 s.5; 1997 c.801 s.103; 1999 c.788 s.22]

**Note:** Section 104, chapter 801, Oregon Laws 1997, provides:

**Sec. 104.** (1) ORS 18.360, as amended by section 103 of this Act, applies to:

(a) All judgments in criminal actions, as defined in ORS 131.005, entered on or after January 15, 1998, and all judgment liens on real property created by those judgments; and

(b) All judgments in criminal actions, as defined in ORS 131.005, entered before January 15, 1998, and all judgment liens on real property created by those judgments, that have not expired under the provisions of ORS 18.360 (1995 Edition) before January 15, 1998.

(2) If a judgment in a criminal action, as defined in ORS 131.005, is renewed pursuant to the provisions of ORS 18.360 (1995 Edition) before January 15, 1998, and the renewed judgment is unexpired on January 15, 1998, the judgment and any lien created by the judgment expire on the date specified by ORS 18.360, as amended by section 103 of this Act, and do not expire on the date specified by ORS 18.360 (1995 Edition).

(3) The amendments to ORS 18.360 by section 103 of this Act do not revive any judgment or lien that expires under the operation of ORS 18.360 (1995 Edition) before January 15, 1998. [1997 c.801 s.104]

**Note:** Sections 11 and 12, chapter 343, Oregon Laws 1985, provide:

**Sec. 11.** (1) Notwithstanding the changes made to ORS 18.320 and 18.360 by sections 1 and 3 of this Act, when a certified transcript of the original docket entry of a judgment or the new record entry of a judgment renewed under ORS 18.360 was recorded in a County Clerk Lien Record between October 1, 1983, and October 1, 1985, under chapter 696, Oregon Laws 1983, the judgment is a lien upon all the real property of the judgment debtor within the county for which the County Clerk Lien Record is maintained, or which the judgment debtor may afterwards acquire in that county, during the time prescribed in ORS 18.360. If a court of competent jurisdiction rules that a judgment so recorded is not a lien as of the time it was recorded, the judgment shall be a lien as described in this subsection from the effective date of this Act [July 3, 1985].

(2) Notwithstanding chapter 696, Oregon Laws 1983, when a certified transcript of the original docket entry of a judgment or the new record entry of a judgment renewed under ORS 18.360 was docketed in a judgment docket between October 1, 1983, and October 1, 1985, the judgment is a lien upon all the real property of the judgment debtor within the county, or which the judgment debtor may afterwards acquire in that county, during the time prescribed in ORS 18.360. If a court of competent jurisdiction rules that a judgment so docketed is not a lien as of the time it was docketed, the judgment shall be a lien as described in this subsection from the effective date of this Act. [1985 c.343 s.11]

**Sec. 12.** (1) When a certified transcript of the original docket entry of a judgment was recorded in a County Clerk Lien Record between October 1, 1983, and October 1, 1985, if the judgment creditor renews the judgment under ORS 18.360, the certified transcript of the new docket entry of the renewed judgment shall be filed and docketed in the judgment docket of the county.

(2) When a certified transcript of the original docket entry of a judgment was recorded in a County Clerk Lien Record between October 1, 1983, and October 1, 1985, a certificate obtained under ORS 18.400 showing the fact of satisfaction of the judgment shall be entered upon the same County Clerk Lien Record. [1985 c.343 s.12]

**Note:** Section 6, chapter 716, Oregon Laws 1993, provides:

**Sec. 6.** The amendments to ORS 18.360 by section 1, chapter 716, Oregon Laws 1993, apply to all judgments entered on or after November 4, 1983, that provide for the future payment of money in gross or in installments. [1993 c.716 s.6; 1995 c.236 s.1]

**18.365 Expiration of justice and municipal court judgments and liens.** (1) Except as provided in this section, whenever a period of 10 years elapses after the entry of a judgment by a justice or municipal court, the judgment and any lien arising out of recording the judgment expires.

(2) Upon motion of the judgment creditor, the justice or municipal court that rendered the judgment may renew the

judgment. The motion must be made before the expiration of the judgment under subsection (1) of this section. The clerk of the court that rendered the judgment must note in the judgment docket for the court that the judgment has been renewed. The renewed judgment and any lien created by the judgment expire 10 years after the docketing of the renewed judgment. If the judgment is renewed, the judgment creditor or the agent of the judgment creditor may cause to be recorded in the County Clerk Lien Record a certified copy of the renewed judgment, or a lien record abstract in the form provided by ORS 18.325, in the same manner as provided in ORS 52.635 and 221.351 for original judgments. If the judgment is a civil judgment entered by a justice court, the renewed judgment may be transcribed to the circuit court for the county in which the justice court is located in the same manner as provided in ORS 52.635 for original judgments. Execution may issue upon the renewed judgment until the judgment expires or is fully satisfied.

(3) Notwithstanding subsection (1) of this section, a judgment in a criminal action, as defined in ORS 131.005, and any lien created by the recording of the judgment expire 20 years after entry of the judgment and may not be renewed. [1999 c.788 s.17]

**Note:** See note under 18.315.

**18.370 Priority of lien over unrecorded conveyance.** A conveyance of real property, or any portion thereof, or interest therein, shall be void as against the lien of a judgment, unless such conveyance be recorded at the time of docketing such judgment or the recording of a certified copy of the judgment or a lien record abstract as the case may be. [Amended by 1987 c.586 s.6]

**18.380** [Repealed by 1985 c.343 s.14]

**18.390** [Amended by 1961 c.151 s.3; 1983 c.696 s.4; repealed by 1985 c.343 s.14]

**18.400 Record of satisfaction or assignment of judgment; support orders.** (1) Subject to subsection (5) of this section, when any judgment is paid or satisfied, that fact may be noted upon the judgment docket of original entry over the signature of the officer having the official custody of such docket, or of the party entitled to receive and receiving payment or satisfaction, or of the attorney or attorneys representing the judgment creditor in the suit, action or proceeding in which the judgment was rendered; provided, such satisfaction shall not be made by an attorney whose authority over the judgment has expired. Upon annulment or payment or satisfaction and entry thereof being so made, the officer having the official custody of the judgment docket of original entry shall, upon request of any person and payment of the applicable fee, issue a certificate showing the fact of satisfaction of such judgment, or annulment of the lien thereof, describing the same sufficiently for identification; and such certificate shall, upon presentation to the officer having official custody of the judgment docket or the clerk in any county in which a certified copy of the judgment or lien record abstract may have been docketed or recorded, be entered upon such docket or recorded in the County Clerk Lien Record where a certified copy of the judgment or a lien record abstract has been recorded for the purpose of making the satisfaction of judgment a matter of record in such county.

(2) Evidence of the satisfaction of any judgment may also be perpetuated by the execution and acknowledgment by the judgment creditor, or the assignee or personal representative of the judgment creditor, of a certificate describing the judgment with convenient certainty, and specifying that the judgment has been paid or otherwise satisfied or discharged. Such certificate shall be acknowledged or proved and certified in the manner provided by law for conveyances of real property, and may be recorded in the County Clerk Lien Record of any county or counties. In case such judgment has been docketed in the judgment docket of a court of any such county, the official custodian of such docket shall, upon filing of such certificate of annulment or satisfaction, make notation thereof in the judgment docket. The procedures authorized by this subsection may be used only when the judgment does not arise pursuant to a support order entered under ORS 108.010 to 108.550, 110.303 to 110.452, 416.010 to 416.270, 416.310 to 416.340 and 416.510 to 416.990 or 419B.400 or 419C.590 or ORS chapter 25, 107 or 109 which directs that payments are to be made to the Department of Justice.

(3) An assignment of any judgment, executed in like manner, may be:

(a) Filed with the official custodian of the judgment docket of any county in which the judgment has been docketed, and upon such filing shall be docketed therein; or

(b) Recorded in the office of the county clerk of any county in which the judgment was recorded in the County Clerk Lien Record.

(4) In any case in which a state agency is assigned or subrogated to the support rights of a person under ORS

418.032, 418.042, 419B.406 or 419C.597 or similar statutes of another state, a notice of assignment of judgment bearing the signature of the Administrator of the Division of Child Support or the authorized representative of the administrator shall be entitled to record, and with like effect, as an assignment of judgment under subsection (3) of this section.

(5)(a) In cases where support payments ordered under ORS 110.303 to 110.452, 416.010 to 416.270, 416.310 to 416.340 and 416.510 to 416.990 or 419B.400 or 419C.590 or ORS chapter 25, 107, 108 or 109 are to be paid to the Department of Justice, any full or partial satisfaction of a support payment judgment signed by an obligee or an attorney representing the obligee must be mailed to or delivered to the Department of Justice, and not to the clerk of the court. The Department of Justice may provide support satisfaction forms, along with specific instructions. No credit shall be given for such support satisfaction except as provided by this subsection. The department shall credit such support satisfaction to the support judgment pay records maintained by the department, except to the extent that the judgment is assigned to the Department of Human Services or its divisions or subrogated to a state agency under ORS 418.032, 418.042, 419B.406 or 419C.597. The department shall then promptly forward the satisfaction instrument to the appropriate clerk of the court together with a Department of Justice certificate stating the amount of support satisfaction entered on the pay records of the department. The clerk of the court shall enter on the judgment docket only the amount of the support satisfaction shown on the Department of Justice certificate, and not the amount shown on the satisfaction instrument.

(b) In addition to or in lieu of a certificate and satisfaction instrument provided for in paragraph (a) of this subsection, the Department of Justice may execute and file satisfactions for judgments based on support orders subject to paragraph (a) of this subsection if the obligor provides a sworn affidavit that indicates that the judgment has been paid in full and the department certifies that the department has a complete pay record for the support payment judgment and further certifies that there are no arrearages. The department shall be considered to have a complete pay record if the department has kept the pay record for the support payment judgment from the date of the first support payment required under the judgment, or if the obligee or an entity providing enforcement services under ORS 25.080 establishes arrearages for the time period the pay record was not kept by the department. A satisfaction of judgment under this paragraph need not be notarized. If the satisfaction of judgment is for any payment made to the Department of Justice for amounts that have not been assigned by the obligee to the state, the department shall give notice to the obligee in the manner provided by ORS 25.085. The notice must inform the obligee that the Department of Justice will execute and file the satisfaction of judgment unless the department receives a request for a hearing within 30 days after the date of the mailing of the notice. If an obligee requests a hearing, the Department of Justice shall conduct the hearing as a contested case under ORS 183.310 to 183.550 before a hearings officer appointed by the Department of Justice.

(c) Satisfactions of support payment judgments in cases where support payments are not ordered to be paid to the Department of Justice or where enforcement services are not provided pursuant to ORS 25.080 must be filed with the clerk of the court.

(6) The Department of Human Services, the Oregon Youth Authority, assistant attorneys general representing these agencies, the administrator of the Division of Child Support and the administrator's designees may, in their discretion, sign and mail or deliver to the Department of Justice a full or partial satisfaction of a support payment judgment to the extent that such judgment is assigned to the Department of Human Services or Oregon Youth Authority. Notwithstanding subsection (5) of this section, the Department of Justice may give credit for such satisfaction and shall forward to the clerk of the court the satisfaction instrument together with a Department of Justice certificate stating the amount of support satisfaction entered on the pay records of the department for entry on the judgment docket of the amount of satisfaction shown on the certificate and not the amount shown on the satisfaction instrument. [Amended by 1965 c.619 s.7; 1979 c.694 s.1; 1983 c.696 s.5; 1985 c.343 s.4; 1985 c.496 s.18; 1985 c.610 s.2; 1987 c.586 s.7; 1993 c.33 s.275; 1995 c.608 s.20; 1997 c.123 s.1; 1997 c.704 s.12; 1999 c.788 s.23]

**18.405 Notice of satisfaction of support judgment.** At least five days prior to any application to the circuit court for an order fully or partially satisfying a support judgment, if aid, as defined in ORS 418.035 (2), is or has been granted to or on behalf of any person who is entitled to support pursuant to the support order, then a true copy of all papers to be submitted as part of such application shall be served by personal delivery or first-class mail on the Administrator of the Division of Child Support or on the branch office of the division which provides service to the county in which the application will be made. [1979 c.694 s.3]

**18.410 Procedure to satisfy judgment; hearing; judgments docketed in another county; disposition of money.**

(1) This section establishes a procedure to obtain a satisfaction for a judgment for the payment of money when any person, against whom exists a judgment for the payment of money or who is interested in any property upon which any such judgment is a lien, is unable to obtain a satisfaction from a judgment creditor for any reason. The following apply to a procedure under this section:

(a) The procedure and all filings, entries and other actions relating to the procedure are to be considered as a continuation of the original action in which the judgment was entered.

(b) No appearance fee shall be charged for proceeding under this section.

(2) A person described in subsection (1) of this section may request the court which gave the judgment to determine whether the judgment has been paid in full or to determine the amount necessary to satisfy the judgment at a specific time in the future. To make such request, the person must do all of the following:

(a) File a motion with the court accompanied by an affidavit setting forth all the following, to the extent known to the person:

(A) The date of entry and principal amount of the judgment.

(B) The rate of interest and the date the rate of interest began.

(C) The date or dates and amounts of any payments on the judgment.

(D) Any amount the person believes is remaining to be paid on the judgment.

(E) Supporting mathematical calculations.

(F) Any other information necessary or helpful to the court in making its determination.

(b) Serve the motion and supporting affidavit on the judgment creditor and, if the person making the request is not the judgment debtor, on the judgment debtor. If the motion is filed within one year of the date of entry of the judgment to which the motion for satisfaction relates, service shall be made as provided in ORCP 9. If the motion is filed more than one year after the date of entry of the judgment to which the motion for satisfaction relates, service shall be made as provided in ORCP 7.

(c) File proof of service with the court.

(3) Any party served under subsection (2)(b) of this section shall have 21 days or such additional time as may be allowed by the court within which to serve and file a responding affidavit with the court setting forth those parts of the original affidavit with which the person disagrees and any supporting information or mathematical calculations necessary to support the contentions of the objecting party.

(4) Not less than seven days after notice of hearing given to the person filing the motion and to the parties served with the motion, the court shall hear and determine the issues between the parties in a summary fashion without a jury. All the following apply to the court proceeding:

(a) The court shall give the parties a reasonable opportunity to present evidence relevant to any factual issues in dispute as shown by the affidavits.

(b) If the court, based on the record and sufficient evidence, is satisfied that the person making the request is entitled to relief, the court shall issue an order stating all the following:

(A) That the judgment has been satisfied in full or, if the judgment has not been satisfied in full, the specific amount that will satisfy the judgment on a date or within a period of time specified in the order.

(B) The party or parties to whom the money is owed.

(c) If the court finds that the judgment creditor's failure to file a satisfaction of judgment pursuant to ORS 18.350 or 18.355 was willful, the court, on motion, may do either or both of the following:

(A) The court may require the judgment creditor to pay to the demanding party a sum of money determined to be reasonable as attorney fees, costs and disbursements by awarding the demanding party a separate judgment for such costs.

(B) The court's order may specify that the demanding party may satisfy the judgment by paying such amounts determined by the court to be necessary to satisfy the judgment less that sum of money the court determines to be reasonable as attorney fees, costs and disbursements.

(5) If the order provides that the judgment has been satisfied or if money is paid to the clerk in the amount and within the time specified in the order, the clerk shall thereupon satisfy the judgment upon the records of the court.

(6) If such judgment has been entered in the records or docketed in the judgment docket in any other county than the county in which it was rendered, then a certified copy of the satisfaction may be used for any of the following purposes:

(a) Entry in the register of the circuit court for such other county and the clerk of that court shall thereupon satisfy the judgment upon the records of that court.

(b) Recording in the County Clerk Lien Record in any county in which a certified copy of the judgment or lien

record abstract was recorded.

(7) The clerk shall, at any time, pay the money over to the person who shall be determined to be entitled thereto by the order of the court in which the judgment was given. [Amended by 1985 c.540 s.26; 1987 c.586 s.8; 1989 c.768 s.6; 1999 c.788 s.24]

**18.420 Proceedings after discharge in bankruptcy.** (1) Any person discharged from debts pursuant to the federal bankruptcy laws may file in any court or tribunal in which a judgment has at any time been rendered against the person, either before or after such discharge, a motion in the suit, action or proceeding for the discharge of the judgment from the record. After notice to the judgment creditor, or to any assignee of the judgment creditor whose assignment has been filed or recorded pursuant to ORS 18.400, the court shall enter a final order that the judgment be discharged and satisfied of record if the debtor establishes that:

(a) The debtor has been discharged from the payment of the judgment or the claim upon which the judgment was based; and

(b) Either there was no property upon which the judgment became a lien under ORS 18.350, 52.635 or 221.351, as of the date the petition for relief is filed under the federal bankruptcy laws, or if there was such property, the value of the property on the date of the filing of the petition was not more than the outstanding balance of any prior lien or liens upon the property.

(2) If the debtor fails to meet the burden of proof established by subsection (1) of this section, the court shall enter a final order denying the debtor's motion.

(3) For the purposes of this section, where notice was given in connection with bankruptcy proceedings to a creditor retaining a beneficial interest in an assigned judgment or claim, such notice shall provide the basis for the satisfaction of that portion of said judgment in which the creditor retains a beneficial interest. Where the bankrupt received notice prior to the adjudication of bankruptcy of the assignment of a judgment or claim, notice to the assignor retaining a beneficial interest shall not provide the basis for satisfaction for that portion of the judgment which represents the amount actually paid by the assignee of said judgment for said claim and actual court costs incurred by said assignee in prosecuting said claim. [Amended by 1961 c.538 s.1; 1987 c.586 s.9; 1991 c.696 s.1; 1999 c.788 s.25]

**18.425 Judgments of dismissal or after verdict; statement by attorney; content; record of statements.** The following requirements apply to every civil action which is brought in circuit court for damages resulting from personal injury or wrongful death, whether it results in a judgment of dismissal, with or without a settlement, or a judgment after verdict:

(1) The attorneys for each party to an action shall file the statement required under subsection (2) of this section within 45 days after final judgment is entered.

(2) The attorney shall file with the court a certified statement in the form and manner required by the Chief Justice. The statement shall contain the following information regarding the settlement or judgment:

(a) The date and terms.

(b) Any damages awarded or agreed to. For purposes of this paragraph, the information shall distinguish damages based on whether they are economic or noneconomic, as defined in ORS 18.560, or punitive.

(c) Any costs awarded or agreed to be paid by or to any party.

(d) Any disbursements awarded or agreed to be paid by or to any party.

(e) Any attorney fees awarded or agreed to be paid by or to any party.

(f) Any net amount realized by any party after payment of any costs, disbursements, attorney fees or any other charges or costs related to the case.

(3) If the attorney fails to file the statement by the due date or the statement is incomplete, the court shall order it filed within 20 days after the due date.

(4) The court shall maintain a record of the statements in a manner determined by the State Court Administrator. The statements shall be separately maintained from other records kept by the court. Each court shall transmit the information from the statements as determined by the State Court Administrator.

(5)(a) The State Court Administrator shall use the information in the statements to compile statistical summaries. The summaries shall be public records. A summary shall not contain information that identifies a specific case or a party to the case.

(b) Except as provided in paragraph (a) of this subsection, the statements are confidential and shall not be released by the State Court Administrator or trial court administrator to any person, including but not limited to other parties to the action.

(6) The Chief Justice shall adopt rules concerning the form and manner for filing of the statements. The rules shall be made available to the public in a manner which the Chief Justice determines will be most likely to apprise attorneys of their content.

(7) The State Court Administrator may adopt any procedures necessary or convenient for purposes of this section, except where rules are required to be adopted by the Chief Justice under subsection (6) of this section. [1987 c.774 s.29; 1997 c.801 s.123; 1999 c.788 s.26]

## CONTRIBUTION

**18.430 Contribution among judgment debtors; subrogation of surety.** When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is levied upon the property of one of them, or one of them pays, without a sale, more than that person's proportion, that person may compel contribution from the others; and when a judgment is against several, and is upon an obligation or contract of one of them as security for another, and the surety pays the amount, or any part thereof, either by sale of property or before sale, the surety may compel repayment from the principal. In such cases, the person so paying or contributing shall be entitled to the benefit of the judgment to enforce contribution or repayment, if within 30 days after payment the person files with the clerk of the court where the judgment was rendered, notice of payment and claim to contribution or repayment; upon filing such notice, the clerk shall make an entry thereof in the margin of the docket where the judgment is entered. In any county where the judgment was recorded the person may have the notice of payment and claim to contribution or repayment recorded in the County Clerk Lien Record. [Amended by 1987 c.586 s.10]

**18.440 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. [1971 c.665 s.1; 1975 c.269 s.1]

**18.445 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 18.470, 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. [1975 c.269 s.2]

**18.450 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 18.470 (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. [1975 c.269 s.3; 1995 c.696 s.1]

**Note:** Section 7, chapter 696, Oregon Laws 1995, provides:

**Sec. 7.** The amendments to ORS 18.450, 18.455, 18.470, 18.480, 18.485 and 18.570 by sections 1 to 6 of this Act apply only to causes of action arising on or after the effective date of this Act [September 9, 1995]. [1995 c.696 s.7]

**18.455 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 18.470 (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 18.480 and 18.485; 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. [1975 c.269 s.4; 1995 c.696 s.2]

**Note:** See note under 18.450.

**18.460 Severability.** If any provision of ORS 18.440 to 18.460 or the application thereof to any person is held invalid, the invalidity shall not affect other provisions or applications of ORS 18.440 to 18.460 which can be given effect without the invalid provision or application and to this end the provisions of ORS 18.440 to 18.460 are severable. [1975 c.269 s.5]

## COMPARATIVE NEGLIGENCE

**18.470 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. [1971 c.668 s.1; 1975 c.599 s.1; 1995 c.696 s.3]

**Note:** See note under 18.450.

**18.475 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. [1975 c.599 s.4]

**18.480 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 18.470 (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 18.470.

(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 18.470 (2). [1975 c.599 s.2; 1995 c.79 s.6; 1995 c.696 s.4]

**Note:** See note under 18.450.

**18.485 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 18.480 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 18.480. The court shall calculate and state in the judgment a monetary amount reflecting the share of the obligation of each person specified in ORS 18.470 (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 18.480.

(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 18.480. 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 18.480, 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 18.480; or

(b) The percentage of fault of the party is 25 percent or less as determined by the trier of fact under ORS 18.480.

(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. [1975 c.599 s.3; 1987 c.774 s.7; 1995 c.696 s.5]

**Note:** See note under 18.450.

**18.490 Setoff of damages not allowed.** Setoff of damages shall not be granted in actions subject to ORS 18.470 to 18.490. [1975 c.599 s.5]

## ADVANCE PAYMENTS

**18.500 "Advance payment" defined.** As used in ORS 12.155 and 18.500 to 18.530, "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 41.950]

**18.510 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 18.520 or 18.530 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, 18.520, 18.530 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. [1971 c.331 s.6; 1975 c.784 s.14; 1981 c.892 s.85c; 1981 c.898 s.17]

**18.520 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 41.960]

**18.530 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 41.970]

## DAMAGES

**18.535 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 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.

(4) 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.

(5) 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. [1995 c.688 s.3]

**18.537 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. [1995 c.688 s.2]

**18.540 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 shall become a judgment creditor as to the punitive damages portion of the award to which the Criminal Injuries Compensation Account is entitled pursuant to paragraph (b) of this subsection, and the punitive damage portion of an award shall be allocated as follows:

(a) Forty percent shall be paid 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 shall be paid to the Criminal Injuries Compensation Account of the Department of Justice Crime Victims' Assistance Section to be used 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.

(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. [1987 c.774 s.3; 1991 c.862 s.1; 1995 c.688 s.1; 1997 c.73 s.1]

**18.550 Award of punitive damages against health practitioner prohibited; conditions.** Punitive damages shall 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 licensed clinical social worker under ORS 675.530, 675.540 to 675.560, 675.580 and 675.585;

(d) A physician under ORS 677.100 to 677.228;

(e) An emergency medical technician under ORS chapter 682;

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

(g) A nurse under ORS 678.040 to 678.101;

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

(i) A dentist under ORS 679.060 to 679.180;

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

(k) A denturist under ORS 680.515 to 680.535;

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

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

- (n) A chiropractor under ORS 684.040 to 684.105;
- (o) A naturopath under ORS 685.060 to 685.110, 685.125 and 685.135;
- (p) A massage therapist under ORS 687.021 to 687.086;
- (q) A physical therapist under ORS 688.040 to 688.145;
- (r) A radiologic technician under ORS 688.445 to 688.525; or
- (s) A pharmacist under ORS 689.151 and 689.225 to 689.285; 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. [1987 c.774 s.4; 1989 c.721 s.45; 1989 c.782 s.34; 1995 c.280 s.28; 1999 c.537 s.1]

**18.560 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. [1987 c.774 s.6]

**18.570 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 18.560. [1987 c.774 s.7a; 1995 c.696 s.6]

**Note:** See note under 18.450.

**18.580 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 final 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. [1987 c.774 s.9]

**18.590 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. [1989 c.1074 s.1]

**18.592 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 18.560, 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. [1999 c.1065 s.1]

**Note:** Section 2, chapter 1065, Oregon Laws 1999, provides:

**Sec. 2.** Section 1 of this 1999 Act [18.592] applies only to acts or omissions occurring on or after the effective date of this 1999 Act [October 23, 1999]. [1999 c.1065 s.2]

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