Chapter 30

2011 EDITION

Actions and Suits in Particular Cases

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ACTIONS FOR INJURY OR DEATH

30.010 Who may maintain action for injury or death of child. (1) A parent having custody of a child of the parent may maintain an action for the injury of the child.

(2) A parent may recover damages for the death of a child of the parent only under ORS 30.020. [Amended by 1961 c.344 §102; 1973 c.718 §1; 2003 c.14 §16]

30.020 Action for wrongful death; when commenced; damages. (1) When the death of a person is caused by the wrongful act or omission of another, the personal representative of the decedent, for the benefit of the decedent's surviving spouse, surviving children, surviving parents and other individuals, if any, who under the law of intestate succession of the state of the decedent's domicile would be entitled to inherit the personal property of the decedent, and for the benefit of any stepchild or stepparent whether that stepchild or stepparent would be entitled to inherit the personal property of the decedent or not, may maintain an action against the wrongdoer, if the decedent might have maintained an action, had the decedent lived, against the wrongdoer for an injury done by the same act or omission. The action shall be commenced within three years after the injury causing the death of the decedent is discovered or reasonably should have been discovered by the decedent, by the personal representative or by a person for whose benefit the action may be brought under this section if that person is not the wrongdoer. In no case may an action be commenced later than the earliest of:

(a) Three years after the death of the decedent; or

(b) The longest of any other period for commencing an action under a statute of ultimate repose that applies to the act or omission causing the injury, including but not limited to the statutes of ultimate repose provided for in ORS 12.110 (4), 12.115, 12.135, 12.137 and 30.905.

(2) In an action under this section damages may be awarded in an amount which:

(a) Includes reasonable charges necessarily incurred for doctors' services, hospital services, nursing services, other medical services, burial services and memorial services rendered for the decedent;

(b) Would justly, fairly and reasonably have compensated the decedent for disability, pain, suffering and loss of income during the period between injury to the decedent and the decedent's death;

(c) Justly, fairly and reasonably compensates for pecuniary loss to the decedent's estate;

(d) Justly, fairly and reasonably compensates the decedent's spouse, children, stepchildren, stepparents and parents for pecuniary loss and for loss of the society, companionship and services of the decedent; and

(e) Separately stated in finding or verdict, the punitive damages, if any, which the decedent would have been entitled to recover from the wrongdoer if the decedent had lived.

(3) For the purposes of this section:

(a) Two persons shall be considered to have a stepchild-stepparent relationship if one of the biological parents of the stepchild, while the stepchild is a minor and in the custody of this first biological parent, marries the stepparent who is not the second biological parent or the adoptive parent of the stepchild;

(b) The stepchild-stepparent relationship shall remain in effect even though the stepchild is older than the age of majority or has been emancipated;

(c) The stepchild-stepparent relationship shall remain in effect even though one or both of the biological parents of the stepchild die; and

(d) The stepchild-stepparent relationship shall end upon the divorce of the biological parent and the stepparent. [Amended by 1953 c.600 §3; 1961 c.437 §1; 1967 c.544 §1; 1973 c.718 §2; 1991 c.471 §1; 1991 c.608 §1; 1995 c.618 §19]

30.030 Distribution of damages. (1) Upon settlement of a claim, or recovery of judgment in an action, for damages for wrongful death, by the personal representative of a decedent under ORS 30.020, the amount of damages so accepted or recovered shall be distributed in the manner prescribed in this section.

(2) The personal representative shall make payment or reimbursement for costs, expenses and fees incurred in prosecution or enforcement of the claim, action or judgment.

(3) The personal representative shall make payment or reimbursement for reasonable charges necessarily incurred for doctors' services, hospital services, nursing services or other medical services, burial services and memorial services rendered for the decedent.

(4) If under ORS 30.040 or 30.050 or by agreement of the beneficiaries a portion of the damages so accepted or recovered is apportioned to a beneficiary as recovery for loss described in ORS 30.020 (2)(d), the personal representative shall distribute that portion to the beneficiary.

(5) The remainder of damages accepted or recovered shall be distributed to the beneficiaries in the proportions prescribed under the laws of intestate succession of the state of decedent's domicile, or as agreed by the beneficiaries, but no such damages shall be subject to payment of taxes or claims against the decedent's estate. [Amended by 1973 c.718 §3; 2009 c.51 §1]

30.040 Apportionment among dependents upon settlement. Except when all beneficiaries otherwise agree, if settlement, with or without action, is effected and there is more than one beneficiary, the amount to be distributed to each beneficiary as recovery for loss described in ORS 30.020 (2)(d) shall be apportioned by the probate court to each beneficiary in accordance with the beneficiary's loss. [Amended by 1973 c.718 §4]

30.050 Apportionment among dependents after judgment. Except when all beneficiaries otherwise agree, if the action described in ORS 30.020 is brought, and a judgment for the plaintiff is given, and there is more than one beneficiary, the amount to be distributed to each beneficiary as recovery for loss described in ORS 30.020 (2)(d) shall be apportioned by the trial court to each beneficiary in accordance with the beneficiary's loss. [Amended by 1973 c.718 §5]

30.060 Appeal from order of distribution or apportionment. In the case of an order of distribution under ORS 30.030 (5) or an order of apportionment made under either ORS 30.040 or 30.050, any individual who in the probate court or trial court claims to be a beneficiary may appeal therefrom, or from any part thereof, to the Court of Appeals, within the time, in the manner and with like effect as though such order was a judgment of the circuit court. [Amended by 1973 c.718 §6]

30.070 Settlement; discharge of claim. The personal representative of the decedent, with the approval of the court of appointment, shall have full power to compromise and settle any claim of the class described in ORS 30.030, whether the claim is reduced to judgment or not, and to execute such releases and other instruments as may be necessary to satisfy and discharge the claim. The party paying any such claim or judgment, whether in full or in part, or in an amount agreed upon in compromise, shall not be required to see that the amount paid is applied or apportioned as provided in ORS 30.030 to 30.060, but shall be fully discharged from all liability on payment to the personal representative.

30.075 Procedure upon death of injured person. (1) Causes of action arising out of injuries to a person, caused by the wrongful act or omission of another, shall not abate upon the death of the injured person, and the personal representatives of the decedent may maintain an action against the wrongdoer, if the decedent might have maintained an action, had the decedent lived, against the wrongdoer for an injury done by the same act or omission. The action shall be commenced within the limitations established in ORS 12.110 by the injured person and continued by the personal representatives under this section, or within three years by the personal representatives if not commenced prior to death.

(2) In any such action the court may award to the prevailing party, at trial and on appeal, a reasonable amount to be fixed by the court as attorney fees.

(3) Subsection (2) of this section does not apply to an action for damages arising out of injuries that result in death. If an action for wrongful death under ORS 30.020 is brought, recovery of damages for disability, pain, suffering and loss of income during the period between injury to the decedent and the resulting death of the decedent may only be recovered in the wrongful death action, and the provisions of subsection (2) of this section are not applicable to the recovery. [1965 c.620 §4; 1971 c.473 §2; 1981 c.810 §1; 1981 c.897 §6; 1995 c.618 §21]

30.080 Effect of death of wrongdoer. Claims for relief arising out of injury to or death of a person, caused by the wrongful act or negligence of another, shall not abate upon the death of the wrongdoer, and the injured person or the personal representatives of the one meeting death, as above stated, shall have a claim for relief against the personal representatives of the wrongdoer as if the wrongdoer had survived, except for those damages provided for in ORS 30.020 (2)(e). [Amended by 1953 c.600 §3; 1961 c.437 §2; 1967 c.544 §2; 1973 c.742 §1; 1983 c.662 §1]

30.085 [1987 c.774 §10; 1997 c.734 §1; renumbered 30.698 in 1997]

30.090 Appointment of administrator of estate of wrongdoer. If no probate of the estate of the wrongdoer has been instituted within 60 days from the death of the wrongdoer, the court, upon motion of the injured person, or of the personal representatives of one meeting death, as stated in ORS 30.080, shall appoint an administrator of the estate of the wrongdoer.

30.100 Substitution of personal representative as party defendant. In the event of the death of a wrongdoer, as designated in ORS 30.080, while an action is pending, the court, upon motion of the plaintiff, shall cause to be substituted as defendant the personal representative of the wrongdoer, and the action shall continue against such personal representative.

ACTIONS BY GUEST PASSENGERS

30.110 [Repealed by 1961 c.578 §1 (30.115 enacted in lieu of 30.110 and 30.120)]

30.115 Aircraft and watercraft guest passengers; definitions. No person transported by the owner or operator of an aircraft or a watercraft as a guest without payment for such transportation, shall have a cause of action for damages against the owner or operator for injury, death or loss, in case of accident, unless the accident was intentional on the part of the owner or operator or caused by the gross negligence or intoxication of the owner or operator. As used in this section:

(1) "Payment" means a substantial benefit in a material or business sense conferred upon the owner or operator of the conveyance and which is a substantial motivating factor for the transportation, and it does not include a mere gratuity or social amenity.

(2) "Gross negligence" refers to negligence which is materially greater than the mere absence of reasonable care under the circumstances, and which is characterized by conscious indifference to or reckless disregard of the rights of others. [1961 c.578 §2 (30.115 enacted in lieu of 30.110 and 30.120); 1979 c.866 §7]

30.120 [Repealed by 1961 c.578 §1 (30.115 enacted in lieu of 30.110 and 30.120)]

30.130 Public carriers by aircraft and prospective aircraft purchasers. ORS 30.115 shall not relieve a public carrier by aircraft, or any owner or operator of aircraft while the same is being demonstrated to a prospective purchaser, of responsibility for any injuries sustained by a passenger.

LIABILITY OF CERTAIN PERSONS PROVIDING MOTOR VEHICLES

30.135 Liability of certain persons that lend, rent, donate use of, make available for test drive or otherwise provide motor vehicle. (1) Subject to the provisions of this section, a person that lends, rents, donates use of, makes available for test drive or otherwise provides a motor vehicle, as defined in ORS 801.360, to another person is not liable for any injury, death or damage that arises out of the use of that motor vehicle by the other person, unless the person providing the motor vehicle is negligent in maintaining the motor vehicle or in providing the motor vehicle and the injury, death or damage results from that negligence.

(2) The limitation on liability provided by this section applies only if the person providing the motor vehicle is engaged in the business of selling, renting, leasing or repairing motor vehicles and the motor vehicle is provided to another person in the course of that business.

(3) The limitation on liability provided by this section applies only if there is a written agreement between the person providing the motor vehicle and the person receiving the motor vehicle, and the agreement specifically indicates that the person receiving the motor vehicle is liable for any injury, death or damage arising out of the use of the motor vehicle. The limitation on liability provided by this section applies to injury, death or damage suffered during the period specified in the written agreement, or until the return of the motor vehicle, whichever is later.

(4) The limitation on liability provided by this section applies without regard to whether the motor vehicle is provided for consideration or is provided without charge.

(5) Nothing in this section affects the liability of a manufacturer, distributor, seller or lessor of a product under the provisions of ORS 30.900 to 30.920.

(6) Nothing in this section increases, reduces or relates to those obligations that a self-insurer may choose to undertake pursuant to ORS 806.130. Nothing in ORS 806.130 increases, reduces or relates to the limitations of this section. [1999 c.438 §1; 2001 c.291 §1; 2003 c.331 §1; 2007 c.287 §4]

ENFORCEMENT OF RIGHTS UNDER SERVICEMEMBERS CIVIL RELIEF ACT

30.136 Action to enforce right or remedy under Servicemembers Civil Relief Act. (1) As used in this section and ORS 30.138, "servicemember" has the meaning given that term in 50 U.S.C. App. 511 as in effect on May 8, 2009.

(2) An action brought by a servicemember to enforce a right or remedy under 50 U.S.C. App. 501 et seq. is not subject to court-ordered arbitration under ORS 36.400 to 36.425 unless the parties to the action stipulate in writing to arbitration after the action is commenced.

(3) In addition to the counties specified in ORS 14.080, an action brought by a servicemember to enforce a right or remedy under 50 U.S.C. App. 501 et seq. may be brought in the Oregon county where the servicemember resides or where the servicemember was a resident at the time of bringing the action.

(4) Any contract term or provision providing for a choice of forum other than Oregon in an agreement entered into by a servicemember who resides in Oregon or is a resident of Oregon is voidable at the election of the servicemember. [2009 c.83 §1]

Note: Section 4, chapter 83, Oregon Laws 2009, provides:

Sec. 4. Sections 1 and 2 of this 2009 Act [30.136 and 30.138] apply only to conduct that violates 50 U.S.C. App. 501 et seq. that occurs on or after the effective date of this 2009 Act [May 8, 2009]. [2009 c.83 §4]

30.138 Remedies for violation of Servicemembers Civil Relief Act. (1) In addition to any other remedy payable to a servicemember for the enforcement of a right under 50 U.S.C. App. 501 et seq., a court shall award a servicemember reasonable attorney fees and the amounts specified in subsection (2) of this section if the court finds that written demand as described in subsection (3) of this section was mailed to the opposing party demanding relief under 50 U.S.C. App. 501 et seq., and the opposing party failed to remedy the violation of 50 U.S.C. App. 501 et seq. within 30 days after the mailing of the demand.

(2) If a court finds that notice was mailed as required by this section, and the opposing party failed to remedy the violation of 50 U.S.C. App. 501 et seq. within the time allowed, the court shall award the servicemember:

(a) The greater of $1,000 or actual damages, including damages for emotional distress; or

(b) If the court finds that the opposing party's conduct was willful, as described in ORS 646.605, the court shall award the servicemember the greater of $5,000, or three times the amount of actual damages, including damages for emotional distress.

(3) A written demand under subsection (1) of this section must be sent by certified mail, return receipt requested. The demand must include the servicemember's name and address, the date on which the servicemember went on active duty and a description of the alleged violation of 50 U.S.C. App. 501 et seq. [2009 c.83 §2]

Note: See note under 30.136.

ACTIONS ON CERTAIN CONSTRUCTION AGREEMENTS

30.140 Certain indemnification provisions in construction agreement void. (1) Except to the extent provided under subsection (2) of this section, any provision in a construction agreement that requires a person or that person's surety or insurer to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by the negligence of the indemnitee is void.

(2) This section does not affect any provision in a construction agreement that requires a person or that person's surety or insurer to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of the indemnitor, or the fault of the indemnitor's agents, representatives or subcontractors.

(3) As used in this section, "construction agreement" means any written agreement for the planning, design, construction, alteration, repair, improvement or maintenance of any building, highway, road excavation or other structure, project, development or improvement attached to real estate including moving, demolition or tunneling in connection therewith.

(4) This section does not apply to:

(a) Any real property lease or rental agreement between a landlord and tenant whether or not any provision of the lease or rental agreement relates to or involves planning, design, construction, alteration, repair, improvement or maintenance as long as the predominant purpose of the lease or rental agreement is not planning, design, construction, alteration, repair, improvement or maintenance of real property; or

(b) Any personal property lease or rental agreement.

(5) No provision of this section shall be construed to apply to a "railroad" as defined in ORS 824.200. [1973 c.570 §§1,2; 1987 c.774 §25; 1995 c.704 §1; 1997 c.858 §1; 2007 c.413 §1]

30.142 [2001 c.616 §1; renumbered 31.150 in 2003]

30.144 [2001 c.616 §2; renumbered 31.152 in 2003]

30.145 Certain provisions relating to waivers in construction agreements void. (1) Except as provided in this section, a provision in a construction agreement is void to the extent that the provision requires a party or the party's surety or insurer to waive a right of subrogation, indemnity or contribution for amounts paid by reason of death or bodily injury, or damage to property, caused in whole or in part by the negligence of another person.

(2) This section does not apply to a provision for waiver of subrogation, indemnity or contribution in an insurance policy issued pursuant to ORS 737.602 or to a provision for waiver of subrogation, indemnity or contribution that applies to proceeds of a property insurance policy.

(3) This section does not apply to a provision for waiver of subrogation, indemnity or contribution in a real property lease or rental agreement between a landlord and tenant, whether or not any provision of the lease or rental agreement relates to or involves planning, designing, constructing, altering, repairing, improving or maintaining, as long as the predominant purpose of the

lease or rental agreement is not planning, designing, constructing, altering, repairing, improving or maintaining real property.

(4) This section does not apply to a provision for waiver of subrogation, indemnity or contribution in a personal property lease or rental agreement.

(5) This section does not apply to a provision for waiver of subrogation, indemnity or contribution in a construction agreement in which one of the parties is a railroad as defined in ORS 824.200.

(6) As used in this section, "construction agreement" has the meaning given that term in ORS 30.140. [2011 c.518 §1]

30.146 [2001 c.616 §3; renumbered 31.155 in 2003]

30.150 [Formerly 30.760; renumbered 31.200 in 2003]

30.155 [1955 c.365 §1; renumbered 31.205 in 2003]

30.160 [1955 c.365 §2; renumbered 31.210 in 2003]

30.165 [1955 c.365 §3; 1991 c.249 §4; renumbered 31.215 in 2003]

30.170 [1955 c.365 §4; renumbered 31.220 in 2003]

30.175 [1955 c.365 §5; renumbered 31.225 in 2003]

ACTIONS AGAINST FORMER EMPLOYER FOR DISCLOSURE OF INFORMATION

30.178 Liability of employer for disclosing information about employee to new employer; no action based on compelled self-publication. (1) An employer who discloses information about a former employee's job performance to a prospective employer of the former employee upon request of the prospective employer or of the former employee is presumed to be acting in good faith and, unless lack of good faith is shown by a preponderance of the evidence, is immune from civil liability for such disclosure or its consequences. For purposes of this section, the presumption of good faith is rebutted upon a showing that the information disclosed by the employer was knowingly false or deliberately misleading, was rendered with malicious purpose or violated any civil right of the former employee protected under ORS chapter 659 or 659A.

(2) A civil action for defamation may not be maintained against an employer by an employee who is terminated by the employer based on a claim that in seeking subsequent employment the former employee will be forced to reveal the reasons given by the employer for the termination. [1995 c.330 §1; 1997 c.754 §1; 2001 c.621 §68]

ACTIONS ARISING OUT OF PROVISION OF UTILITY SERVICES

30.180 Definitions for ORS 30.180 to 30.186. As used in ORS 30.180 to 30.186:

(1) "Customer" means the person in whose name a utility service is provided.

(2) "Divert" means to change the intended course or path of the utility service without the authorization or consent of the utility.

(3) "Person" means any individual, partnership, firm, association, corporation or government agency.

(4) "Reconnection" means the commencement of utility service to a customer or other person after service has been lawfully disconnected by the utility.

(5) "Tamper" means to rearrange, injure, alter, interfere with or otherwise prevent from performing the normal or customary function.

(6) "Utility" means a private corporation, a municipal corporation or an agency thereof, any other public corporation or any district that provides electricity, gas, water, telephone or cable television to customers on a retail or wholesale basis.

(7) "Utility service" means the provision of electricity, gas, water, telephone, cable television, electronic communications, steam or any other service or commodity furnished by the utility for compensation. [1989 c.670 §3]

30.182 Civil action for taking of or tampering with utility services. A utility may bring a civil action for damages against any person who knowingly and willfully commits, authorizes, solicits, aids, abets or attempts to:

(1) Divert, or cause to be diverted, utility services by any means whatsoever;

(2) Make, or cause to be made, any connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility;

(3) Prevent any utility meter or other device used in determining the charge for utility services from accurately performing its measuring function by tampering or by any other means;

(4) Tamper with any property owned or used by the utility to provide utility services; or

(5) Use or receive the direct benefit of all or a portion of the utility service with knowledge of, or reason to believe that, the diversion, tampering or unauthorized connection existed at the time of the use or that the use or receipt was without the authorization or consent of the utility. [1989 c.670 §1]

30.184 Amount recoverable; attorney fees. In any civil action brought under this section, the utility shall recover from the defendant the greater of actual damages, if any, or $100. Actual damages include the costs incurred on account of the bypassing, tampering or unauthorized reconnection, including but not limited to costs and expenses for investigation, disconnection, reconnection and service calls. The utility may recover punitive damages in addition to actual damages. The court may award reasonable attorney fees and expert witness fees to the prevailing party in an action under this section. [1989 c.670 §2; 1993 c.217 §1; 1995 c.618 §22]

30.186 Remedies not exclusive. The remedies provided in ORS 30.180 to 30.186 are in addition to, and not in lieu of, any and all other remedies, both civil and criminal, provided by law. [1989 c.670 §4]

30.190 [1981 c.785 §3; 1983 c.521 §3; 1995 c.618 §23; renumbered 30.198 in 1999]

ACTIONS ARISING OUT OF PROVISION OF CABLE SERVICES

30.192 Definitions for ORS 30.192 to 30.196. As used in ORS 30.192 to 30.196:

(1) "Cable operator" means a person who:

(a) Lawfully provides cable service over a cable system in which the person, directly or through one or more affiliates, owns a significant interest; or

(b) Lawfully controls or is responsible for the management and operation of a cable system through an arrangement.

(2) "Cable service" means:

(a) One-way transmission to subscribers of a video programming service;

(b) Two-way interactive services delivered over a cable system; or

(c) Any communication with subscribers necessary for the use of video programming or interactive service.

(3) "Cable system" means a facility consisting of closed transmission paths and associated signal operation, reception and control equipment that is designed to provide cable service. [1999 c.705 §1]

30.194 Prohibitions relating to cable services. A person shall not knowingly:

(1) Obtain cable service from a cable operator by trick, artifice, deception, use of an unauthorized device or decoder, or other means without authorization or with the intent to deprive the cable operator of lawful compensation for services rendered;

(2) Make or maintain, without authorization from or payment to a cable operator, a connection or connections, whether physical, electrical, mechanical, acoustical or otherwise with any cable, wire, component or other device used for the distribution of cable services, except that nothing in this subsection is intended to make unlawful circumstances in which the person has attached a wire or cable to extend authorized or paid cable services to an additional outlet or in which the cable operator has failed to disconnect previously authorized or paid cable service;

(3) Modify, alter or maintain a modification or alteration to a device installed by a cable operator if the modification or alteration is for the purpose of intercepting or otherwise receiving cable service without authorization from or payment to the cable operator;

(4) Possess, with intent to receive cable services without authorization from or payment to a cable operator, a printed circuit board or other device designed in whole or in part to facilitate:

(a) Receiving cable services offered for sale over a cable system; or

(b) Performing or facilitating any act described in subsections (1) to (3) of this section;

(5) Manufacture, import into this state, distribute, sell, lease or offer for sale or lease, with intent to promote the receipt of cable services without authorization from or payment to a cable operator, any printed circuit board, plan or other device, or a kit for such a device, designed in whole or in part to facilitate:

(a) Receiving cable services offered for sale over a cable system; or

(b) Performing or facilitating any act described in subsections (1) to (3) of this section; or

(6) Fail to return or surrender, upon demand and after service has been terminated, equipment provided by a cable operator to receive cable service. [1999 c.705 §2]

30.195 Civil action for violation of prohibitions relating to cable services. (1) A cable operator may bring a civil action for damages against any person who violates any provision of ORS 30.194.

(2) A cable operator who alleges a violation of ORS 30.194 may file for injunctive relief in the circuit court for the county where the alleged violation occurred or is occurring.

(3) A cable operator who files an action under this section is not required to plead damages with particularity as a condition of filing or maintaining the action.

(4) In any action brought under this section, there shall be a rebuttable presumption that a person has violated ORS 30.194 (1) if

the person is in actual possession of a device that permits the reception of unauthorized cable services for which payment has not been made and for which no legitimate purpose exists.

(5) In any action brought under this section, there shall be a rebuttable presumption that a person has violated ORS 30.194 (2) if cable service to the person's business or residence was disconnected by a cable operator, notice of the disconnection was provided to the person by certified mail, and a connection exists at the person's business or residence after the date of the notice.

(6) In any action brought under this section, there shall be a rebuttable presumption that a person has violated ORS 30.194 (3) if the cable operator as standard procedure:

(a) Places written warning labels on its converters or decoders indicating that tampering with the devices is a violation of law and a converter or decoder is found to have been tampered with, altered or modified to allow the reception of cable services without authorization from or payment to the cable operator; or

(b) Seals its converters or decoders with a label or mechanical device and the label or device has been removed or broken.

(7) In any action brought under this section, there shall be a rebuttable presumption that a person has violated ORS 30.194 (4) if a person possesses 10 or more printed circuit boards or other devices designed to receive cable services. A person who is found to have violated ORS 30.194 (4) shall be subject to penalties described in ORS 30.196 (2).

(8) In any action brought under this section, there shall be a rebuttable presumption that a person has violated ORS 30.194 (5) if the person made representations to a buyer that the device offered for sale would allow the purchaser to obtain cable service without authorization from or payment to a cable operator. A person who is found to have violated ORS 30.194 (5) shall be subject to penalties described in ORS 30.196 (2).

(9) In any action brought under this section, there shall be a rebuttable presumption that a person has violated ORS 30.194 (6) if a cable operator sent to the person by certified mail, at the most recent address for the person shown in the records of the cable operator, a written demand for the return of converters, decoders or other equipment owned by the cable operator. The demand shall allow the person to make reasonable arrangements to return the equipment within 15 days of receiving the notice. Reasonable arrangements may include a request that the cable operator pick up the equipment, subject to the cable operators written policies.

(10) Statements from a manufacturer or retailer regarding the intended use or uses of a product shall not constitute a defense to an alleged violation of ORS 30.194 (5). [1999 c.705 §3]

30.196 Amount recoverable; attorney fees. (1) In addition to any other penalty provided by law, a cable operator who prevails on a claim under ORS 30.195 may recover the amount of $3,000.

(2)(a) A court may increase an award under subsection (1) of this section to an amount not to exceed $50,000 if the court determines that the violation was committed for purposes of commercial advantage.

(b) As used in this subsection, "commercial advantage" does not include any monetary gain realized by a person's private use of unauthorized cable services.

(3) The prevailing party in an action brought under ORS 30.195 shall be awarded reasonable court costs and attorney fees and all costs including but not limited to the cost of investigation, disconnection or reconnection, service calls, labor, equipment and expert testimony. [1999 c.705 §4]

ACTIONS FOR INTIMIDATION

30.198 Civil action for intimidation; remedies; attorney fees; liability of parents. (1) Irrespective of any criminal prosecution or the result thereof, any person injured by a violation of ORS 166.155 or 166.165 shall have a civil action to secure an injunction, damages or other appropriate relief against any and all persons whose actions are unlawful under ORS 166.155 and 166.165.

(2) Upon prevailing in such action, the plaintiff may recover:

(a) Both special and general damages, including damages for emotional distress; and

(b) Punitive damages.

(3) The court shall award reasonable attorney fees to the prevailing plaintiff in an action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court.

(4) The parent, parents or legal guardian of an unemancipated minor shall be liable for any judgment recovered against such minor under this section, in an amount not to exceed $5,000. [Formerly 30.190]

30.200 Action by district attorney; effect on others. If any district attorney has reasonable cause to believe that any person

or group of persons is engaged in violation of ORS 166.155 or 166.165, the district attorney may bring a civil claim for relief in the appropriate court, setting forth facts pertaining to such violation, and request such relief as may be necessary to restrain or prevent such violation. Any claim for relief under this section does not prevent any person from seeking any other remedy otherwise available under law. [1981 c.785 §4]

ACTIONS ON OFFICIAL BONDS

30.210 To whom official bonds are security. The official undertaking or other security of a public officer to the state, or to any county, city or other public corporation of like character therein, is a security to the state, county, city or public corporation, as the case may be, and also, to all persons severally for the official delinquencies against which it is intended to provide.

30.220 Parties. When a public officer by official misconduct or neglect of duty forfeits an official undertaking or other security of the public officer, or renders the sureties of the public officer liable thereon, any person injured by the misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action thereon in the name of the person, against the officer and the sureties of the officer, to recover the amount to which the person may by reason thereof be entitled.

30.230 Leave to begin action. Before an action can be commenced by a plaintiff other than the state, or the public corporation named in the undertaking or security, leave shall be obtained of the court or judge thereof where the action is triable. Such leave shall be granted upon the production of a certified copy of the undertaking or security, and an affidavit of the plaintiff or some person on behalf of the plaintiff showing the delinquency; but if the matters set forth in the affidavit are such that, if true, the party applying would clearly not be entitled to recover in the action, the leave shall not be granted. If it does not appear from the complaint that leave has been granted, the defendant on motion shall be entitled to judgment of dismissal without prejudice; if it does, the defendant may controvert the allegation, and if the issue be found in favor of the defendant, judgment shall be given accordingly. [Amended by 1979 c.284 §63]

30.240 Subsequent delinquencies on same bond. A judgment in favor of a party for one delinquency shall not preclude the same or another party from maintaining another action on the same undertaking or security for another delinquency.

30.250 Amount of judgment. In an action upon an official undertaking or security, if judgments have already been recovered on the same undertaking or security against the surety therein, other than by confession, and if such recovery is established on the trial, judgment shall not be given against the surety for an amount exceeding the difference between the amount of the penalty and the amount that already has been recovered against the surety.

TORT ACTIONS AGAINST PUBLIC BODIES

(Generally)

30.260 Definitions for ORS 30.260 to 30.300. As used in ORS 30.260 to 30.300, unless the context requires otherwise:

(1) "Department" means the Oregon Department of Administrative Services.

(2) "Director" means the Director of the Oregon Department of Administrative Services.

(3) "Governing body" means the group or officer in which the controlling authority of any public body is vested.

(4) "Public body" means:

(a) A public body as defined in ORS 174.109;

(b) Any nonprofit corporation that is organized and existing under ORS chapter 65 and that has only political subdivisions or municipal, quasi-municipal or public corporations in this state as members;

(c) A private child-caring agency, as defined in ORS 418.205, that meets the criteria specified in ORS 278.322 (1)(a) and that receives more than 50 percent of its funding from the state for the purpose of providing residential treatment to children who have been placed in the care and custody of the state or that provides residential treatment to children more than half of whom have been placed in the care and custody of the state; or

(d) A private, nonprofit organization that provides public transportation services if more than 50 percent of the organization's funding for the purpose of providing public transportation services is received from governmental bodies.

(5) "State" means:

(a) State government as defined in ORS 174.111;

(b) The State Accident Insurance Fund Corporation; and

(c) The Oregon Utility Notification Center.

(6) "Local public body" means any public body other than the state.

(7) "Nuclear incident" has the meaning given that term in 42 U.S.C. 2014(q).

(8) "Tort" means the breach of a legal duty that is imposed by law, other than a duty arising from contract or quasi-contract, the breach of which results in injury to a specific person or persons for which the law provides a civil right of action for damages or for a protective remedy. [1967 c.627 §1; 1975 c.609 §11; 1977 c.823 §1; 1981 c.109 §1; 1987 c.915 §9; subsections (7) and (8) enacted as 1987 c.705 §6; 1989 c.905 §1; 1989 c.1004 §2; 1993 c.500 §3; 1997 c.215 §4; 2005 c.684 §1; 2005 c.798 §2; 2009 c.67 §9]

Note: Sections 7 and 8, chapter 67, Oregon Laws 2009, provide:

Sec. 7. Task Force on Oregon Tort Claims Act. (1) There is created the Task Force on the Oregon Tort Claims Act, consisting of four members appointed as follows:

(a) The President of the Senate shall appoint two members from among members of the Senate.

(b) The Speaker of the House of Representatives shall appoint two members from among members of the House of Representatives.

(2) The task force shall:

(a) Study the impact of sections 2 to 6 of this 2009 Act and the operation of other laws governing the tort liability of public bodies; and

(b) Prepare a report for submission to the Legislative Assembly that contains the task force's findings and recommendations relating to the tort liability of public bodies.

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

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

(5) The task force shall elect one of its members to serve as chairperson.

(6) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

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

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

(9) The task force may presession file legislation in the manner provided in ORS 171.130 for interim committees. All legislation recommended by official action of the task force must indicate that it is introduced at the request of the task force.

(10) The task force shall report to the Legislative Assembly in the manner provided in ORS 192.245 at any time within 30 days after its final meeting or at such later time as the President and Speaker may designate.

(11) The Legislative Administrator may employ persons necessary for the performance of the functions of the task force. The Legislative Administrator shall fix the duties and amounts of compensation of these employees. The task force shall use the services of permanent legislative staff to the greatest extent practicable.

(12) 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. [2009 c.67 §7]

Sec. 8. (1) Section 7 of this 2009 Act becomes operative on January 1, 2014.

(2) Section 7 of this 2009 Act is repealed on March 1, 2015. [2009 c.67 §8]

30.261 Limitation on applicability of ORS 30.260 to 30.300 to certain private, nonprofit organizations. A private, nonprofit organization described under ORS 30.260 (4)(d) is subject to ORS 30.260 to 30.300 only for the purposes of providing public transportation services. [2005 c.684 §4; 2009 c.67 §17]

Note: 30.261 was added to and made a part of 30.260 to 30.300 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

30.262 Certain nonprofit facilities and homes public bodies for purposes of ORS 30.260 to 30.300. (1) The following facilities and training homes are public bodies for the purposes of ORS 30.260 to 30.300:

(a) A nonprofit residential training facility as defined in ORS 443.400, nonprofit residential training home as defined in ORS 443.400 or nonprofit facility as defined in ORS 427.005, organized and existing under ORS chapter 65, that receives more than 50 percent of its funding from the state or a political subdivision of the state for the purpose of providing residential or vocational services to individuals with intellectual or other developmental disabilities.

(b) A nonprofit residential training facility as defined in ORS 443.400, nonprofit residential training home as defined in ORS 443.400 or nonprofit facility as defined in ORS 427.005, organized and existing under ORS chapter 65, that receives less than 50 percent of its funding from the state or a political subdivision of the state but that provides residential or vocational services to individuals with intellectual or other developmental disabilities, more than half of whom are eligible for funding for services by the Department of Human Services under criteria established by the department.

(2) The provisions of this section apply only to a nonprofit residential training facility, nonprofit residential training home or nonprofit facility that provides services to individuals with intellectual or other developmental disabilities under a contract with:

(a) The Department of Human Services; or

(b) A community mental health program or community developmental disabilities program established pursuant to ORS 430.620. [1997 c.579 §2; 2001 c.900 §9; 2007 c.70 §8; 2011 c.658 §30; 2011 c.720 §52]

Note: 30.262 was added to and made a part of 30.260 to 30.300 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

30.264 Liability insurance for students involved in off-campus experiential activities; coverage under ORS 30.260 to 30.300. (1) The State Board of Higher Education may authorize public universities listed in ORS 352.002 to provide liability insurance coverage for students involved in off-campus experiential activities, including, but not limited to, student teaching, internships, clinical experiences, capstone projects and related activities.

(2) If commercial liability insurance coverage is not available to the public universities, students participating in the activities described in subsection (1) of this section shall be considered to be acting within the course and scope of state employment duties for purposes of ORS 30.260 to 30.300. [2001 c.370 §2; 2011 c.637 §60]

30.265 Scope of liability of public body, officers, employees and agents; liability in nuclear incident. (1) Subject to the limitations of ORS 30.260 to 30.300, every public body is subject to civil action for its torts and those of its officers, employees and agents acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function or while operating a motor vehicle in a ridesharing arrangement authorized under ORS 276.598.

(2) The sole cause of action for a tort committed by officers, employees or agents of a public body acting within the scope of their employment or duties and eligible for representation and indemnification under ORS 30.285 or 30.287 is an action under ORS 30.260 to 30.300. The remedy provided by ORS 30.260 to 30.300 is exclusive of any other action against any such officer, employee or agent of a public body whose act or omission within the scope of the officer's, employee's or agent's employment or duties gives rise to the action. No other form of civil action is permitted.

(3) If an action under ORS 30.260 to 30.300 alleges damages in an amount equal to or less than the damages allowed under ORS 30.271, 30.272 or 30.273, the sole cause of action for a tort committed by officers, employees or agents of a public body acting within the scope of their employment or duties and eligible for representation and indemnification under ORS 30.285 or 30.287 is an action against the public body. If an action is filed against an officer, employee or agent of a public body, and the plaintiff alleges damages in an amount equal to or less than the damages allowed under ORS 30.271, 30.272 or 30.273, the court upon motion shall substitute the public body as the defendant. Substitution of the public body as the defendant does not exempt the public body from making any report required under ORS 742.400.

(4) If an action under ORS 30.260 to 30.300 alleges damages in an amount greater than the damages allowed under ORS 30.271, 30.272 or 30.273, the action may be brought and maintained against an officer, employee or agent of a public body, whether or not the public body is also named as a defendant. An action brought under this subsection is subject to the limitations on damages imposed under ORS 30.271, 30.272 or 30.273, and the total combined amount recovered in the action may not exceed those limitations for a single accident or occurrence without regard to the number or types of defendants named in the action.

(5) Every public body is immune from liability for any claim for injury to or death of any person or injury to property resulting from an act or omission of an officer, employee or agent of a public body when such officer, employee or agent is immune from liability.

(6) Every public body and its officers, employees and agents acting within the scope of their employment or duties, or while operating a motor vehicle in a ridesharing arrangement authorized under ORS 276.598, are immune from liability for:

(a) Any claim for injury to or death of any person covered by any workers' compensation law.

(b) Any claim in connection with the assessment and collection of taxes.

(c) Any claim based upon the performance of or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused.

(d) Any claim that is limited or barred by the provisions of any other statute, including but not limited to any statute of ultimate repose.

(e) Any claim arising out of riot, civil commotion or mob action or out of any act or omission in connection with the prevention of any of the foregoing.

(f) Any claim arising out of an act done or omitted under apparent authority of a law, resolution, rule or regulation that is unconstitutional, invalid or inapplicable except to the extent that they would have been liable had the law, resolution, rule or regulation been constitutional, valid and applicable, unless such act was done or omitted in bad faith or with malice.

(7) This section applies to any action of any officer, employee or agent of the state relating to a nuclear incident, whether or not the officer, employee or agent is acting within the scope of employment, and pro-

vided the nuclear incident is covered by an insurance or indemnity agreement under 42 U.S.C. 2210.

(8) Subsection (6)(c) of this section does not apply to any discretionary act that is found to be the cause or partial cause of a nuclear incident covered by an insurance or indemnity agreement under the provisions of 42 U.S.C. 2210, including but not limited to road design and route selection. [1967 c.627 §§2,3,10; 1969 c.429 §1; 1975 c.609 §12; 1977 c.823 §2; 1981 c.490 §4; 1985 c.731 §31; 1987 c.705 §7; 1991 c.861 §1; 2005 c.22 §19; 2007 c.803 §4; 2011 c.270 §1]

30.266 [1977 c.781 §2; 1981 c.109 §2; 1985 c.731 §20; 1989 c.873 §1; repealed by 1991 c.756 §5]

30.267 Liability for certain medical treatment at Oregon Health and Science University facilities. (1) For the purposes of ORS 30.260 to 30.300, all services constituting patient care, including, but not limited to, inpatient care, outpatient care and all forms of consultation, that are provided on the Oregon Health and Science University campus or in any Oregon Health and Science University clinic are within the scope of their state employment or duties when performed by:

(a) Salaried physicians or dentists employed at any full-time equivalent by the Oregon Health and Science University;

(b) Nonsalaried or courtesy physicians or dentists affiliated with the Oregon Health and Science University;

(c) Medical, dental or nursing students or trainees affiliated with the Oregon Health and Science University;

(d) Volunteer physicians or dentists affiliated with the Oregon Health and Science University; or

(e) Any nurses, students, orderlies, volunteers, aides or employees of the Oregon Health and Science University.

(2) As used in this section:

(a) "Nonsalaried or courtesy physician or dentist" means a physician or dentist who receives a fee or other compensation for those services constituting patient care which are within the scope of state employment or duties under this section. The term does not include a physician or dentist described under subsection (1)(a) of this section.

(b) "Volunteer physician or dentist" means a physician or dentist who does not receive a salary, fee or other compensation for those services constituting patient care which are within the scope of state employment or duties under this section. [1977 c.851 §2]

30.268 Liability for certain medical treatment at facilities other than Oregon Health and Science University. (1) For the purposes of ORS 30.260 to 30.300, all services constituting patient care, including, but not limited to, inpatient care, outpatient care and all forms of consultation that are provided at a location other than the Oregon Health and Science University campus or one of the Oregon Health and Science University clinics are within the scope of state employment or duties when:

(a) Provided by members of the Oregon Health and Science University faculty or staff, Oregon Health and Science University students under prior written express authorization from the president of the Oregon Health and Science University or a representative of the president to provide those services at that location;

(b) The services provided are within the scope of the express authorization; and

(c) The Oregon Health and Science University:

(A) Derives revenue in a similar amount or percentage as it would for care rendered on the Oregon Health and Science University campus or at an Oregon Health and Science University clinic; or

(B) Is performing a salaried, nonfee-generating or volunteer public community or nonfee-generating educational service by providing the services.

(2) For the purposes of ORS 30.260 to 30.300, services constituting patient care that are provided at a location other than the Oregon Health and Science University campus or one of the Oregon Health and Science University clinics are not within the scope of state employment or duties when:

(a) Such services constitute an exclusively private relationship between the patient and a person described in subsection (1)(a) of this section; and

(b) The requirements of subsection (1)(b) and (c) of this section are not met. [1977 c.851 §3; 1995 c.84 §1]

30.269 Limitations on awards under Oregon Tort Claims Act generally. (1) Punitive damages may not be awarded on any claim subject to ORS 30.260 to 30.300.

(2) Claims subject to ORS 30.260 to 30.300 are not subject to the limitation imposed by ORS 31.710.

(3) A court may not apply the limitations imposed on recovery under ORS 30.271, 30.272 and 30.273 until after the entry of a verdict or a stipulation by the parties to the amount of the damages.

(4) The limitations imposed under ORS 30.271 (2) and 30.272 (2) on single claimants

include damages claimed for loss of services or loss of support arising out of the same tort.

(5) If two or more claimants recover on a claim that arises out of a single accident or occurrence, and the recovery is subject to a limitation imposed by ORS 30.271 (3), 30.272 (3) or 30.273 (2)(b), any party to the action in which the claim is made may apply to the court to apportion to each claimant the proper share of the amount allowed by ORS 30.271 (3), 30.272 (3) or 30.273 (2)(b). The share apportioned to each claimant shall be in the proportion that the ratio of the award or settlement made to the claimant bears to the aggregate awards and settlements for all claims arising out of the accident or occurrence.

(6) Liability of any public body and one or more of its officers, employees or agents, or two or more officers, employees or agents of a public body, on claims arising out of a single accident or occurrence, may not exceed in the aggregate the amounts allowed by ORS 30.271, 30.272 and 30.273.

(7) ORS 30.271, 30.272 and 30.273 do not apply to a claim arising in connection with a nuclear incident covered by an insurance or indemnity agreement under 42 U.S.C. 2210.

(8) For the purposes of the limitations imposed by ORS 30.271, 30.272 and 30.273, events giving rise to a proclamation of a state of emergency under ORS 401.165, or a proclamation of a public health emergency under ORS 433.441, do not constitute a single accident or occurrence. [2009 c.67 §2; 2009 c.718 §15]

Note: 30.269 to 30.274 were added to and made a part of 30.260 to 30.300 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

30.270 [1967 c.627 §4; 1969 c.429 §2; 1975 c.609 §13; 1987 c.705 §8; 1987 c.915 §13; repealed by 2009 c.67 §20]

30.271 Limitations on liability of state for personal injury and death. (1) The limitations imposed by this section apply to claims that:

(a) Are subject to ORS 30.260 to 30.300;

(b) Are made against the state, or against an officer, employee or agent of the state acting within the person's scope of employment or duties;

(c) Arise out of a single accident or occurrence; and

(d) Are not claims for damage to or destruction of property.

(2) The liability of the state, and the liability of the state's officers, employees and agents acting within the scope of their employment or duties, to any single claimant for claims described in subsection (1) of this section may not exceed:

(a) $1.5 million, for causes of action arising on or after December 28, 2007, and before July 1, 2010.

(b) $1.6 million, for causes of action arising on or after July 1, 2010, and before July 1, 2011.

(c) $1.7 million, for causes of action arising on or after July 1, 2011, and before July 1, 2012.

(d) $1.8 million, for causes of action arising on or after July 1, 2012, and before July 1, 2013.

(e) $1.9 million, for causes of action arising on or after July 1, 2013, and before July 1, 2014.

(f) $2 million, for causes of action arising on or after July 1, 2014, and before July 1, 2015.

(g) The adjusted limitation provided by subsection (4) of this section, for causes of action arising on or after July 1, 2015.

(3) The liability of the state, and the liability of the state's officers, employees and agents acting within the scope of their employment or duties, to all claimants for claims described in subsection (1) of this section may not exceed:

(a) $3 million, for causes of action arising on or after December 28, 2007, and before July 1, 2010.

(b) $3.2 million, for causes of action arising on or after July 1, 2010, and before July 1, 2011.

(c) $3.4 million, for causes of action arising on or after July 1, 2011, and before July 1, 2012.

(d) $3.6 million, for causes of action arising on or after July 1, 2012, and before July 1, 2013.

(e) $3.8 million, for causes of action arising on or after July 1, 2013, and before July 1, 2014.

(f) $4 million, for causes of action arising on or after July 1, 2014, and before July 1, 2015.

(g) The adjusted limitation provided by subsection (4) of this section, for causes of action arising on or after July 1, 2015.

(4) Beginning in 2015, and every year thereafter, the State Court Administrator shall determine the percentage increase or decrease in the cost of living for the previous calendar year, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of La-

bor. On or before July 1 of the year in which the State Court Administrator makes the determination required by this subsection, the State Court Administrator shall adjust the limitations imposed under subsections (2) and (3) of this section for the following calendar year by multiplying the limitation amounts applicable to the calendar year in which the adjustment is made by the percentage amount determined under this subsection. The adjustment may not exceed three percent for any year. The State Court Administrator shall round the adjusted limitation amount to the nearest $100, but the unrounded amount shall be used to calculate the adjustments to the limitations in subsequent calendar years. The adjusted limitation becomes effective on July 1 of the year in which the adjustment is made, and applies to all causes of action arising on or after July 1 of that year and before July 1 of the subsequent year.

(5) The limitations imposed by this section apply to claims against Oregon Health and Science University. [2009 c.67 §3]

Note: See note under 30.269.

30.272 Limitations on liability of local public bodies for personal injury and death. (1) The limitations imposed by this section apply to claims that:

(a) Are subject to ORS 30.260 to 30.300;

(b) Are made against a local public body, or against an officer, employee or agent of a local public body acting within the person's scope of employment or duties;

(c) Arise out of a single accident or occurrence; and

(d) Are not claims for damage to or destruction of property.

(2) The liability of a local public body, and the liability of the public body's officers, employees and agents acting within the scope of their employment or duties, to any single claimant for claims described in subsection (1) of this section may not exceed:

(a) $500,000, for causes of action arising on or after July 1, 2009, and before July 1, 2010.

(b) $533,300, for causes of action arising on or after July 1, 2010, and before July 1, 2011.

(c) $566,700, for causes of action arising on or after July 1, 2011, and before July 1, 2012.

(d) $600,000, for causes of action arising on or after July 1, 2012, and before July 1, 2013.

(e) $633,300, for causes of action arising on or after July 1, 2013, and before July 1, 2014.

(f) $666,700, for causes of action arising on or after July 1, 2014, and before July 1, 2015.

(g) The adjusted limitation provided by subsection (4) of this section, for causes of action arising on or after July 1, 2015.

(3) The liability of a local public body, and the liability of the public body's officers, employees and agents acting within the scope of their employment or duties, to all claimants for claims described in subsection (1) of this section may not exceed:

(a) $1 million, for causes of action arising on or after July 1, 2009, and before July 1, 2010.

(b) $1,066,700, for causes of action arising on or after July 1, 2010, and before July 1, 2011.

(c) $1,133,300, for causes of action arising on or after July 1, 2011, and before July 1, 2012.

(d) $1,200,000, for causes of action arising on or after July 1, 2012, and before July 1, 2013.

(e) $1,266,700, for causes of action arising on or after July 1, 2013, and before July 1, 2014.

(f) $1,333,300, for causes of action arising on or after July 1, 2014, and before July 1, 2015.

(g) The adjusted limitation provided by subsection (4) of this section, for causes of action arising on or after July 1, 2015.

(4) Beginning in 2015, and every year thereafter, the State Court Administrator shall determine the percentage increase or decrease in the cost of living for the previous calendar year, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor. On or before July 1 of the year in which the State Court Administrator makes the determination required by this subsection, the State Court Administrator shall adjust the limitations imposed under subsections (2) and (3) of this section for the following calendar year by multiplying the limitation amounts applicable to the calendar year in which the adjustment is made by the percentage amount determined under this subsection. The adjustment may not exceed three percent for any year. The State Court Administrator shall round the adjusted limitation amount to the nearest $100, but the unrounded amount shall be used to calculate the adjustments to the limitations in subsequent calendar years. The adjusted limitation becomes effective on July 1 of the year in which the adjustment is made, and applies

to all causes of action arising on or after July 1 of that year and before July 1 of the subsequent year.

(5) The limitations imposed by this section do not apply to claims against Oregon Health and Science University. [2009 c.67 §4]

Note: See note under 30.269.

30.273 Limitations on liability of public bodies for property damage or destruction. (1) The limitations imposed by this section apply to claims that:

(a) Are subject to ORS 30.260 to 30.300;

(b) Are made against a public body, or against a public body's officers, employees and agents acting within the scope of their employment or duties;

(c) Arise out of a single accident or occurrence; and

(d) Are claims for damage to or destruction of property, including consequential damages.

(2) The liability of a public body, and the liability of the public body's officers, employees and agents acting within the scope of their employment or duties, for claims described in subsection (1) of this section may not exceed:

(a) $100,000, or the adjusted limitation provided by subsection (3) of this section, to any single claimant.

(b) $500,000, or the adjusted limitation provided by subsection (3) of this section, to all claimants.

(3) Beginning in 2010, and every year thereafter, the State Court Administrator shall determine the percentage increase or decrease in the cost of living for the previous calendar year, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor. On or before July 1 of the year in which the State Court Administrator makes the determination required by this subsection, the State Court Administrator shall adjust the limitations imposed under subsection (2) of this section for the following calendar year by multiplying the limitation amounts applicable to the calendar year in which the adjustment is made by the percentage amount determined under this subsection. The adjustment may not exceed three percent for any year. The State Court Administrator shall round the adjusted limitation amount to the nearest $100, but the unrounded amount shall be used to calculate the adjustments to the limitations in subsequent calendar years. The adjusted limitation becomes effective on July 1 of the year in which the adjustment is made, and applies to all causes of action arising on or after July 1 of that year and before July 1 of the subsequent year. [2009 c.67 §5]

Note: See note under 30.269.

30.274 Direct appeal of constitutionality of limitations. (1) At the request of any party to an action under ORS 30.260 to 30.300, the court shall enter a limited judgment that is limited to the issue of the application of the limitations imposed by ORS 30.271, 30.272 or 30.273. A limited judgment may be entered under this section only after:

(a) The parties have stipulated to the total damages in the action; or

(b) The finder of fact has decided the total damages in the action.

(2) If a limited judgment is entered under this section, the court may not enter a general judgment until an appellate judgment on any appeal of the limited judgment has been entered.

(3) A limited judgment entered under this section may be appealed only by filing a notice of appeal directly with the Supreme Court within the time and in the manner specified in ORS chapter 19 for civil appeals to the Court of Appeals. Any party filing a notice of appeal under this subsection must note in the notice of appeal that the case is subject to this subsection.

(4) An appeal filed under this section may not raise any issue relating to the case other than the application of a limitation imposed under ORS 30.271, 30.272 or 30.273.

(5) If a limited judgment is not requested under this section, a party may seek judicial review of the imposition of any of the limitations under ORS 30.271, 30.272 or 30.273 in an appeal from the general judgment in the action. [2009 c.67 §6]

Note: See note under 30.269.

30.275 Notice of claim; time of notice; time of action. (1) No action arising from any act or omission of a public body or an officer, employee or agent of a public body within the scope of ORS 30.260 to 30.300 shall be maintained unless notice of claim is given as required by this section.

(2) Notice of claim shall be given within the following applicable period of time, not including the period, not exceeding 90 days, during which the person injured is unable to give the notice because of the injury or because of minority, incompetency or other incapacity:

(a) For wrongful death, within one year after the alleged loss or injury.

(b) For all other claims, within 180 days after the alleged loss or injury.

(3) Notice of claim required by this section is satisfied by:

(a) Formal notice of claim as provided in subsections (4) and (5) of this section;

(b) Actual notice of claim as provided in subsection (6) of this section;

(c) Commencement of an action on the claim by or on behalf of the claimant within the applicable period of time provided in subsection (2) of this section; or

(d) Payment of all or any part of the claim by or on behalf of the public body at any time.

(4) Formal notice of claim is a written communication from a claimant or representative of a claimant containing:

(a) A statement that a claim for damages is or will be asserted against the public body or an officer, employee or agent of the public body;

(b) A description of the time, place and circumstances giving rise to the claim, so far as known to the claimant; and

(c) The name of the claimant and the mailing address to which correspondence concerning the claim may be sent.

(5) Formal notice of claim shall be given by mail or personal delivery:

(a) If the claim is against the state or an officer, employee or agent thereof, to the office of the Director of the Oregon Department of Administrative Services.

(b) If the claim is against a local public body or an officer, employee or agent thereof, to the public body at its principal administrative office, to any member of the governing body of the public body, or to an attorney designated by the governing body as its general counsel.

(6) Actual notice of claim is any communication by which any individual to whom notice may be given as provided in subsection (5) of this section or any person responsible for administering tort claims on behalf of the public body acquires actual knowledge of the time, place and circumstances giving rise to the claim, where the communication is such that a reasonable person would conclude that a particular person intends to assert a claim against the public body or an officer, employee or agent of the public body. A person responsible for administering tort claims on behalf of a public body is a person who, acting within the scope of the person's responsibility, as an officer, employee or agent of a public body or as an employee or agent of an insurance carrier insuring the public body for risks within the scope of ORS 30.260 to 30.300, engages in investigation, negotiation, adjustment or defense of claims within the scope of ORS 30.260 to 30.300, or in furnishing or accepting forms for claimants to provide claim information, or in supervising any of those activities.

(7) In an action arising from any act or omission of a public body or an officer, employee or agent of a public body within the scope of ORS 30.260 to 30.300, the plaintiff has the burden of proving that notice of claim was given as required by this section.

(8) The requirement that a notice of claim be given under subsections (1) to (7) of this section does not apply if:

(a)(A) The claimant was under the age of 18 years when the acts or omissions giving rise to a claim occurred;

(B) The claim is against the Department of Human Services or the Oregon Youth Authority; and

(C) The claimant was in the custody of the Department of Human Services pursuant to an order of a juvenile court under ORS 419B.150, 419B.185, 419B.337 or 419B.527, or was in the custody of the Oregon Youth Authority under the provisions of ORS 419C.478, 420.011 or 420A.040, when the acts or omissions giving rise to a claim occurred.

(b) The claim is against a private, nonprofit organization that provides public transportation services described under ORS 30.260 (4)(d).

(9) Except as provided in ORS 12.120, 12.135 and 659A.875, but notwithstanding any other provision of ORS chapter 12 or other statute providing a limitation on the commencement of an action, an action arising from any act or omission of a public body or an officer, employee or agent of a public body within the scope of ORS 30.260 to 30.300 shall be commenced within two years after the alleged loss or injury. [1967 c.627 §5; 1969 c.429 §3; 1975 c.604 §1a; 1975 c.609 §14; 1977 c.823 §3; 1979 c.284 §64; 1981 c.350 §1; 1993 c.500 §4; 1993 c.515 §1; 2001 c.601 §1; 2001 c.621 §89; 2005 c.684 §2; 2009 c.67 §18]

30.278 Reporting notice of claim of professional negligence to licensing board. When notice is received under ORS 30.275 of a claim of professional negligence against a physician, optometrist, dentist, dental hygienist or naturopath who is acting within the scope of employment by a public body or within the scope of duties as defined by ORS 30.267, the person receiving the notice shall report to the appropriate licensing board, in the same manner as required by ORS 742.400, the information required by ORS 742.400 to be reported by insurers or self-insured associations. [1987 c.774 §64]

Note: 30.278 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 30 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

30.280 [1967 c.627 §6; repealed by 1975 c.609 §25]

30.282 Local public body insurance; self-insurance program; action against program. (1) The governing body of any local public body may procure insurance against:

(a) Tort liability of the public body and its officers, employees and agents acting within the scope of their employment or duties; or

(b) Property damage.

(2) In addition to, or in lieu of procuring insurance, the governing body may establish a self-insurance program against the tort liability of the public body and its officers, employees and agents or against property damage. If the public body has authority to levy taxes, it may include in its levy an amount sufficient to establish and maintain a self-insurance program on an actuarially sound basis.

(3) Notwithstanding any other provision of law, two or more local public bodies may jointly provide by intergovernmental agreement for anything that subsections (1) and (2) of this section authorize individually.

(4) As an alternative or in addition to establishment of a self-insurance program or purchase of insurance or both, the governing body of any local public body and the Oregon Department of Administrative Services may contract for payment by the public body to the department of assessments determined by the department to be sufficient, on an actuarially sound basis, to cover the potential liability of the public body and its officers, employees or agents acting within the scope of their employment or duties under ORS 30.260 to 30.300, and costs of administration, or to cover any portion of potential liability, and for payment by the department of valid claims against the public body and its officers, employees and agents acting within the scope of their employment or duties. The department may provide the public body evidence of insurance by issuance of a certificate or policy.

(5) Assessments paid to the department under subsection (4) of this section shall be paid into the Insurance Fund created under ORS 278.425, and claims paid and administrative costs incurred under subsection (4) of this section shall be paid out of the Insurance Fund, and moneys in the Insurance Fund are continuously appropriated for those purposes. When notice of any claim is furnished as provided in the agreement, the claim shall be handled and paid, if appropriate, in the same manner as a claim against a state agency, officer, employee or agent, without regard to the amount the local public body has been assessed.

(6) A self-insurance program established by three or more public bodies under subsections (2) and (3) of this section is subject to the following requirements:

(a) The annual contributions to the program must amount in the aggregate to at least $1 million.

(b) The program must provide documentation that defines program benefits and administration.

(c) Program contributions and reserves must be held in separate accounts and used for the exclusive benefit of the program.

(d) The program must maintain adequate reserves. Reserve adequacy shall be calculated annually with proper actuarial calculations including the following:

(A) Known claims, paid and outstanding;

(B) Estimate of incurred but not reported claims;

(C) Claims handling expenses;

(D) Unearned contributions; and

(E) A claims trend factor.

(e) The program must maintain an unallocated reserve account equal to 25 percent of annual contributions, or $250,000, whichever is greater. As used in this paragraph, "unallocated reserves" means the amount of funds determined by a licensed independent actuary to be greater than what is required to fund outstanding claim liabilities, including an estimate of claims incurred but not reported.

(f) The program must make an annual independently audited financial statement available to the participants of the program.

(g) The program must maintain adequate excess or reinsurance against the risk of economic loss.

(h) The program, a third party administrator or an owner of a third party administrator may not collect commissions or fees from an insurer.

(7) A program operated under subsection (6) of this section that fails to meet any of the listed requirements for a period longer than 30 consecutive days shall be dissolved and any unallocated reserves returned in proportional amounts based on the contributions of the public body to the public bodies that established the program within 90 days of the failure.

(8) A local public body may bring an action against a program operated under subsection (6) of this section if the program fails to comply with the requirements listed in subsection (6) of this section. [1975 c.609 §19; 1977 c.428 §1; 1981 c.109 §4; 1985 c.731 §21; 2005 c.175 §2; 2009 c.67 §19]

30.285 Public body shall indemnify public officers; procedure for requesting counsel; extent of duty of state; obligation for judgment and attorney fees. (1) The governing body of any public body shall defend, save harmless and indemnify any of its officers, employees and agents, whether elective or appointive, against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty.

(2) The provisions of subsection (1) of this section do not apply in case of malfeasance in office or willful or wanton neglect of duty.

(3) If any civil action, suit or proceeding is brought against any state officer, employee or agent which on its face falls within the provisions of subsection (1) of this section, or which the state officer, employee or agent asserts to be based in fact upon an alleged act or omission in the performance of duty, the state officer, employee or agent may, after consulting with the Oregon Department of Administrative Services file a written request for counsel with the Attorney General. The Attorney General shall thereupon appear and defend the officer, employee or agent unless after investigation the Attorney General finds that the claim or demand does not arise out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of amounted to malfeasance in office or willful or wanton neglect of duty, in which case the Attorney General shall reject defense of the claim.

(4) Any officer, employee or agent of the state against whom a claim within the scope of this section is made shall cooperate fully with the Attorney General and the department in the defense of such claim. If the Attorney General after consulting with the department determines that such officer, employee or agent has not so cooperated or has otherwise acted to prejudice defense of the claim, the Attorney General may at any time reject the defense of the claim.

(5) If the Attorney General rejects defense of a claim under subsection (3) of this section or this subsection, no public funds shall be paid in settlement of said claim or in payment of any judgment against such officer, employee or agent. Such action by the Attorney General shall not prejudice the right of the officer, employee or agent to assert and establish an appropriate proceedings that the claim or demand in fact arose out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of did not amount to malfeasance in office or willful or wanton neglect of duty, in which case the officer, employee or agent shall be indemnified against liability and reasonable costs of defending the claim, cost of such indemnification to be a charge against the Insurance Fund established by ORS 278.425.

(6) Nothing in subsection (3), (4) or (5) of this section shall be deemed to increase the limits of liability of any public officer, agent or employee under ORS 30.260 to 30.300, or obviate the necessity of compliance with ORS 30.275 by any claimant, nor to affect the liability of the state itself or of any other public officer, agent or employee on any claim arising out of the same accident or occurrence.

(7) As used in this section, "state officer, employee or agent" includes district attorneys and deputy district attorneys, special prosecutors and law clerks of the office of district attorney who act in a prosecutorial capacity, but does not include any other employee of the office of district attorney or any employee of the justice or circuit courts whose salary is paid wholly or in part by the county. [1967 c.627 §7; 1975 c.609 §16; 1981 c.109 §5; 1981 c.913 §2; 1985 c.731 §22; 1987 c.763 §1; 2009 c.67 §11]

30.287 Counsel for public officer; when public funds not to be paid in settlement; effect on liability limit; defense by insurer. (1) If any civil action, suit or proceeding is brought against any officer, employee or agent of a local public body which on its face falls within the provisions of ORS 30.285 (1), or which the officer, employee or agent asserts to be based in fact upon an alleged act or omission in the performance of duty, the officer, employee or agent may file a written request for counsel with the governing body of the public body. The governing body shall thereupon engage counsel to appear and defend the officer, employee or agent unless after investigation it is determined that the claim or demand does not arise out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of amounted to malfeasance in office or willful or wanton neglect of duty, in which case the governing body shall reject defense of the claim.

(2) Any officer, employee or agent of a local public body against whom a claim within the scope of this section is made shall cooperate fully with the governing body and counsel in the defense of such claim. If the counsel determines and certifies to the governing body that such officer, employee or agent has not so cooperated or has otherwise acted in prejudice of the defense of the claim, the governing body may at any time reject the defense of the claim.

(3) If the governing body rejects defense of a claim under subsection (1) of this section, no public funds shall be paid in settle-

ment of the claim or in payment of any judgment against such officer, employee or agent. Such action by the governing body shall not prejudice the right of the officer, employee or agent to assert and establish in an appropriate proceedings that the claim or demand in fact arose out of an alleged act or omission occurring in the performance of duty, or that the act or omission complained of did not amount to malfeasance in office or willful or wanton neglect of duty, in which case the officer, employee or agent shall be indemnified by the public body against liability and reasonable costs of defending the claim.

(4) Nothing in subsection (1), (2) or (3) of this section shall be deemed to increase the limits of liability of any public officer, agent or employee under ORS 30.260 to 30.300, or relieve any claimant of the necessity of compliance with ORS 30.275, nor to affect the liability of the local public body itself or of any other public officer, agent or employee on any claim arising out of the same accident or occurrence.

(5) The provisions of this section may be superseded to the extent that the claim against the public officer, employee or agent may be defended by any insurer, or may be subject under ORS 30.282 to agreement with the Oregon Department of Administrative Services, in which case the provisions of the policy of insurance or other agreement are applicable. [1975 c.609 §20; 1985 c.565 §3; 1989 c.1004 §1; 2009 c.67 §12]

30.290 Settlement of claims by local public body. The governing body of any local public body may, subject to the provisions of any contract of liability insurance existing, compromise, adjust and settle tort claims against the public body or its officers, employees or agents acting within the scope of their employment for damages under ORS 30.260 to 30.300 and may, subject to procedural requirements imposed by law or other charter, appropriate money for the payment of amounts agreed upon. [1967 c.627 §8; 1975 c.609 §17; 1989 c.655 §1]

30.295 Payment of judgment or settlement; remedies for nonpayment; tax levy for payment; installment payments. (1) When a judgment is entered against or a settlement is made by a public body for a claim within the scope of ORS 30.260 to 30.300, including claims against officers, employees or agents required to be indemnified under ORS 30.285, payment shall be made and the same remedies shall apply in case of nonpayment as in the case of other judgments or settlements against the public body except as otherwise provided in this section.

(2) If the public body is authorized to levy taxes that could be used to satisfy a judgment or settlement within the scope of ORS 30.260 to 30.300, and it has, by resolution, declared that the following conditions exist, interest shall accrue on the judgment or settlement, but the same shall not be due and payable until after the canvass and certification of an election upon a special tax levy for purposes of satisfying the judgment or settlement:

(a) The amount of the judgment or settlement would exceed amounts budgeted for contingencies, tort claims and projected surplus in the current budget;

(b) The amount of the judgment or settlement would exceed 10 percent of the total of the next fiscal year's projected revenues that are not restricted as to use, including the maximum amount of general property tax that could be levied without election but excluding any levy for debt service;

(c) Payment of the judgment or settlement within less than a certain number of years would seriously impair the ability of the public body to carry out its responsibilities as a unit of government; and

(d) The public body has passed an appropriate ordinance or resolution calling a special election to submit to its electors a special levy in an amount sufficient to satisfy the judgment or settlement.

(3) A certified copy of the resolution provided for in subsection (2) of this section shall be filed with the clerk of the court in which an order permitting installment payments could be entered.

(4) If the public body is not authorized to levy taxes as provided in subsection (2) of this section, and it has, by resolution, declared that the applicable conditions specified in subsection (2)(a) to (c) of this section exist, it may petition for an order permitting installment payments as provided in subsection (6) of this section.

(5)(a) The provisions of subsections (2) and (4) of this section do not apply to the State of Oregon.

(b) Notwithstanding paragraph (a) of this subsection, if the conditions specified in subsection (4) of this section exist, the Secretary of State may, under Seal of the State of Oregon, attest thereto in lieu of a resolution, and the State of Oregon may thereafter petition for an order permitting installment payments as provided in subsection (6) of this section.

(6) If the procedure specified in subsections (2) to (5) of this section has been followed, and, with respect to public bodies subject to subsection (2) of this section, the tax levy failed, the public body may petition for an order permitting installment pay-

ments. The petition shall be filed in the court in which judgment was entered or, if no judgment has been entered, it shall be filed in the circuit court of the judicial district in which the public body has its legal situs. Petitions by the State of Oregon when no judgment has been entered shall be filed in Marion County Circuit Court.

(7) The court in which a petition is filed shall order that the judgment or settlement be paid in quarterly, semiannual or annual installments over a period of time not to exceed 10 years. The court shall determine the term of years based upon the ability of the public body to effectively carry out its governmental responsibilities, and shall not allow a longer term than appears reasonably necessary to meet that need. The order permitting installment payments shall provide for annual interest at the judgment rate. [1967 c.627 §9; 1977 c.823 §4; 2005 c.22 §20]

30.297 Liability of certain state agencies for damages caused by foster child or youth offender; conditions; exceptions. (1) Notwithstanding ORS 125.235, the Department of Human Services is liable for damages resulting from the intentional torts of a foster child who is residing in:

(a) A foster home that has been certified by the department under the provisions of ORS 418.625 to 418.645, even though the child is temporarily absent from that home;

(b) An approved home that is receiving payment from the department under the provisions of ORS 418.027 or under the provisions of ORS 420.810 and 420.815, even though the child is temporarily absent from that home; or

(c) A developmental disability child foster home that has been certified by the department under the provisions of ORS 443.830 and 443.835, even though the foster child is temporarily absent from that home.

(2) Notwithstanding ORS 125.235, the Oregon Youth Authority is liable for damages resulting from the intentional torts of a youth offender who is residing in a youth offender foster home that has been certified by the authority under the provisions of ORS 420.888 to 420.892, even though the youth offender is temporarily absent from that home.

(3) Except as otherwise provided in this section, the liability of the department and the authority under this section is subject to the same requirements and limitations provided in ORS 30.260 to 30.300, and a claim under this section shall be treated as a claim for damages within the scope of ORS 30.260 to 30.300 for the purposes of ORS 278.120.

(4) Notwithstanding subsections (1) and (2) of this section:

(a) The department and the authority are not liable for any damages arising out of the operation of a motor vehicle by a foster child or youth offender; and

(b) The department and the authority are only liable for theft by a foster child or youth offender upon a showing by clear and convincing evidence that the foster child or youth offender committed the theft.

(5) For the purposes of this section:

(a) "Authority" means the Oregon Youth Authority.

(b) "Department" means the Department of Human Services.

(c) "Foster child" means:

(A) A minor child under the custody or guardianship of the department by reason of appointment pursuant to ORS chapter 125, 419A, 419B or 419C;

(B) A minor child under the physical custody of the department pursuant to a voluntary agreement with the parent under ORS 418.015 (1);

(C) A minor child placed in a certified foster home, pending hearing, by any person authorized by the department to make that placement;

(D) A person under 21 years of age who has been placed in an approved home that is receiving payment from the department under the provisions of ORS 418.027 or under the provisions of ORS 420.810 and 420.815; or

(E) A child residing in a developmental disability child foster home certified under ORS 443.830 and 443.835.

(d) "Youth offender" has the meaning given in ORS 419A.004. [1991 c.756 §2; 1993 c.33 §370; 1995 c.664 §76; 1997 c.130 §1; 1999 c.316 §6; 2001 c.900 §10; 2003 c.232 §1; 2005 c.374 §4]

Note: 30.297 and 30.298 were added to and made a part of 30.260 to 30.300 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

30.298 Liability of certain state agencies to foster parents for injury or damage caused by foster child or youth offender; conditions; limitations. (1) Except as otherwise provided in this section, the Department of Human Services is liable, without regard to fault, for injury to the person of foster parents or damage to the property of foster parents caused by a foster child if the foster child is residing in:

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

(b) An approved home that is maintained by the foster parents and that is receiving payment from the department under the pro-

visions of ORS 418.027 or under the provisions of ORS 420.810 and 420.815; or

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

(2) Except as otherwise provided in this section, the Oregon Youth Authority is liable, without regard to fault, for injury to the person of foster parents or damage to the property of foster parents caused by a youth offender if the youth offender resides in a youth offender foster home that is maintained by the foster parents and that has been certified by the authority under the provisions of ORS 420.888 to 420.892.

(3) Except as otherwise provided in this section, the liability of the department and of the authority under this section is subject to the same requirements and limitations provided in ORS 30.260 to 30.300, and a claim under this section shall be treated as a claim for damages within the scope of ORS 30.260 to 30.300 for the purposes of ORS 278.120.

(4) Notwithstanding ORS 30.260 to 30.300:

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

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

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

(d) No claim shall be allowed under this section unless written notice of the claim is delivered to the Oregon Department of Administrative Services within 90 days after the alleged loss or injury.

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

(a) Damage to or destruction of currency, securities or any other intangible property;

(b) The unexplained disappearance of any property; or

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

(6) In no event does the liability of the department or the authority under this section for damage to property exceed the difference between the fair market value of the property immediately before its damage or destruction and its fair market value immediately thereafter. The department and the authority are not liable for the costs of any betterments to the property that may be required by code, statute or other law as a condition of repair, replacement or reconstruction.

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

(8) For the purposes of this section:

(a) "Authority" means the Oregon Youth Authority.

(b) "Department" means the Department of Human Services.

(c) "Economic damages" and "noneconomic damages" have those meanings given in ORS 31.710.

(d) "Foster child" has that meaning given in ORS 30.297.

(e) "Youth offender" has the meaning given in ORS 419A.004. [1991 c.756 §3; 1997 c.130 §2; 1999 c.316 §11; 2001 c.900 §11; 2003 c.232 §2; 2005 c.374 §5]

Note: See note under 30.297.

30.300 ORS 30.260 to 30.300 exclusive. ORS 30.260 to 30.300 are exclusive and supersede all home rule charter provisions and conflicting laws and ordinances on the same subject. [1967 c.627 §11]

(Certain Retired Physicians)

30.302 Certain retired physicians to be considered agents of public bodies. (1) As used in this section, "retired physician" means any person:

(a) Who holds a degree of Doctor of Medicine or Doctor of Osteopathy or has met the minimum educational requirements for licensure to practice naturopathic medicine;

(b) Who has been licensed and is currently retired in accordance with the provisions of ORS chapter 677 or 685;

(c) Who is registered with the Oregon Medical Board as a retired emeritus physician or who complies with the requirements of the Oregon Board of Naturopathic Medicine as a retired naturopath;

(d) Who registers with the county health officer in the county in which the physician or naturopath practices; and

(e) Who provides medical care as a volunteer without compensation solely through referrals from the county health officer specified in paragraph (d) of this subsection.

(2) Any retired physician who treats patients pursuant to this section shall be considered to be an agent of a public body for the purposes of ORS 30.260 to 30.300. [1991 c.952 §1; 2009 c.43 §2]

ACTIONS AND SUITS BY AND AGAINST GOVERNMENTAL UNITS AND OFFICIALS

30.310 Actions and suits by governmental units. A suit or action may be maintained by the State of Oregon or any county, incorporated city, school district or other public corporation of like character in this state, in its corporate name, upon a cause of suit or action accruing to it in its corporate character, and not otherwise, in the following cases:

(1) Upon a contract made with the public corporation.

(2) Upon a liability prescribed by law in favor of the public corporation.

(3) To recover a penalty or forfeiture given to the public corporation.

(4) To recover damages for injury to the corporate rights or property of the public corporation.

30.312 Actions by governmental units under federal antitrust laws. The State of Oregon, any city, county, school district, municipal or public corporation, political subdivision of the State of Oregon or any instrumentality thereof, or any agency created by two or more political subdivisions to provide themselves governmental services may bring an action in behalf of itself and others similarly situated for damages under section 4 of the Act of October 15, 1914, ch. 323, as amended prior to January 1, 1965 (38 Stat. 731, 15 U.S.C. 15). [1965 c.465 §1; 2005 c.22 §21]

30.315 Proceedings by cities and counties to enforce ordinances and resolutions. (1) An incorporated city or any county may maintain civil proceedings in courts of this state against any person or property to enforce requirements or prohibitions of its ordinances or resolutions when it seeks:

(a) To collect a fee or charge;

(b) To enforce a forfeiture;

(c) To require or enjoin the performance of an act affecting real property;

(d) To enjoin continuance of a violation that has existed for 10 days or more; or

(e) To enjoin further commission of a violation that otherwise may result in additional violations of the same or related penal provisions affecting the public morals, health or safety.

(2) The remedies provided by this section are supplementary and in addition to those described in ORS 30.310.

(3) Nothing in this section shall affect the limitations imposed on cities and counties by ORS 131A.010 (3) and (4). [1961 c.313 §2; 1963 c.338 §1; 1985 c.626 §1; 1989 c.882 §§1,2; 2009 c.78 §53]

30.320 Contract and other actions and suits against governmental units. A suit or action may be maintained against any county and against the State of Oregon by and through and in the name of the appropriate state agency upon a contract made by the county in its corporate character, or made by such agency and within the scope of its authority; provided, however, that no suit or action may be maintained against any county or the State of Oregon upon a contract relating to the care and maintenance of an inmate or patient of any county or state institution. An action or suit may be maintained against any other public corporation mentioned in ORS 30.310 for an injury to the rights of the plaintiff arising from some act or omission of such other public corporation within the scope of its authority. An action may be maintained against any governmental unit mentioned in ORS 30.310 for liability in tort only as provided in ORS 30.260 to 30.300. An action or suit to quiet title may be maintained against any governmental unit mentioned in ORS 30.310. [Amended by 1959 c.614 §1; 1969 c.429 §4; 1993 c.289 §1]

30.330 Contracts of Department of Transportation providing for arbitration. The provisions of ORS 30.310 and 30.320 do not apply to contracts made by the Department of Transportation that provide for arbitration under the provisions of ORS 36.600 to 36.740. [Amended by 2003 c.598 §32]

30.340 Title of proceedings by or against county; control of proceedings by county court. All actions, suits or proceedings by or against a county shall be in the name of the county, but the county is represented by the county court, which has the power to control the proceeding as if it were plaintiff or defendant, as the case may be.

30.350 [Repealed by 1979 c.284 §199]

30.360 Governmental unit as defendant in actions involving liens on realty. (1) In any suit, action or proceeding brought in any circuit court of this state, affecting the title to real property on which a governmental unit has, or claims to have, a lien, other than a suit, action or proceeding to foreclose tax liens or special improvement liens, the governmental unit may be made a party defendant, and its rights or interests adjudicated. When property has been or is acquired in the name of a governmental unit upon which there are valid, unpaid special improvement liens at the time of the acquisition, the governmental unit may be made a party defendant in a suit to foreclose the lien.

(2) In any suit, action or proceeding brought in any circuit court of this state involving the title to real property where a

governmental unit has record title to contested real property, the governmental unit may be made a party defendant, and its rights or interests adjudicated.

(3) In no event shall any money judgment be rendered or recovery made against a governmental unit in any suit, action or proceeding brought under the provisions of this section.

(4) For the purposes of this section, "governmental unit" means the State of Oregon or any county, incorporated city, school district or other public corporation of like character in this state. [Amended by 1959 c.586 §1; 1993 c.289 §2]

30.370 Service of summons on Attorney General; content. In any suit, action or proceeding commenced under the provisions of ORS 30.360 to which the state is made a party, service of summons upon the state shall be made upon the Attorney General. In addition to other required content, any summons served pursuant to this section shall state the state agency involved in the suit, action or proceeding. [Amended by 1959 c.586 §2; 1979 c.284 §65]

30.380 Action by assignee of claim for money illegally charged or exacted. No assignee of any claim against any county, city or municipal corporation of this state or any county, city or municipal officer in this state, for money claimed to have been illegally charged or exacted by such county, city or municipal corporation or such officer, except money collected as taxes or license, or money due on contract, shall have the right to institute or maintain any action or suit for the recovery thereof in any court in this state.

30.390 Satisfaction of judgment against public corporation. If judgment is given for the recovery of money or damages against a public corporation mentioned in ORS 30.310, no execution shall issue thereon for the collection of such money or damages, but the judgment shall be satisfied as follows:

(1) The party in whose favor the judgment is given may, at any time thereafter, when an execution might issue on a like judgment against a private person, present a certified copy of the judgment document, to the officer of the public corporation who is authorized to draw orders on the treasurer thereof.

(2) On the presentation of the copy, the officer shall draw an order on the treasurer for the amount of the judgment, in favor of the party for whom the judgment was given. Thereafter, the order shall be presented for payment, and paid, with like effect and in like manner as other orders upon the treasurer of the public corporation.

(3) The certified copy provided for in subsection (1) of this section shall not be furnished by the clerk, unless at the time an execution might issue on the judgment if the same was against a private person, nor until satisfaction of the judgment in respect to such money or damages is acknowledged as in ordinary cases. The clerk shall provide with the copy a memorandum of such acknowledgment of satisfaction and the entry thereof. Unless the memorandum is provided, no order upon the treasurer shall issue thereon. [Amended by 2003 c.576 §185]

30.395 Settlement of certain claims against municipal corporations; manner of payment. (1) The governing body of any municipal corporation, as defined in ORS 297.405, may compromise, adjust and settle claims other than tort claims against the municipal corporation, its officers, employees or agents acting within the scope of their employment, and may, subject to procedural requirements imposed by law or charter, appropriate money for the payment of amounts agreed upon.

(2) When a judgment is entered or a settlement is made pursuant to subsection (1) of this section, payment therefor may be made in the same manner as payment for tort claims under ORS 30.295. [1979 c.630 §2; 1987 c.396 §1]

30.400 Actions by and against public officers in official capacity. An action may be maintained by or against any public officer in this state in an official character, when, as to such cause of action, the officer does not represent any of the public corporations mentioned in ORS 30.310, for any of the causes specified in such section and ORS 30.320. If judgment is given against the officer in such action, it may be enforced against the officer personally, and the amount thereof shall be allowed to the officer in the official accounts of the officer.

30.402 [1991 c.847 §1; renumbered 17.095 in 2003]

INJUNCTIONS BY PUBLIC SERVANT OR PUBLIC SERVANT'S EMPLOYER

30.405 Injunction for criminal conduct related to employment or status of public servant. (1) A public servant or the public servant's employer may petition a circuit court for an order enjoining a person who engages in conduct that:

(a) Is directed at the public servant;

(b) Relates to the public servant's employment or the public servant's status as an elected or appointed public servant; and

(c) Constitutes any of the following crimes:

(A) Obstructing governmental or judicial administration under ORS 162.235.

(B) Assault under ORS 163.160, 163.165, 163.175 or 163.185.

(C) Menacing under ORS 163.190.

(D) Criminal trespass in the first degree under ORS 164.255.

(E) Disorderly conduct under ORS 166.025.

(F) Harassment under ORS 166.065.

(G) Telephonic harassment under ORS 166.090.

(2) The petitioner has the burden of proof by a preponderance of the evidence under subsection (1) of this section. An order issued under this section is valid for one year after entry in the register of the court or until vacated by the court, whichever occurs first.

(3) Contempt proceedings against a person who violates an order issued by a circuit court under subsection (1) of this section shall be as provided in ORS 33.055 or 33.065.

(4) As used in this section, "public servant" has the meaning given that term in ORS 162.005. [2005 c.158 §1]

Note: 30.405 and 30.407 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 30 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

30.407 Request for hearing following issuance of order under ORS 30.405. (1) A person against whom an order is issued under ORS 30.405 may file a request for hearing with the court that issued the order within 30 days after the order is served on the person. A request under this section shall be in writing, shall be signed by the person and shall include the printed name, telephone number and mailing address of the person.

(2) Upon the filing of a request under this section, the clerk of the court shall mail a copy of the request to the petitioner in the matter and shall notify the petitioner and the person filing the request of the date and time set for the hearing. [2005 c.158 §2]

Note: See note under 30.405.

RECOVERY OF FINES AND FORFEITURES

30.410 In whose name action brought. Fines and forfeitures may be recovered by an action at law in the name of the officer or person to whom they are by law given, or in the name of the officer or person who by law is authorized to prosecute for them.

30.420 Venue of action for forfeiture. Whenever, by law, any property is forfeited to the state, or to any officer for its use, the action for the recovery of such property may be commenced in any county where the defendant may be found, or where such property may be.

30.430 Amount of penalty. When an action is commenced for a penalty, which by law is not to exceed a certain amount, the action may be commenced for that amount, and if judgment is given for the plaintiff, it may be for such amount or less, in the discretion of the court, in proportion to the offense.

30.440 Judgment by collusion not a bar. A recovery of a judgment for a penalty or forfeiture by collusion between the plaintiff and defendant, with intent to save the defendant, wholly or partially, from the consequences contemplated by law, in case where the penalty or forfeiture is given wholly or partly to the person who prosecutes, shall not bar the recovery of the same by another person.

30.450 [Amended by 1981 s.s. c.3 §110; 1995 c.658 §27; repealed by 2011 c.597 §118]

30.460 Payment of fines or costs in proceeding to enforce county ordinance or resolution; defendant personally liable. When proceedings are conducted by county hearings officers to enforce requirements or prohibitions of county ordinances or resolutions, if fines or costs are not paid by a defendant within 60 days after payment is ordered, the defendant is personally liable to the county for the amount of the unpaid fines or costs. The county may file and record the order for payment in the County Clerk Lien Record. [1985 c.626 §3; 1999 c.1051 §241]

VOLUNTEERS TRANSPORTING OLDER PERSONS AND PERSONS WITH DISABILITIES

30.475 Legislative policy. In enacting ORS 30.480 and 30.485, the Legislative Assembly of the State of Oregon declares:

(1) That many persons with disabilities and older persons, due to disability or age, cannot obtain medical, educational, recreational or other important services or benefits, or pursue daily life activities outside the home, such as shopping or socializing, without transportation and other necessary assistance;

(2) That public resources are not adequate to provide dependable transportation to persons with disabilities and older persons, and that it is in the best interest of this state to encourage volunteers to provide transportation services to Oregon's people with disabilities and older people;

(3) That the threat or fear of personal liability arising from the provision of transportation services to persons with disabilities and older persons seriously discourages indi-

viduals from providing services on a volunteer basis;

(4) That the policy of this state is to encourage volunteers to provide such transportation services; and

(5) That, therefore, persons who qualify under ORS 30.480 must be protected from the threat of unlimited personal liability arising from the provision of volunteer transportation services, and that ORS 30.475 to 30.485 shall be liberally construed in favor of such persons in order to promote fully the foregoing policies. [1983 c.468 §1; 1989 c.224 §5; 2007 c.70 §9]

30.480 Limitation on liability of volunteers; conditions. (1) When a provider of volunteer transportation services who is qualified under subsection (3) of this section provides the services under the conditions described in subsection (4) of this section to a person with a disability or a person who is 55 years of age or older, the liability of the provider to the person for injury, death or loss arising out of the volunteer transportation services shall be limited as provided in this section. When volunteer transportation services are provided to five or fewer persons at one time, the liability of the provider of the volunteer transportation services shall not exceed the greater of the amount of coverage under the terms of the provider's motor vehicle liability insurance policy, as described in ORS 806.080, or the amounts specified in ORS 806.070 for future responsibility payments for:

(a) Bodily injury to or death of any one person to whom the transportation services are provided, in any one accident.

(b) Bodily injury to or death of two or more persons to whom the transportation services are provided, in any one accident.

(c) Injury to or destruction of the property of one or more persons to whom the transportation services are provided, in any one accident.

(2) Notwithstanding the amount specified in subsection (1)(b) of this section by reference to ORS 806.070, if a qualified provider of transportation services provides the services to more than five persons, but not more than 16, at one time who have disabilities or who are 55 years of age or older, under the conditions described in subsection (4) of this section, the liability under subsection (1)(b) of this section shall not exceed the greater of the amount of coverage under the terms of the provider's motor vehicle liability insurance policy or $300,000. The limitations on liability provided by ORS 30.475, 30.480 and 30.485 do not apply when volunteer transportation services are provided to 17 or more persons at one time who have disabilities or who are 55 years of age or older.

(3) The following persons qualify for the limitation on liability under subsections (1) and (2) of this section:

(a) The person who provides or sponsors transportation services.

(b) The owner of the vehicle in which transportation services are provided.

(c) The person who operates the vehicle in which transportation services are provided.

(4) The limitation on liability under subsections (1) and (2) of this section applies to a person qualified under subsection (3) of this section only under the following conditions:

(a) If the person is an individual, the individual must hold a valid Oregon driver's license.

(b) The person must provide the transportation services on a nonprofit and voluntary basis. However, this paragraph does not prohibit a sponsor of transportation services from reimbursing an operator of a private motor vehicle providing the services for actual expenses incurred by the operator. If an operator is paid, that operator is qualified only if operating as an emergency operator.

(c) The person providing the transportation services must not receive from the persons using the services any substantial benefit in a material or business sense that is a substantial motivating factor for the transportation. A contribution or donation to the provider of the transportation services other than the operator of the motor vehicle or any mere gratuity or social amenity shall not be a substantial benefit under this paragraph.

(d) Except as provided in paragraph (c) of this subsection, the transportation services must be provided without charge to the person using the services.

(5) The amounts received by a person with a disability or a person 55 years of age or older under the personal injury protection provisions of the insurance coverage of a person who qualifies for the limitation on liability under this section shall not reduce the amount that the person may recover under subsection (1) or (2) of this section.

(6) The liability of two or more persons whose liability is limited under this section, on claims arising out of a single accident, shall not exceed in the aggregate the amounts limited by subsection (1) or (2) of this section.

(7) This section does not apply in the case of an accident or injury if the accident or injury was intentional on the part of any

person who provided the transportation services or if the accident or injury was caused by the person's gross negligence or intoxication. For purposes of this subsection, gross negligence is negligence which is materially greater than the mere absence of reasonable care under the circumstances, and which is characterized by conscious indifference to or reckless disregard of the rights of others.

(8) For purposes of this section, a person has a disability if the person has a physical or mental disability that for the person constitutes or results in a functional limitation to one or more of the following activities: Self-care, ambulation, communication, transportation, education, socialization or employment. [1983 c.468 §2; 1985 c.16 §443; 1987 c.915 §7; 1989 c.224 §6; 2007 c.70 §10]

30.485 Apportionment of damages; insurance issues excluded from jury consideration. (1) If the amount awarded by a court to multiple claimants exceeds the total amount limited under ORS 30.480 (1) or (2), the court shall apportion a proper share of that total amount to each claimant to whom ORS 30.480 (1) or (2) applies.

(2) If the amount settled upon by multiple claimants exceeds the total amount limited under ORS 30.480 (1) or (2), any party may apply to any circuit court to apportion a proper share of that total amount to each claimant to whom ORS 30.480 (1) or (2) applies.

(3) The share apportioned under subsection (1) or (2) of this section to each claimant to whom ORS 30.480 (1) or (2) applies shall be in the proportion that the ratio of the award or settlement made to the claimant bears to the aggregate awards and settlements for all claims arising out of the occurrence that are made by all claimants to whom ORS 30.480 (1) or (2) applies.

(4) Nothing in this section or ORS 30.480 authorizes the issues of insurance coverage or the amount of insurance coverage to be presented to a jury. [1983 c.468 §3]

VOLUNTEERS PROVIDING ASSISTANCE OR ADVICE IN RESPONSE TO DISCHARGE OF HAZARDOUS MATERIAL OR RELATING TO COMPLIANCE WITH DISPOSAL LAWS

30.490 Definitions for ORS 30.490 to 30.497. As used in ORS 30.490 to 30.497:

(1) "Discharge" means any leakage, seepage or any other release of hazardous material.

(2) "Hazardous material" means:

(a) Hazardous waste as defined in ORS 466.005;

(b) Hazardous substances as defined in ORS 453.005;

(c) Radioactive waste as defined in ORS 469.300;

(d) Uranium mine overburden or uranium mill tailings, mill wastes or mill by-product materials;

(e) Radioactive substance as defined in ORS 453.005;

(f) Any substance designated by the United States Department of Transportation as hazardous pursuant to the Hazardous Materials Transportation Act, 49 U.S.C. 5101 et seq., P.L. 93-633, as amended; and

(g) Any substance that the Environmental Protection Agency designates as hazardous pursuant to:

(A) The federal Toxic Substances Control Act, 15 U.S.C. 2601 to 2671; or

(B) The federal Resource Conservation and Recovery Act, 42 U.S.C. 6901 to 6992, P.L. 94-580, as amended.

(3) "Person" means an individual, corporation, association, firm, partnership, joint stock company or state or local government agency. [1985 c.376 §1; 1991 c.480 §9; 2005 c.22 §22]

30.492 Limitation on liability of volunteer providing assistance or advice related to mitigation or cleanup of discharge of hazardous material. (1) Except as provided in ORS 30.495 and 30.497, no person may maintain an action for damages against a person for voluntarily providing assistance or advice directly related to:

(a) Mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous material; or

(b) Preventing, cleaning up or disposing of or in attempting to prevent, clean up or dispose of any discharge of hazardous material.

(2) Except as provided in ORS 30.495 and 30.497, no state or local agency may assess a civil or criminal penalty against a person for voluntarily providing assistance or advice directly related to:

(a) Mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous material; or

(b) Preventing, cleaning up or disposing of or in attempting to prevent, clean up or dispose of any discharge of hazardous material. [1985 c.376 §2]

30.495 Exceptions to limitation. The immunity provided in ORS 30.492 shall not apply to any person:

(1) Whose act or omission caused in whole or in part the actual or threatened discharge and who would otherwise be liable for the damages; or

(2) Who receives compensation other than reimbursement for expenses for the person's service in rendering such assistance or advice. [1985 c.376 §3]

30.497 When limitation on liability not applicable. Nothing in ORS 30.492 shall be construed to limit or otherwise affect the liability of any person for damages resulting from the person's gross negligence or from the person's reckless, wanton or intentional misconduct. [1985 c.376 §4]

30.500 Definitions for ORS 30.500 and 30.505. As used in this section and ORS 30.505:

(1) "Generator" has the meaning given that term in ORS 466.005.

(2) "Person" means an individual, corporation, association, firm, partnership, joint stock company or state or local government agency. [1987 c.332 §1]

30.505 Limitation on liability of volunteer providing assistance relating to compliance with hazardous waste disposal laws; exceptions. (1) Except as provided in subsection (2) of this section, no person may maintain an action for damages against a person who voluntarily provides assistance, training or advice to a generator directly related to procedures or actions the generator must take to comply with the requirements of state or federal hazardous waste disposal laws.

(2) The immunity provided in subsection (1) of this section shall not apply to:

(a) Any person whose act or omission caused in whole or in part the occurrence resulting in the damages for which the action is brought and who would otherwise be liable for the damages.

(b) Any person who receives compensation other than reimbursement for expenses for the person's service in providing such assistance, training or advice.

(c) The liability of any person for damages resulting from the person's gross negligence or from the person's reckless, wanton or intentional misconduct.

(d) Any activity for which a person is otherwise strictly liable without regard to fault. [1987 c.332 §2]

ACTIONS FOR USURPATION OF OFFICE OR FRANCHISE; TO ANNUL CORPORATE EXISTENCE; TO ANNUL LETTERS PATENT

30.510 Action for usurpation of office or franchise, forfeiture of office or failure to incorporate. An action at law may be maintained in the name of the state, upon the information of the district attorney, or upon the relation of a private party against the person offending, in the following cases:

(1) When any person usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise within this state, or any office in a corporation either public or private, created or formed by or under the authority of this state; or,

(2) When any public officer, civil or military, does or suffers an act which, by the provisions of law, makes a forfeiture of the office of the public officer; or,

(3) When any association or number of persons acts within this state, as a corporation, without being duly incorporated.

30.520 Joinder of defendants. Several persons may be joined as defendants in an action for the causes specified in ORS 30.510 (1), and in such action their respective rights to such office or franchise may be determined.

30.530 Determining right of person claiming an office or franchise. Whenever an action is brought against a person for any of the causes specified in ORS 30.510 (1), the district attorney, in addition to the statement of the cause of action, may separately set forth in the complaint the name of the person rightfully entitled to the office or franchise, with a statement of the facts constituting the right of the person thereto. In such case, judgment may be given upon the right of the defendant, and also upon the right of the person so alleged to be entitled, or only upon the right of the defendant, as justice may require.

30.540 Rights of person adjudged entitled to office or franchise. If judgment is given upon the right of and in favor of the person alleged in the complaint to be entitled to the office or franchise, the person shall be entitled to the possession and enjoyment of the franchise, or to take upon the person the execution of the office, after qualifying the person therefor as required by law, and to demand and receive the possession of all the books, papers and property belonging thereto.

30.550 Action for damages. If judgment is given upon the right of and in favor of the person alleged in the complaint to be entitled to the office or franchise, the person may

afterwards maintain an action to recover the damages which the person has sustained by reason of the premises. [Amended by 1973 c.836 §320; 1981 c.898 §35]

30.560 Judgment against usurper; imposition of fine. When a defendant, whether a natural person or a corporation, against whom an action has been commenced for any of the causes specified in ORS 30.510 (1), is determined to be guilty of usurping, or intruding into, or unlawfully holding or exercising any office or franchise, judgment shall be given that such defendant be excluded therefrom. The court may also impose a fine upon the defendant not exceeding $2,000.

30.570 Action to annul corporate existence on direction of Governor. An action may be maintained in the name of the state, whenever the Governor shall so direct, against a corporation either public or private, for the purpose of avoiding the Act of incorporation, or an Act renewing or modifying its corporate existence, on the ground that such Act was procured upon some fraudulent suggestion or concealment of a material fact by the persons incorporated, or some of them, or with their knowledge and consent; or for annulling the existence of a corporation formed under any general law of this state, on the ground that such incorporation, or any renewal or modification thereof, was procured in like manner.

30.580 Action to annul corporate existence on leave of court. An action may be maintained in the name of the state against a corporation, other than a public one, on leave granted by the court or judge thereof where the action is triable, for the purpose of avoiding the charter or annulling the existence of such corporation, whenever it shall:

(1) Offend against any of the provisions of an Act creating, renewing, or modifying such corporation, or the provisions of any general law under which it became incorporated;

(2) Violate the provisions of any law, by which such corporation forfeits its charter, by abuse of its powers;

(3) Whenever it has forfeited its privileges or franchises, by failure to exercise its powers;

(4) Whenever it has done or omitted any act, which amounts to a surrender of its corporate rights, privileges and franchises; or,

(5) Whenever it exercises a franchise or privilege not conferred upon it by law.

30.590 Judgment against corporation. If it is determined that a corporation, against which an action has been commenced pursuant to ORS 30.570 or 30.580, has forfeited its corporate rights, privileges and franchises, judgment shall be given that the corporation be excluded therefrom, and that the corporation be dissolved.

30.600 Action to annul letters patent. An action may be maintained in the name of the state for the purpose of vacating or annulling letters patent, issued by the state, against the person to whom the letters were issued, or those claiming under the person, as to the subject matter thereof, in the following cases:

(1) When the letters patent were issued by means of some fraudulent suggestion or concealment of a material fact by the person to whom the letters were issued, or with the knowledge and consent of the person;

(2) When the letters patent were issued through mistake or in ignorance of a material fact; or

(3) When the patentee, or those claiming under the patentee, have done or omitted an act, in violation of the terms and conditions on which the letters patent were issued, or have by any other means forfeited the interest acquired under the letters. [Amended by 2001 c.104 §8]

30.610 Prosecutor; verification of pleadings; affidavit for leave of court; relator as coplaintiff. The actions provided for in ORS 30.510 to 30.640 shall be commenced and prosecuted by the district attorney of the district where the same are triable. When the action is upon the relation of a private party, as allowed in ORS 30.510, the pleadings on behalf of the state shall be signed by the relator as if the relator were the plaintiff, or otherwise as provided in ORCP 17; in all other cases the pleadings shall be signed by the district attorney in like manner or otherwise as provided in ORCP 17. When an action can only be commenced by leave, as provided in ORS 30.580, the leave shall be granted when it appears by affidavit that the acts or omissions specified in that section have been done or suffered by the corporation. When an action is commenced on the information of a private person, as allowed in ORS 30.510, having an interest in the question, such person, for all the purposes of the action, and as to the effect of any judgment that may be given therein, shall be deemed a coplaintiff with the state. [Amended by 1979 c.284 §66]

30.620 Duty of district attorney. When directed by the Governor, as prescribed in ORS 30.570, it shall be the duty of the district attorney to commence the action therein provided for accordingly. In all other actions provided for in ORS 30.510 to 30.640 it shall be the duty of the proper district at-

torney to commence such action, upon leave given where leave is required, in every case of public interest, whenever the district attorney has reason to believe that a cause of action exists and can be proven, and also for like reasons in every case of private interest only in which satisfactory security is given to the state to indemnify it against the costs and expenses that may be incurred thereby.

30.630 Filing copy of judgment with Secretary of State. If judgment is given against a corporation, the effect of which is that the corporation ceases to exist, or whereby any letters patent are determined to be vacated or annulled, it shall be the duty of the district attorney to cause a copy of the judgment to be filed with the Secretary of State. [Amended by 1991 c.111 §3]

30.640 Enforcement of judgment. A judgment given in any action provided for in ORS 30.510 to 30.640, in respect to costs and disbursements, may be enforced by execution as a judgment which requires the payment of money. [Amended by 1981 c.898 §36]

ACTIONS AGAINST PUBLIC BODY BY INMATES

30.642 Definitions for ORS 30.642 to 30.650. As used in ORS 30.642 to 30.650:

(1) "Action against a public body" means a civil action, including an action brought in a small claims department, an appeal or a petition for review, that names as a defendant a public body as defined in ORS 30.260 or an officer, employee or agent of a public body. "Action against a public body" does not mean petitions for writs of habeas corpus, petitions for writs of mandamus and petitions for post-conviction relief under ORS 138.510 to 138.680.

(2) "Correctional facility" means a Department of Corrections institution or a jail.

(3) "Inmate" means a person incarcerated or detained in a correctional facility who is accused of, convicted of or sentenced for a violation of criminal law or for the violation of the terms and conditions of pretrial release, probation, parole, post-prison supervision or a diversion program. [1999 c.657 §1; 2011 c.262 §3]

30.643 Waiver or deferral of fees and costs in action against public body by inmate. (1) If an inmate seeks to file an action against a public body, the fees and court costs of the inmate may be waived or deferred only in the manner provided by this section.

(2) Any inmate seeking waiver or deferral of fees or court costs must submit with the application for waiver or deferral a certified copy of the inmate's trust account statement for the six-month period immediately preceding the filing of the complaint, petition, notice of appeal or petition for review. The statement must be certified as correct by an official of each correctional facility in which the inmate was confined within the six-month period or by an employee of the Department of Corrections charged with the responsibility of overseeing inmate trust accounts.

(3) Upon the filing of a statement under subsection (2) of this section, the court shall review the information in the statement relating to deposits in the inmate's trust account and any other resources available to the inmate. The court may only waive the inmate's fees and court costs if the court determines that the inmate has no funds and will not have funds.

(4) If the court makes a determination that an inmate has or will have funds to pay fees and court costs, the court shall require full payment of the filing fees and court costs, or, if funds are not immediately available in the inmate's trust account, shall assess and collect filing fees and court costs as funds become available in the inmate's trust account.

(5) On its own motion or on the motion of the public body, the court may review the pleadings of the inmate in an action against a public body at the time a request for waiver or deferral of filing fees or court costs is made. If the court finds that the pleadings fail to state a claim for which relief may be granted, the court may decline to waive or defer filing fees or court costs. The court shall enter a denial of waiver or deferral of fees and costs under this subsection as a limited judgment. Notwithstanding the time established by statute for the commencement of an action, if a limited judgment is entered under this subsection within 30 days of the expiration of the time allowed for commencing the action, the inmate may commence the action not later than 45 days after the judgment is entered. Only one extension of the time allowed for commencing an action may be granted by the court under this section.

(6) Nothing in this section shall be construed as preventing an inmate from bringing an action against a public body because the inmate has no assets or means by which to pay the initial partial filing fee as provided under this section. [1999 c.657 §2; 2005 c.530 §1; 2007 c.493 §11]

30.645 Waiver or deferral of fees after three dismissals of action. (1) Except as provided in subsection (2) of this section, the court may not waive or defer an inmate's fees or court costs under ORS 30.643 if the inmate has, on three or more prior occasions while incarcerated or detained in any cor-

rectional facility, filed an action against a public body in a court of this state that was dismissed on the grounds that the action:

(a) Was frivolous or malicious;

(b) Failed to state a claim upon which relief could be granted; or

(c) Sought monetary relief from a defendant who is immune from a claim for monetary relief.

(2) The court may waive or defer fees or court costs of an inmate who would not otherwise be eligible for waiver or deferral under subsection (1) of this section if the inmate establishes in the application for waiver or deferral that the inmate is in imminent danger of serious physical injury and the action against a public body is needed to seek relief from that danger. [1999 c.657 §3; 2007 c.493 §12]

30.646 Payment of costs under judgment against inmate. (1) If an inmate files an action against a public body and a judgment is entered that requires the inmate to pay costs to the public body, the inmate must pay the full amount of the costs ordered.

(2) Payment for costs under this section shall be made by deductions from the income credited to the inmate's trust account. [1999 c.657 §4]

30.647 Dismissal of inmate action during proceedings. (1) If fees or court costs of an inmate have been waived or deferred under ORS 30.643, a court shall dismiss the case if at any time the court determines that the inmate was in fact able to pay fees and court costs at the time the application for waiver or deferral was made under ORS 21.680 to 21.698.

(2) If an inmate's fees or court costs have been waived or deferred under ORS 30.643, a court shall dismiss the case if at any time the court determines that each claim in the action, petition or appeal:

(a) Is frivolous or malicious;

(b) Fails to state a claim upon which relief may be granted, and the court denies leave to amend; or

(c) Seeks monetary relief against a defendant who is immune from a claim for monetary relief.

(3) Upon appeal of any dismissal under this section, the Court of Appeals on its own motion, or on the motion of the respondent, may summarily affirm the judgment of the trial court, with or without submission of briefs and without oral argument, if the Court of Appeals determines that the appeal does not present a substantial question of law. Notwithstanding ORS 2.570, the Chief Judge of the Court of Appeals may deny a respondent's motion for summary affirmance under this subsection or may grant the motion if the petitioner does not oppose the motion. A dismissal of an appeal under this subsection constitutes a decision on the merits of the case. [1999 c.657 §5; 2007 c.493 §13]

30.648 Small claims actions by inmates against public bodies. (1)(a) An inmate who brings an action against a public body in a small claims department must serve the notice and claim and all subsequent filings on the public body. If the public body is the Department of Corrections or another state agency, the inmate must also serve the notice and claim and all subsequent filings on the Attorney General.

(b) Notice and claim served under paragraph (a) of this subsection must be served in the manner provided in ORS 46.445 except that the statement required under ORS 46.445 (4) must read "30 DAYS" instead of "14 DAYS."

(2) The public body or Attorney General served under subsection (1) of this section must take action as required under ORS 46.455 except that the public body or Attorney General must admit or deny the claim within 30 days after the date of service.

(3) Notwithstanding ORS 46.405, in an action against a public body brought under this section, the court shall transfer the action to the regular department of the circuit court upon request of the public body or, if the public body is the Department of Corrections or another state agency, or an officer, employee or agent of the Department of Corrections or the state agency, upon request of the public body or the Attorney General.

(4) Notwithstanding ORS 46.415, in an action against a public body brought under this section, if the public body is the Department of Corrections or another state agency, or an officer, employee or agent of the Department of Corrections or the state agency, an attorney or paralegal employed by the Department of Justice may appear and represent the public body.

(5)(a) Notwithstanding ORS 46.475, in an action against a public body brought under this section, notice of intent to apply for an order of default, in the form prescribed by Uniform Trial Court Rule 2.010, must be filed and served on the public body against which an order of default is sought at least 10 days before a court may enter an order of default. If the public body is the Department of Corrections or another state agency, or an officer, employee or agent of the Department of Corrections or the state agency, notice must also be served on the Attorney General.

(b) The court may not enter a default judgment in favor of the inmate unless the inmate submits to the court proof of service

by affidavit of the notice and claim required under subsection (1) of this section and the notice of intent to apply for an order of default required under paragraph (a) of this subsection. [2011 c.262 §2]

30.650 Award of noneconomic damages in inmate action. Noneconomic damages, as defined in ORS 31.710, may not be awarded to an inmate in an action against a public body unless the inmate has established that the inmate suffered economic damages, as defined in ORS 31.710. [1999 c.657 §6]

ACTIONS BASED ON COMPUTER DATE FAILURE

30.655 Definitions for ORS 30.655 to 30.665. As used in ORS 30.655 to 30.665:

(1) "Computer" means an electronic, magnetic, optical electrochemical or other high-speed data processing device that performs logical, arithmetic or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage or communication facilities that are connected or related to the device. "Computer" includes a component of a computer, such as a microprocessor, memory chip, storage device or input or output device.

(2) "Computer date failure" means:

(a) The inability of a computer product or computer service to properly handle or process dates of calendar year 1999 or subsequent years; or

(b) An incompatibility between:

(A) A computer product or computer service; and

(B) Any other product, service or electronic data in any form, with respect to the handling or processing of dates of calendar year 1999 or subsequent years.

(3) "Computer network" means the interconnection of two or more computers or computer systems by satellite, microwave, line or other communication medium with the capability to transmit information among the computers.

(4) "Computer product" includes a computer, computer network, computer program, computer software, computer system or any component of any of those items.

(5) "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer causes the computer to process data or perform specific functions.

(6) "Computer service" means the product of the use of a computer, the information stored in the computer or the personnel supporting the computer, including time, data processing and storage functions.

(7) "Computer software" means a set of computer programs, procedures and associated documentation related to the operation of a computer, computer system or computer network.

(8) "Computer system" means any combination of a computer or computer network with the documentation, computer software or physical facilities supporting the computer or computer network. [1999 c.810 §1]

30.656 Action for computer date failure. (1) A person may not bring an action for damages caused by a computer date failure unless the complaint in the action alleges with specificity a material defect in a computer product that caused the computer date failure and that caused the damages that are alleged to have resulted from the computer date failure.

(2) Notwithstanding any other provision of law, an action for damages caused by a computer date failure may not be brought by any person later than two years from the date that the person discovered, or in the exercise of reasonable diligence should have discovered, that the computer product or computer service had experienced a computer date failure.

(3) Except as provided in subsection (4) of this section, a person must bring an action against a manufacturer or seller of a computer product or computer service for damages caused by a computer date failure no later than eight years after the product or the service was first purchased for use or consumption in this state. This subsection does not apply to a manufacturer or seller that expressly warranted that the product would not experience a computer date failure.

(4) If a manufacturer or seller of an item that contains a computer product expressly warranted to a person that the item had a useful safe life longer than eight years, the person must bring an action against the manufacturer or seller for damages caused by a computer date failure before the end of the time period warranted by the manufacturer or seller as the useful safe life of the item. [1999 c.810 §2]

30.658 Opportunity to cure. (1) Before a claimant may commence an action against a person for damages caused by a computer date failure, the claimant must notify the person of the failure, describe the failure and provide the person a reasonable opportunity to cure the failure or to make restitution.

(2) A person given notice under this section must be provided with at least three

months to cure the failure or to make restitution.

(3) If a claimant commences an action against a defendant for harm caused by a computer date failure without providing the defendant an opportunity to cure the failure or to make restitution, the court shall dismiss the action. [1999 c.810 §3]

30.660 Affirmative defense; notice and repair. (1) It is an affirmative defense to civil liability for damages caused by a computer date failure that:

(a) The defendant notified buyers of the computer product or computer service that the product or service may experience a computer date failure;

(b) The defendant offered to repair, replace or upgrade the product or service, or the component that would experience the computer date failure, at no cost to the buyer other than reasonable and customary charges for shipping, handling and installing the items needed to repair, replace or upgrade the product, service or component; and

(c) The tendered repair, replacement or upgrade would have avoided the harm caused by the computer date failure.

(2) The notice issued under subsection (1) of this section must:

(a) Identify the product, service or component supplied by the defendant that could experience a computer date failure; and

(b) Explain how the buyer may repair, replace or upgrade the product, service or component if repair, replacement or upgrade is available.

(3) Notice under subsection (1) of this section must be sent or published at least three months before the date of the computer date failure and not more than three years before that date.

(4) A defendant meets the requirement of notice under subsection (1) of this section if the defendant:

(a) Timely delivers the notice to the claimant;

(b) Timely sends the notice to all registered buyers by mail, courier, electronic mail or fax to the last known address or fax number provided by the buyer; or

(c) Timely publishes the notice on the defendant's Internet site, if the defendant has a site. [1999 c.810 §4]

30.661 Affirmative defense; reliance. (1) In an action for fraud, misrepresentation, breach of warranty or other similar action based on the alleged falsity or misleading character of a statement relating to the susceptibility of a computer product, computer service or component to computer date failure, it is an affirmative defense to liability for harm caused by a computer date failure that the defendant:

(a) Relied on the representation or express warranty of a vendor or supplier of the computer product or computer service who is independent of the defendant that the product, service or component would not experience a computer date failure; and

(b) The defendant did not have actual knowledge that the representation or warranty was not true.

(2) For the purposes of subsection (1)(a) of this section, a representation by a vendor or supplier of the computer product, computer service or component that a product, service or component is "Year 2000 Compliant" or "Millennium Bug Free" or complies with a computer date standard established by a state or federal regulatory agency or a national or international service organization, or any similar representation, satisfies the condition of a representation or express warranty. [1999 c.810 §5]

30.662 Affirmative defense; compliance testing. (1) It is an affirmative defense to civil liability for harm caused by a computer date failure of a computer product or computer service that:

(a) The defendant examined the product or service to determine if it would experience a computer date failure;

(b) The defendant repaired, replaced or upgraded the product or service, or a component of the product or service, identified in the examination as subject to computer date failure;

(c) The defendant tested the product or service, or the component of the product or service, after it was repaired to determine if it would experience a computer date failure; and

(d) The product or service successfully passed the test.

(2) A defendant may satisfy all or part of the requirements of this section through an independent contractor. [1999 c.810 §6]

30.664 Punitive damages. In an action to recover damages for harm caused by a computer date failure, a court may award punitive damages against a defendant only if the claimant proves by clear and convincing evidence that the defendant acted fraudulently or with malice. [1999 c.810 §8]

30.665 Applicability. (1) Except as provided in this section, ORS 30.655 to 30.665 apply to any action in which a claimant seeks recovery of damages for harm caused by a computer date failure, regardless of the legal theory or statute on which the action is based, including an action based in tort,

contract or breach of an express or implied warranty. ORS 30.655 to 30.665 also apply to any action based on an alleged failure to properly detect, disclose, prevent, report or remedy a computer date failure.

(2) ORS 30.655 to 30.665 do not apply to any action to collect workers' compensation benefits under the workers' compensation laws of this state.

(3) ORS 30.655 to 30.665 do not create any duty or any cause of action.

(4) ORS 30.655 to 30.665 shall not be construed to limit or restrict the right of parties to enter into written agreements on the issues of liability and damages for a computer date failure. ORS 30.655 to 30.665 do not limit the right of parties to recover damages in accordance with the terms of written agreements.

(5) ORS 30.655 to 30.665 do not affect the rights or obligations of parties under a contract of insurance. [1999 c.810 §9]

30.670 [1953 c.495 §1; 1973 c.714 §1; 2001 c.621 §16; renumbered 659A.403 in 2001]

30.675 [1953 c.495 §2; 1957 c.724 §1; 1961 c.247 §1; 1973 c.714 §2; renumbered 659A.400 in 2001]

30.680 [Amended by 1953 c.495 §3; 1957 c.724 §2; 1973 c.714 §3; 1981 c.897 §7; 1995 c.618 §24; repealed by 2001 c.621 §90]

30.685 [1973 c.714 §14; 2001 c.621 §17; renumbered 659A.406 in 2001]

ACTIONS ARISING OUT OF EQUINE ACTIVITIES

30.687 Definitions for ORS 30.687 to 30.697. For the purposes of ORS 30.687 to 30.697:

(1) "Equine" means a horse, pony, mule, donkey or hinny.

(2) "Equine activity" means:

(a) Equine shows, fairs, competitions, performances or parades that involve any or all breeds of equines and any of the equine disciplines including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, three-day events, combined training, rodeos, driving, pulling, cutting, polo, steeplechasing, endurance trail riding and western games and hunting;

(b) Equine training, grooming, breeding and teaching activities;

(c) Boarding equines;

(d) Riding, inspecting or evaluating an equine belonging to another whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect or evaluate the equine; and

(e) Rides, trips, hunts or other equine activities of any type however informal or impromptu that are sponsored by an equine activity sponsor.

(3) "Equine activity sponsor" means an individual, group or club, partnership or corporation, whether or not the sponsor is operating for profit or nonprofit, that sponsors, organizes or provides the facilities for an equine activity, including but not limited to pony clubs, 4-H clubs, hunt clubs, riding clubs, school and college sponsored classes and programs, therapeutic riding programs and operators, instructors, and promoters of equine facilities, including but not limited to stables, clubhouses, pony ride strings, fairs and arenas at which the activity is held.

(4) "Equine professional" means a person engaged for compensation:

(a) In instructing a participant or renting to a participant an equine for the purpose of riding, training, driving, grooming or being a passenger upon the equine; or

(b) In renting equipment or tack to a participant.

(5) "Participant" means any person, whether amateur or professional, who directly engages in an equine activity, whether or not a fee is paid to participate in the equine activity. "Participant" does not include a spectator at an equine activity or a person who participates in the equine activity but does not ride, train, drive, groom or ride as a passenger upon an equine. [1991 c.864 §2; 1995 c.211 §2]

30.689 Policy. (1) It is the purpose of ORS 30.687 to 30.697 to assist courts and juries to define the circumstances under which those persons responsible for equines may and may not be liable for damages to other persons harmed in the course of equine activities.

(2) It is the policy of the State of Oregon that no person shall be liable for damages sustained by another solely as a result of risks inherent in equine activity, insofar as those risks are, or should be, reasonably obvious, expected or necessary to the person injured.

(3) It is the policy of the State of Oregon that persons responsible for equines, or responsible for the safety of those persons engaged in equine activities, who are negligent and cause foreseeable injury to a person engaged in those activities, bear responsibility for that injury in accordance with other applicable law. [1991 c.864 §1]

30.691 Limitations on liability; exceptions. (1) Except as provided in subsection (2) of this section and in ORS 30.693, an equine activity sponsor or an equine professional shall not be liable for an injury to or the death of a participant arising out of riding, training, driving, grooming or riding as

a passenger upon an equine and, except as provided in subsection (2) of this section and ORS 30.693, no participant or participant's representative may maintain an action against or recover from an equine activity sponsor or an equine professional for an injury to or the death of a participant arising out of riding, training, driving, grooming or riding as a passenger upon an equine.

(2)(a) The provisions of ORS 30.687 to 30.697 do not apply to any injury or death arising out of a race as defined in ORS 462.010.

(b) Nothing in subsection (1) of this section shall limit the liability of an equine activity sponsor or an equine professional:

(A) If the equine activity sponsor or the equine professional commits an act or omission that constitutes willful or wanton disregard for the safety of the participant and that act or omission caused the injury;

(B) If the equine activity sponsor or the equine professional intentionally injures the participant;

(C) Under the products liability provisions of ORS 30.900 to 30.920; or

(D) Under ORS 30.820 or 608.015. [1991 c.864 §3]

30.693 Additional exceptions to limitations on liability; effect of written release. (1) Except as provided in subsection (2) of this section, nothing in ORS 30.691 shall limit the liability of an equine activity sponsor or an equine professional if the equine activity sponsor or the equine professional:

(a) Provided the equipment or tack, failed to make reasonable and prudent inspection of the equipment or tack, and that failure was a cause of the injury to the participant;

(b) Provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to safely ride, train, drive, groom or ride as a passenger upon an equine, to determine the ability of the equine to behave safely with the participant and to determine the ability of the participant to safely manage the particular equine; or

(c) Owns, leases, rents or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known to or should have been known to the equine activity sponsor or the equine professional and for which warning signs have not been conspicuously posted.

(2) The limitations on liability provided in ORS 30.691 shall apply to an adult participant in the circumstances listed in subsection (1)(b) of this section if the participant, prior to riding, training, driving, grooming or riding as a passenger upon an equine, knowingly executes a release stating that as a condition of participation, the participant waives the right to bring an action against the equine professional or equine activity sponsor for any injury or death arising out of riding, training, driving, grooming or riding as a passenger upon the equine. A release so executed shall be binding upon the adult participant, and no equine professional or equine activity sponsor shall be liable in the circumstances described in subsection (1)(b) of this section except as provided in ORS 30.691 (2). [1991 c.864 §4]

30.695 Effect of written release on liability of veterinarian or farrier. (1) No veterinarian or farrier shall be liable to any person who assists the veterinarian or farrier in rendering veterinarian or farrier services to an equine if the person, prior to assisting the veterinarian or farrier, executes a release stating that the person rendering assistance waives the right to bring an action against the veterinarian or farrier for any injury or death arising out of assisting in the provision of veterinarian or farrier services. A release so executed shall be enforceable regardless of lack of consideration.

(2) A release executed pursuant to this section shall not limit the liability of a veterinarian or farrier for gross negligence or intentional misconduct. [1991 c.864 §5]

30.697 Effect on workers' compensation benefits. Nothing in ORS 30.687 to 30.695 shall affect the right of any person to any workers' compensation benefits that may be payable by reason of death, injury or other loss. [1991 c.864 §6]

30.698 [Formerly 30.085; renumbered 31.180 in 2003]

MISCELLANEOUS ACTIONS

30.700 [1981 c.670 §§1,2; repealed by 1997 c.182 §1 (30.701 enacted in lieu of 30.700)]

30.701 Actions against maker of dishonored check; statutory damages and attorney fees; handling fee. (1) In any action against a maker of a dishonored check, a payee may recover from the maker statutory damages in an amount equal to $100 or triple the amount for which the check is drawn, whichever is greater. Statutory damages awarded under this subsection are in addition to the amount for which the check was drawn and may not exceed by more than $500 the amount for which the check was drawn. The court shall allow reasonable attorney fees at trial and on appeal to the prevailing party in an action on a dishonored check and in any action on a check that is not paid because payment has been stopped.

(2) Statutory damages and attorney fees under subsection (1) of this section may be awarded only if the payee made written demand of the maker of the check not less than 30 days before commencing the action and the maker failed to tender to the payee before the commencement of the action an amount of money not less than the amount for which the check was drawn, all interest that has accrued on the check under ORS 82.010 as of the date of demand and any charges imposed under subsection (5) of this section.

(3) Statutory damages under subsection (1) of this section shall not be awarded by the court if after the commencement of the action but before trial the defendant tenders to the plaintiff an amount of money equal to the amount for which the check was drawn, all interest that has accrued on the check under ORS 82.010 as of the date of payment, any charges imposed under subsection (5) of this section, costs and disbursements and the plaintiff's reasonable attorney fees incurred as of the date of the tender.

(4) If the court or jury determines that the failure of the defendant to satisfy the dishonored check at the time demand was made under subsection (2) of this section was due to economic hardship, the court or jury has the discretion to waive all or part of the statutory damages provided for in subsection (1) of this section. If all or part of the statutory damages are waived under this subsection, judgment shall be entered in favor of the plaintiff for the amount of the dishonored check, all interest that has accrued on the check under ORS 82.010, any charges imposed under subsection (5) of this section, the plaintiff's reasonable attorney fees and costs and disbursements.

(5) If a check is dishonored, the payee may collect from the maker a fee not to exceed $35. Any award of statutory damages under subsection (1) of this section must be reduced by the amount of any charges imposed under this subsection that have been paid by the maker or that are entered as part of the judgment.

(6) The provisions of this section apply only to a check that has been dishonored because of a lack of funds or credit to pay the check, because the maker has no account with the drawee or because the maker has stopped payment on the check without good cause. A plaintiff is entitled to the remedies provided by this section without regard to the reasons given by the drawee for dishonoring the check.

(7) For the purposes of this section:

(a) "Check" means a check, draft or order for the payment of money.

(b) "Drawee" has that meaning given in ORS 73.0103.

(c) "Payee" means a payee, holder or assignee of a check. [1997 c.182 §2 (enacted in lieu of 30.700); 1999 c.707 §1; 2011 c.449 §1]

30.710 [Amended by 1961 c.344 §103; repealed by 1973 c.640 §1]

30.715 Successive actions or suits. Successive actions or suits may be maintained upon the same contract or transaction, whenever, after the former action or suit, a new cause of action or suit arises therefrom. [Formerly 11.030]

30.720 [Repealed by 1973 c.640 §1; amended by 1973 c.823 §§88,155]

30.725 [Repealed by 1974 c.36 §28]

30.730 [Repealed by 1979 c.801 §4]

30.740 Right of gambling loser to recover double losses. All persons losing money or anything of value at or on any unlawful game described in ORS 167.117, 167.122 and 167.127 shall have a cause of action to recover from the dealer winning the same, or proprietor for whose benefit such game was played or dealt, or such money or thing of value won, twice the amount of the money or double the value of the thing so lost. [Amended by 1971 c.743 §308; 1977 c.850 §4]

30.750 Liability of abstractors. Any person who, after May 24, 1923, certifies to any abstract of title to any land in Oregon, shall be liable for all damages sustained by any person who, in reliance on the correctness thereof, acts thereon with reference to the title of such land, and is damaged in consequence of any errors, omissions or defects therein, regardless of whether the abstract of title was ordered by the person so damaged. Nothing in this section shall be construed to prevent the maker of any abstract of title to land from limiting in the certificate to the abstract the liability of the maker thereunder to any person named in such certificate, but such limitation of liability must be expressly set forth in the certificate.

30.760 [Amended by 1953 c.565 §2; renumbered 30.150]

30.765 Liability of parents for tort by child; effect on foster parents. (1) In addition to any other remedy provided by law, the parent or parents of an unemancipated minor child shall be liable for actual damages to person or property caused by any tort intentionally or recklessly committed by such child. However, a parent who is not entitled to legal custody of the minor child at the time of the intentional or reckless tort shall not be liable for such damages.

(2) The legal obligation of the parent or parents of an unemancipated minor child to pay damages under this section shall be lim-

ited to not more than $7,500, payable to the same claimant, for one or more acts.

(3) When an action is brought under this section on parental responsibility for acts of their children, the parents shall be named as defendants therein and, in addition, the minor child shall be named as a defendant. The filing of an answer by the parents shall remove any requirement that a guardian ad litem be required.

(4) Nothing in subsections (1) to (3) of this section applies to foster parents. [1975 c.712 §§1,4; 1977 c.419 §1; 1991 c.968 §5]

30.770 [1959 c.310 §1; 1965 c.587 §1; 1973 c.827 §8; repealed by 1975 c.712 §5]

30.780 Liability for damages caused by gambling. Any person violating ORS 167.108 to 167.164 shall be liable in a civil suit for all damages occasioned thereby. [1959 c.681 §3; 1971 c.743 §309]

30.785 Liability of construction design professional for injuries resulting from failure of employer to comply with safety standards. (1) A construction design professional who is retained to perform professional services on a construction project, or an employee of the construction design professional in the performance of professional services on the construction project, shall not be liable for any injury to a worker on the construction project that is a compensable injury under ORS chapter 656 and that results from the failure of the employer of the worker to comply with safety standards on the construction project unless the construction design professional by contract specifically assumes responsibility for compliance with those safety standards. The immunity provided by this section to a construction design professional shall not apply to the negligent preparation of design plans or specifications.

(2) As used in this section, "construction design professional" means an architect, registered landscape architect, professional engineer or professional land surveyor. [1987 c.915 §12]

30.788 Liability of architect, engineer, inspector or building evaluator for emergency relief services. (1) An action for damages arising out of the practice of architecture, as defined in ORS 671.010, may not be maintained by any person against an architect for services rendered by the architect under the provisions of this section.

(2) An action for damages arising out of the practice of engineering, as described in ORS 672.007, may not be maintained by any person against an engineer for structural engineering services rendered by the engineer under the provisions of this section.

(3) An action for damages arising out of the provision of building code inspections, plan reviews or post-disaster building evaluations may not be maintained by any person against a certified inspector or certified building evaluator if the inspector or building evaluator is providing building code inspections, plan reviews or post-disaster building evaluations under the provisions of this section and the inspector or building evaluator is operating within the scope of the certification.

(4) The immunity provided by this section applies only to services that meet all of the following requirements:

(a) The services are rendered without compensation.

(b) The services are rendered within 60 days after the Governor declares a state of emergency under the provisions of ORS 401.165.

(c) The services are rendered to assist in relief efforts arising out of the emergency giving rise to the declaration of emergency.

(5) This section does not affect the liability of any architect, engineer, inspector or building evaluator for gross negligence or intentional torts.

(6) The immunity provided by this section applies only to:

(a) Inspectors certified under ORS 455.715 to 455.740;

(b) Building evaluators certified for post-disaster building evaluation by the Department of Consumer and Business Services;

(c) Architects who are licensed under ORS 671.010 to 671.220;

(d) Engineers who are registered under ORS 672.002 to 672.325; and

(e) Architects and engineers who are licensed or registered under the laws of another state. [1995 c.616 §1; 2009 c.259 §19]

30.790 [1963 c.524 §§1,2; repealed by 1971 c.780 §7]

30.792 Liability of health care provider or health clinic for volunteer services to charitable corporations. (1) As used in this section:

(a) "Charitable corporation" has the meaning given that term in ORS 128.620.

(b) "Health care provider" means any person licensed in this state as a practitioner of one or more healing arts as described in ORS 31.740.

(c) "Health clinic" means a public health clinic or a health clinic operated by a charitable corporation that provides primarily primary physical health, dental or mental health services to low-income patients without charge or using a sliding fee scale based on the income of the patient.

(2) Except as provided in subsection (3) of this section, no person may maintain an action for damages against:

(a) A health care provider who voluntarily provides to a charitable corporation any assistance, services or advice directly related to the charitable purposes of the corporation if the assistance, services or advice are within the scope of the license of the health care provider; or

(b) A health clinic for the assistance, services or advice provided by a health care provider described in paragraph (a) of this subsection.

(3) The immunity provided in this section shall not apply to:

(a) Any person who receives compensation other than reimbursement for expenses incurred by the person providing such assistance, services or advice.

(b) The liability of any person for damages resulting from the person's gross negligence or from the person's reckless, wanton or intentional misconduct.

(c) Any activity for which a person is otherwise strictly liable without regard to fault. [1995 c.616 §2; 2005 c.362 §2]

30.794 Liability of physician or hospital arising out of care provided by direct entry midwife. (1) As used in this section:

(a) "Direct entry midwife" means a person practicing direct entry midwifery as defined in ORS 687.405.

(b) "Hospital" has the meaning given that term in ORS 442.015.

(2) A person may not bring a cause of action against a physician licensed under ORS chapter 677 or against a hospital for injury to a patient if:

(a) The injury occurred as a result of care provided by a direct entry midwife in a setting outside the hospital; and

(b) The direct entry midwife requested that the patient be transported to the hospital because the direct entry midwife could not provide appropriate care to the patient.

(3) This section does not apply to the extent the physician or hospital contributed to the injury or to a claim of vicarious liability for care provided by a direct entry midwife.

(4) This section does not limit the liability of a physician or a hospital for gross negligence or reckless, wanton or intentional misconduct. [2011 c.650 §3]

30.795 [1981 c.690 §2; 1985 c.530 §4; repealed by 1993 c.196 §12]

30.800 Liability for emergency medical assistance. (1) As used in this section, "emergency medical assistance" means:

(a) Medical or dental care not provided in a place where emergency medical or dental care is regularly available, including but not limited to a hospital, industrial first-aid station or a physician's or dentist's office, given voluntarily and without the expectation of compensation to an injured person who is in need of immediate medical or dental care and under emergency circumstances that suggest that the giving of assistance is the only alternative to death or serious physical aftereffects; or

(b) Medical care provided voluntarily in good faith and without expectation of compensation by a physician licensed by the Oregon Medical Board in the physician's professional capacity as a team physician at a public or private school or college athletic event or as a volunteer physician at other athletic events.

(2) No person may maintain an action for damages for injury, death or loss that results from acts or omissions of a person while rendering emergency medical assistance unless it is alleged and proved by the complaining party that the person was grossly negligent in rendering the emergency medical assistance.

(3) The giving of emergency medical assistance by a person does not, of itself, establish the relationship of physician and patient, dentist and patient or nurse and patient between the person giving the assistance and the person receiving the assistance insofar as the relationship carries with it any duty to provide or arrange for further medical care for the injured person after the giving of emergency medical assistance. [1967 c.266 §§1,2; 1973 c.635 §1; 1979 c.576 §1; 1979 c.731 §1; 1983 c.771 §1; 1983 c.779 §1; 1985 c.428 §1; 1989 c.782 §35; 1997 c.242 §1; 1997 c.751 §11]

30.801 [1999 c.220 §1; repealed by 2005 c.551 §8]

30.802 Liability for use of automated external defibrillator. (1) As used in this section:

(a) "Automated external defibrillator" means an automated external defibrillator approved for sale by the federal Food and Drug Administration.

(b) "Public setting" means a location that is:

(A) Accessible to members of the general public, employees, visitors and guests, but that is not a private residence;

(B) A public school facility as defined in ORS 327.365;

(C) A health club as defined in ORS 431.680; or

(D) A place of public assembly as defined in ORS 431.690.

(2) A person may not bring a cause of action against another person for damages for injury, death or loss that result from acts or omissions involving the use, attempted use or nonuse of an automated external defibrillator when the other person:

(a) Used or attempted to use an automated external defibrillator;

(b) Was present when an automated external defibrillator was used or should have been used;

(c) Provided training in the use of an automated external defibrillator;

(d) Is a physician and provided services related to the placement or use of an automated external defibrillator; or

(e) Possesses or controls one or more automated external defibrillators placed in a public setting.

(3) The immunity provided by this section does not apply if:

(a) The person against whom the action is brought acted with gross negligence or with reckless, wanton or intentional misconduct; or

(b) The use, attempted use or nonuse of an automated external defibrillator occurred at a location where emergency medical care is regularly available.

(4) Nothing in this section affects the liability of a manufacturer, designer, developer, distributor or supplier of an automated external defibrillator, or an accessory for an automated external defibrillator, under the provisions of ORS 30.900 to 30.920 or any other applicable state or federal law. [2005 c.551 §1; 2010 c.27 §3]

Note: Section 4, chapter 27, Oregon Laws 2010, provides:

Sec. 4. The amendments to ORS 30.802 and 431.690 by sections 1 and 3 of this 2010 Act apply to causes of action that arise on or after the effective date of this 2010 Act [March 4, 2010]. [2010 c.27 §4]

30.803 Liability of licensed emergency medical services provider acting as volunteer. A person may not maintain a cause of action for injury, death or loss against a licensed emergency medical services provider who acts as a volunteer without expectation of compensation, based on a claim of negligence unless the person shows that the injury, death or loss resulted from willful and wanton misconduct or intentional act or omission of the emergency medical services provider. [1987 c.915 §11; 2011 c.703 §19]

30.805 Liability for emergency medical assistance by government personnel. (1) No person may maintain an action for damages for injury, death or loss that results from acts or omissions in rendering emergency medical assistance unless it is alleged and proved by the complaining party that the acts or omissions violate the standards of reasonable care under the circumstances in which the emergency medical assistance was rendered, if the action is against:

(a) The staff person of a governmental agency or other entity if the staff person and the agency or entity are authorized within the scope of their official duties or licenses to provide emergency medical care; or

(b) A governmental agency or other entity that employs, trains, supervises or sponsors the staff person.

(2) As used in this section, "emergency medical care" means medical care to an injured or ill person who is in need of immediate medical care:

(a) Under emergency circumstances that suggest that the giving of assistance is the only alternative to serious physical aftereffects or death;

(b) In a place where emergency medical care is not regularly available;

(c) In the absence of a personal refusal of such medical care by the injured or ill person or the responsible relative of such person; and

(d) Which may include medical care provided through means of radio or telecommunication by a medically trained person, who practices in a hospital as defined in ORS 442.015 and licensed under ORS 441.015 to 441.087, and who is not at the location of the injured or ill person. [1979 c.782 §8; 1981 c.693 §27; 1985 c.747 §48]

30.807 Liability for emergency transportation assistance. (1) No person shall maintain an action for damages for injury, death or loss that results from acts or omissions in rendering emergency transportation assistance unless it is alleged and proved by the complaining party that the person rendering emergency transportation assistance was grossly negligent. The provisions of this section apply only to a person who provides emergency transportation assistance without compensation.

(2) As used in this section, "emergency transportation assistance" means transportation provided to an injured or ill person who is in need of immediate medical care:

(a) Under emergency circumstances that suggest that the giving of assistance is the only alternative to serious physical aftereffect or death;

(b) From a place where emergency medical care is not regularly available;

(c) In the absence of a personal refusal of such assistance by the injured or ill person or the responsible relative of the person; and

(d) Which may include directions on the transportation provided through means of radio or telecommunications by a medically trained person who practices in a hospital, as defined in ORS 442.015 and who is not at the location of the injured or ill person. [1987 c.915 §10; 1997 c.242 §2]

30.809 Liability of fraternal organization that provides used eyeglasses or hearing aids. (1) A fraternal organization, as defined in ORS 307.134, that is also a charitable corporation, as defined in ORS 128.620, and any other charitable corporation, as defined in ORS 128.620, that is affiliated with the fraternal organization are not liable for any damages arising out of providing previously owned eyeglasses or hearing aids to a person if:

(a) The person is at least 14 years of age; and

(b) The eyeglasses or hearing aids are provided to the person without charge.

(2) The immunity provided by subsection (1) of this section applies to eyeglasses only if the eyeglasses are provided by a licensed optometrist or ophthalmologist who has:

(a) Personally examined the person who will receive the eyeglasses and issued a prescription for the eyeglasses; or

(b) Personally consulted with the licensed optometrist or ophthalmologist who issued the prescription for the eyeglasses. [2011 c.59 §1]

30.810 [1969 c.387 §1; 1973 c.823 §89; renumbered 31.700 in 2003]

30.820 Action against seller of drugged horse; attorney fees. In addition to and not in lieu of the penalty provided in ORS 165.825 (2), any person who buys a horse sold in violation of ORS 165.825 (1) may bring an action against the seller for any damages the buyer incurs as a result of the sale. The court may award reasonable attorney fees to the prevailing party in an action under this section. [1971 c.175 §3; 1981 c.897 §8; 1995 c.618 §25]

30.822 Action for theft of or injury to search and rescue animal or therapy animal; attorney fees. (1) In addition to and not in lieu of any other penalty provided by state law, the owner of a search and rescue animal or a therapy animal, as defined in ORS 167.352, may bring an action for economic and noneconomic damages against any person who steals or, without provocation, attacks the search and rescue animal or therapy animal. The owner may also bring an action for such damages against the owner of any animal that, without provocation, attacks a search and rescue animal or therapy animal. The action authorized by this subsection may be brought by the owner even if the search and rescue or therapy animal was in the custody or under the supervision of another person when the theft or attack occurred.

(2) If the theft of or unprovoked attack on a search and rescue animal or therapy animal described in subsection (1) of this section results in the death of the animal or the animal is not returned or if injuries sustained in the theft or attack prevent the animal from returning to service as a search and rescue animal or therapy animal, the measure of economic damages shall include, but need not be limited to, the replacement value of an equally trained animal, without any differentiation for the age or the experience of the animal.

(3) If the theft of or unprovoked attack on a search and rescue animal or therapy animal described in subsection (1) of this section results in injuries from which the animal recovers and returns to service, or if the animal is stolen and is recovered and returns to service, the measure of economic damages shall include, but need not be limited to, the costs of temporary replacement services, veterinary medical expenses and any other costs and expenses incurred by the owner as a result of the theft of or injury to the animal.

(4) No cause of action arises under this section if the owner or the person having custody or supervision of the search and rescue animal or therapy animal was committing a criminal or civil trespass at the time of the attack on the animal.

(5) The court may award reasonable attorney fees to the prevailing party in an action under this section. [1993 c.312 §4; 1995 c.618 §26]

30.825 Action for unlawful tree spiking; attorney fees. Any person who is damaged by an act prohibited in ORS 164.886 (1) to (3) may bring a civil action to recover damages sustained. A party seeking civil damages under this section may recover upon proof by a preponderance of the evidence of a violation of the provisions of ORS 164.886 (1) to (3). The court may award reasonable attorney fees to the prevailing party in an action under this section. [1989 c.1003 §4; 1995 c.618 §27]

30.830 [1971 c.186 §7; 1981 s.s. c.3 §111; 1983 c.763 §52; 1987 c.905 §3a; repealed by 2011 c.597 §118]

30.840 [1975 c.562 §1; renumbered 31.980 in 2003]

30.850 [1975 c.562 §2; renumbered 31.982 in 2003]

30.860 Action for trade discrimination; treble damages; attorney fees. (1) A person or governmental entity may not discriminate against, boycott, blacklist or refuse to buy from, sell to or trade with any person because of foreign government imposed or sanctioned discrimination based upon the race, religion, sex, sexual orientation or na-

tional origin of the person or of the person's partners, members, directors, stockholders, agents, employees, business associates, suppliers or customers.

(2) Any person directly injured in business or property by a violation of subsection (1) of this section may sue whoever knowingly practices, or conspires to practice, activities prohibited by subsection (1) of this section, and shall recover threefold the damages sustained. The court shall award reasonable attorney fees to the prevailing plaintiff in an action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no objectively reasonable basis for appealing an adverse decision of a trial court. [1977 c.395 §§1,2; 1981 c.897 §9; 1995 c.618 §28; 2007 c.100 §15]

30.862 Action for public investment fraud; attorney fees. (1) Conduct constituting a violation of ORS 30.862 and 162.117 to 162.121 shall give rise to a civil cause of action by the state. The court may award reasonable attorney fees to the prevailing party in an action under this section.

(2) The application of one civil remedy under any provision of ORS 30.862 and 162.117 to 162.121 shall not preclude the application of any other remedy, civil or criminal, under ORS 30.862 and 162.117 to 162.121 or under any other provision of law. Civil remedies under ORS 30.862 and 162.117 to 162.121 are supplemental and not mutually exclusive. [1993 c.768 §4; 1995 c.618 §29]

30.864 Action for disclosure of certain education records; limitation of action; attorney fees. (1) Any person claiming to be aggrieved by the reckless disclosure of personally identifiable information from a student's education records as prohibited by rules of the State Board of Education or the State Board of Higher Education may file a civil action in circuit court for equitable relief or, subject to the terms and conditions of ORS 30.265 to 30.300, for damages, or both. The court may order such other relief as may be appropriate.

(2) The action authorized by this section shall be filed within two years of the alleged unlawful disclosure.

(3) In an action brought under this section, the court may allow the prevailing party costs, disbursements and reasonable attorney fees. [1993 c.806 §8; 1995 c.618 §30]

30.865 Action for invasion of personal privacy; attorney fees. (1) A plaintiff has a cause of action for invasion of personal privacy if the plaintiff establishes any of the following:

(a) The defendant knowingly made or recorded a photograph, motion picture, videotape or other visual recording of the plaintiff in a state of nudity without the consent of the plaintiff, and at the time the visual recording was made or recorded the plaintiff was in a place and circumstances where the plaintiff had a reasonable expectation of personal privacy.

(b) For the purpose of arousing or gratifying the sexual desire of the defendant, the defendant was in a location to observe the plaintiff in a state of nudity without the consent of the plaintiff, and the plaintiff was in a place and circumstances where the plaintiff had a reasonable expectation of personal privacy.

(c) For the purpose of arousing or gratifying the sexual desire of any person, the defendant knowingly:

(A) Made or recorded a photograph, motion picture, videotape or other visual recording of an intimate area of the plaintiff without the consent of the plaintiff; or

(B) Viewed an intimate area of the plaintiff without the consent of the plaintiff.

(d) Without the consent of the plaintiff, the defendant disseminated a photograph, motion picture, videotape or other visual recording of the plaintiff in a state of nudity, and the defendant knew that at the time the visual recording was made or recorded the plaintiff was in a place and circumstances where the plaintiff had a reasonable expectation of personal privacy.

(2) A plaintiff who prevails in a cause of action for invasion of personal privacy under this section is entitled to receive:

(a) Compensatory damages; and

(b) Reasonable attorney fees.

(3) An action under this section must be commenced not later than two years after the conduct that gives rise to a claim for relief occurred.

(4) The remedy provided by this section is in addition to, and not in lieu of, any other claim for relief that may be available to a plaintiff by reason of conduct of a defendant described in subsection (1) of this section.

(5) The provisions of subsection (1)(a) and (d) of this section do not apply to a photograph, motion picture, videotape or other visual recording of a person under 12 years of age if:

(a) The person who makes, records or disseminates the visual recording is the father, mother, sibling, grandparent, aunt, uncle or first cousin, by blood, adoption or

marriage, of the person under 12 years of age; and

(b) The visual recording is made, recorded or disseminated for a purpose other than arousing or gratifying the sexual desire of the person or another person.

(6) As used in this section:

(a) "Intimate area" means:

(A) Undergarments that are being worn by a person, are covered by clothing and are intended to be protected from being seen; and

(B) Any of the following that are covered by clothing and are intended to be protected from being seen:

(i) Genitals;

(ii) Pubic areas; or

(iii) Female breasts below the point immediately above the top of the areola.

(b) "Made or recorded a photograph, motion picture, videotape or other visual recording" includes, but is not limited to, making or recording or employing, authorizing, permitting, compelling or inducing another person to make or record a photograph, motion picture, videotape or other visual recording.

(c) "Nudity" means any part of the uncovered, or less than opaquely covered,:

(A) Genitals;

(B) Pubic area; or

(C) Female breast below a point immediately above the top of the areola.

(d) "Places and circumstances where the plaintiff has a reasonable expectation of personal privacy" includes, but is not limited to, a bathroom, dressing room, locker room that includes an enclosed area for dressing or showering, tanning booth and any area where a person undresses in an enclosed space that is not open to public view.

(e) "Public view" means that an area can be readily seen and that a person within the area can be distinguished by normal unaided vision when viewed from a public place as defined in ORS 161.015. [2005 c.544 §1; 2009 c.877 §3]

30.866 Action for issuance or violation of stalking protective order; attorney fees. (1) A person may bring a civil action in a circuit court for a court's stalking protective order or for damages, or both, against a person if:

(a) The person intentionally, knowingly or recklessly engages in repeated and unwanted contact with the other person or a member of that person's immediate family or household thereby alarming or coercing the other person;

(b) It is objectively reasonable for a person in the victim's situation to have been alarmed or coerced by the contact; and

(c) The repeated and unwanted contact causes the victim reasonable apprehension regarding the personal safety of the victim or a member of the victim's immediate family or household.

(2) At the time the petition is filed, the court, upon a finding of probable cause based on the allegations in the petition, shall enter a temporary court's stalking protective order that may include, but is not limited to, all contact listed in ORS 163.730. The petition and the temporary order shall be served upon the respondent with an order requiring the respondent to personally appear before the court to show cause why the temporary order should not be continued for an indefinite period.

(3)(a) At the hearing, whether or not the respondent appears, the court may continue the hearing for up to 30 days or may proceed to enter a court's stalking protective order and take other action as provided in ORS 163.738.

(b) If respondent fails to appear after being served as required by subsection (2) of this section, the court may issue a warrant of arrest as provided in ORS 133.110 in order to ensure the appearance of the respondent in court.

(4) The plaintiff may recover:

(a) Both special and general damages, including damages for emotional distress;

(b) Punitive damages; and

(c) Reasonable attorney fees and costs.

(5) The court may enter an order under this section against a minor respondent without appointment of a guardian ad litem.

(6) An action under this section must be commenced within two years of the conduct giving rise to the claim.

(7) Proof of the claim shall be by a preponderance of the evidence.

(8) The remedy provided by this section is in addition to any other remedy, civil or criminal, provided by law for the conduct giving rise to the claim.

(9) No filing fee, service fee or hearing fee shall be charged for a proceeding under this section if a court's stalking order is the only relief sought.

(10) If the respondent was provided notice and an opportunity to be heard, the court shall also include in the order, when appropriate, terms and findings sufficient under 18 U.S.C. 922 (d)(8) and (g)(8) to affect the respondent's ability to possess firearms

and ammunition or engage in activities involving firearms.

(11) ORS 163.741 applies to protective orders issued under this section.

(12) Except for purposes of impeachment, a statement made by the respondent at a hearing under this section may not be used as evidence in a prosecution for stalking as defined in ORS 163.732 or for violating a court's stalking protective order as defined in ORS 163.750. [1993 c.626 §9; 1995 c.353 §6; 1999 c.1052 §4; 2003 c.292 §3]

Note: Definitions for 30.866 are found in 163.730.

30.867 Action for violation of criminal laws relating to involuntary servitude or trafficking in persons. (1) Irrespective of any criminal prosecution or the result of a criminal prosecution, a person injured by a violation of ORS 163.263, 163.264 or 163.266 may bring a civil action for damages against a person whose actions are unlawful under ORS 163.263, 163.264 or 163.266.

(2) Upon prevailing in an action under this section, the plaintiff may recover:

(a) Both special and general damages, including damages for emotional distress; and

(b) Punitive damages.

(3) The court shall award reasonable attorney fees to the prevailing plaintiff in an action under this section. The court may award reasonable attorney fees and expert witness fees incurred by a defendant who prevails in the action if the court determines that the plaintiff had no objectively reasonable basis for asserting a claim or no reasonable basis for appealing an adverse decision of a circuit court.

(4) An action under this section must be commenced within six years of the conduct giving rise to the claim. [2007 c.811 §9]

30.868 Civil damages for custodial interference; attorney fees. (1) Any of the following persons may bring a civil action to secure damages against any and all persons whose actions are unlawful under ORS 163.257 (1)(a):

(a) A person who is 18 years of age or older and who has been taken, enticed or kept in violation of ORS 163.257 (1)(a); or

(b) A person whose custodial rights have been interfered with if, by reason of the interference:

(A) The person has reasonably and in good faith reported a person missing to any city, county or state police agency; or

(B) A defendant in the action has been charged with a violation of ORS 163.257 (1)(a).

(2) An entry of judgment or a certified copy of a judgment against the defendant for a violation of ORS 163.257 (1)(a) is prima facie evidence of liability if the plaintiff was injured by the defendant's unlawful action under the conviction.

(3)(a) For purposes of this section, a public or private entity that provides counseling and shelter services to victims of domestic violence is not considered to have violated ORS 163.257 (1)(a) if the entity provides counseling or shelter services to a person who violates ORS 163.257 (1)(a).

(b) As used in this subsection, "victim of domestic violence" means an individual against whom domestic violence, as defined in ORS 135.230, 181.610 or 411.117, has been committed.

(4) Bringing an action under this section does not prevent the prosecution of any criminal action under ORS 163.257.

(5) A person bringing an action under this section must establish by a preponderance of the evidence that a violation of ORS 163.257 (1)(a) has occurred.

(6) It is an affirmative defense to civil liability for an action under this section that the defendant reasonably and in good faith believed that the defendant's violation of ORS 163.257 (1)(a) was necessary to preserve the physical safety of:

(a) The defendant;

(b) The person who was taken, enticed or kept in violation of ORS 163.257 (1)(a); or

(c) The parent or guardian of the person who was taken, enticed or kept in violation of ORS 163.257 (1)(a).

(7)(a) If the person taken, enticed or kept in violation of ORS 163.257 (1)(a) is under 18 years of age at the time an action is brought under this section, the court may:

(A) Appoint an attorney who is licensed to practice law in Oregon to act as guardian ad litem for the person; and

(B) Appoint one of the following persons to provide counseling services to the person:

(i) A psychiatrist.

(ii) A psychologist licensed under ORS 675.010 to 675.150.

(iii) A clinical social worker licensed under ORS 675.530.

(iv) A professional counselor or marriage and family therapist licensed under ORS 675.715.

(b) The court may assess against the parties all costs of the attorney or person providing counseling services appointed under this subsection.

(8) If an action is brought under this section by a person described under subsection (1)(b) of this section and a party shows

good cause that it is appropriate to do so, the court may order the parties to obtain counseling directed toward educating the parties on the impact that the parties' conflict has on the person taken, enticed or kept in violation of ORS 163.257 (1)(a). The court may assess against the parties all costs of obtaining counseling ordered under this subsection.

(9) Upon prevailing in an action under this section, the plaintiff may recover:

(a) Special and general damages, including damages for emotional distress; and

(b) Punitive damages.

(10) The court may award reasonable attorney fees to the prevailing party in an action under this section.

(11)(a) Notwithstanding ORS 12.110, 12.115, 12.117 or 12.160, an action under this section must be commenced within six years after the violation of ORS 163.257 (1)(a). An action under this section accruing while the person who is entitled to bring the action is under 18 years of age must be commenced not more than six years after that person attains 18 years of age.

(b) The period of limitation does not run during any time when the person taken, enticed or kept in violation of ORS 163.257 (1)(a) is removed from this state as a result of the defendant's actions in violation of ORS 163.257 (1)(a). [2005 c.841 §1; 2009 c.11 §5; 2009 c.442 §26]

30.870 Definitions for ORS 30.870 and 30.875. As used in this section and ORS 30.875:

(1) "Agricultural produce" means any plant including, but not limited to, trees, or animals, kept, grown or raised upon real property, and the products of those plants and animals.

(2) "Mercantile establishment" means any place where merchandise is displayed, held or offered for sale, either at retail or wholesale.

(3) "Merchandise" means all things movable and capable of manual delivery.

(4) "Owner" means any person who owns or operates a mercantile establishment or farm, or the agents or employees of that person. [1979 c.592 §1; 1981 c.716 §5]

30.875 Civil damages for shoplifting or taking of agricultural produce. (1) An adult or an emancipated minor who takes possession of any merchandise displayed or offered for sale by any mercantile establishment, or who takes from any real property any agricultural produce kept, grown or raised on the property for purposes of sale, without the consent of the owner and with the intention of converting such merchandise or produce to the individual's own use without having paid the purchase price thereof, or who alters the price indicia of such merchandise, shall be civilly liable to the owner for actual damages, for a penalty to the owner in the amount of the retail value of the merchandise or produce not to exceed $500, and for an additional penalty to the owner of not less than $100 nor more than $250.

(2) The parents having custody of an unemancipated minor who takes possession of any merchandise displayed or offered for sale by any mercantile establishment, or who takes from any real property any agricultural produce kept, grown or raised on the property for purposes of sale, without the consent of the owner, and with the intention of converting such merchandise or produce to the minor's own use without having paid the purchase price thereof, or who alters the price indicia of such merchandise or who engages in conduct described in ORS 164.125, 164.132 or 164.373, shall be civilly liable to the owner for actual damages, for a penalty to the owner in the amount of the retail value of the merchandise or produce not to exceed $250, plus an additional penalty to the owner of not less than $100 nor more than $250. Persons operating a foster home certified under ORS 418.625 to 418.645 are not liable under this subsection for the acts of children not related to them by blood or marriage and under their care.

(3) A conviction for theft is not a condition precedent to the maintenance of a civil action under this section.

(4) A civil liability under this section is not limited by any other law that limits liability of parents of minor children.

(5) An action for recovery of damages under this section may be brought in any court of competent jurisdiction, including the small claims department of a circuit court if the total damages do not exceed the jurisdictional limit of the small claims department.

(6) The fact that an owner or seller of merchandise or agricultural produce may bring an action against an individual for damages as provided in this section shall not limit the right of the owner or seller to demand, in writing, that a person who is liable for damages under this section remit said damages prior to the commencement of any legal action.

(7) Judgments, but not claims, arising under this section may be assigned.

(8) An action under this section may not be brought based on a dishonored check, draft or order for payment of money if an action can be brought on the dishonored check, draft or order under ORS 30.701.

(9) An action under this section must be commenced within three years after the merchandise or agricultural produce is taken. [1979 c.592 §2; 1981 c.716 §6; 1985 c.537 §6; 1987 c.907 §16; 1995 c.658 §28; 1997 c.182 §§3,4; 1999 c.705 §5; 2003 c.324 §1]

30.876 Treble damages and costs in actions arising out of interference with agricultural research. In any civil action arising out of conduct that would constitute interference with agricultural research under ORS 164.889, the court shall award:

(1) Treble the amount of damages claimed to real and personal property; and

(2) The costs of repeating experiments including, but not limited to, the costs of replacing records, data, equipment, specimens, labor and materials, if the conduct causes the failure of an experiment in progress or irreparable damage to completed research or experimentation. [2001 c.147 §4]

30.877 Treble damages and costs in actions arising out of research and animal interference and arising out of interference with livestock production. In any civil action arising out of conduct that would constitute a violation of ORS 167.312 or 167.388, the court shall award treble the amount of damages caused to real or personal property by the violation. In addition, in any civil action arising out of conduct that would constitute a violation of ORS 167.312, the court shall award the costs of repeating experiments, including but not limited to the costs of replacing records, data, equipment, specimens, labor and materials, if the conduct causes the failure of an experiment in progress or irreparable damage to completed research or experimentation. [2001 c.843 §1]

30.880 [1979 c.842 §5a; 1987 c.774 §148; 1987 c.915 §8; renumbered 278.322 in 2003]

30.882 Award of liquidated damages to sports official subjected to offensive physical contact; attorney fees. (1) In addition to, and not in lieu of any other damages that may be claimed, a plaintiff who is a sports official shall receive liquidated damages in an amount not less than $500 but not more than $1,000 in any action in which the plaintiff establishes that:

(a) The defendant intentionally subjected the plaintiff to offensive physical contact;

(b) The defendant knew that the plaintiff was a sports official at the time the offensive physical contact was made;

(c) The offensive physical contact is made while the plaintiff is within, or in the immediate vicinity of, a facility at which the plaintiff serves as a sports official for a sports event; and

(d) The offensive physical contact is made while the plaintiff is serving as a sports official or within a brief period of time thereafter.

(2) The court shall award reasonable attorney fees to a prevailing plaintiff in an action in which liquidated damages are awarded under this section.

(3) An award of liquidated damages under this section is not subject to ORS 31.725, 31.730 or 31.735.

(4) As used in this section, "sports official" means a person who:

(a) Serves as a referee, umpire, linesman or judge or performs similar functions under a different title; and

(b) Is a member of, or registered by, a local, state, regional or national organization that engages in providing education and training in sports officiating. [1999 c.786 §1]

30.890 Liability of food gleaners, donors and distributors. (1)(a) Notwithstanding any other provision of law, a gleaner or the good-faith donor of any food, apparently fit for human consumption, to a bona fide charitable or nonprofit organization, including but not limited to a food bank, for distribution without charge or on a scale reflecting ability to pay or only requiring a shared maintenance contribution, shall not be subject to criminal penalty or civil damages arising from the condition of the food, unless an injury is caused by the gross negligence, recklessness or intentional conduct of the donor or gleaner.

(b) The immunity from civil liability and criminal penalty provided by this section applies regardless of compliance with any laws, rules or ordinances regulating the packaging or labeling of food, and regardless of compliance with any laws, rules or ordinances regulating the storage or handling of the food by the donee after the donation of the food.

(2) Notwithstanding any other provision of law, a bona fide charitable or nonprofit organization which in good faith receives food, apparently fit for human consumption, and while apparently fit for human consumption distributes it at no charge or on a fee scale reflecting ability to pay or only requiring a shared maintenance contribution, shall not be subject to criminal penalty or civil damages resulting from the condition of the food unless an injury results from the gross negligence, recklessness or intentional conduct of the organization.

(3) This section applies to the good-faith donation of food not readily marketable due to appearance, freshness, grade, surplus or other considerations but does not restrict the authority of any appropriate agency to regu-

late or ban the use of such food for human consumption.

(4) As used in this section:

(a) "Donor" includes any person who operates a restaurant or other food establishment licensed or regulated by law.

(b) "Food" means any food whether or not it may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition, including but not limited to fresh or processed meats, poultry, seafood, dairy products, bakery products, eggs in the shell, fresh fruits or vegetables, and foods that have been packaged, canned, refrigerated, freeze-dried or frozen.

(c) "Food bank" means a surplus food collection and distribution system operated and established to assist in bringing donated food to nonprofit charitable organizations and individuals for the purpose of reducing hunger and meeting nutritional needs.

(d) "Gleaner" means a person that harvests for free distribution an agricultural crop that has been donated by the owner. [1979 c.265 §1; 1989 c.808 §1]

30.892 Liability of donors and distributors of general merchandise and household items. (1) Notwithstanding any other provision of law, the good-faith donor of any general merchandise or household item, apparently fit for use to a bona fide charitable or nonprofit organization for distribution without charge or on a fee scale reflecting ability to pay, or only requiring a shared maintenance contribution, shall not be subject to criminal penalty or civil damages arising from the condition of the general merchandise or household item, unless an injury is caused by the gross negligence, recklessness or intentional conduct of the donor.

(2) The immunity from civil liability and criminal penalty provided by this section applies regardless of compliance with any laws, rules or ordinances regulating the packaging or labeling of general merchandise or household items, and regardless of compliance with any laws, rules or ordinances regulating the storage or handling of the general merchandise or household items by the donee after the donation.

(3) Notwithstanding any other provision of law, a bona fide charitable or nonprofit organization which in good faith receives general merchandise or household items, apparently fit for use, and while apparently still fit for use, distributes the merchandise or items at no charge or on a fee scale reflecting ability to pay or only requiring a shared maintenance contribution, shall not be subject to criminal penalty or civil damages resulting from the condition of the general merchandise or household items, unless an injury results from the gross negligence, recklessness or intentional conduct of the organization.

(4) This section applies to the good-faith donation of general merchandise or household items not readily marketable due to appearance, grade, surplus or considerations other than safety but does not restrict the authority of any appropriate agency to regulate or ban the use of such general merchandise or household items. The immunity from civil liability and criminal penalty provided by this section shall not apply if the general merchandise or household item is resold by either the donee or any other person. This section does not affect the liability of a manufacturer for products that are subject to a current or future safety recall whether such recall is initiated by the manufacturer or at the request of the state or federal government, nor shall this section affect the liability of a manufacturer under ORS 30.900 to 30.920.

(5) As used in this section:

(a) "Donor" includes all of the following, without regard to who is the owner of the general merchandise or household item at the time of the donation:

(A) A general merchandiser;

(B) A retail establishment;

(C) A wholesaler; and

(D) A manufacturer.

(b) "General merchandise or household item" means any item sold as general merchandise for household use, including but not limited to items sold in the following categories: Toiletries, cosmetics, domestics, electronics, sporting goods, clothing, toys, small appliances, personal care appliances, housewares, household chemicals, hardware, paint, sundries, plumbing, garden supplies, automotive, school supplies, pet food, pet supplies, over-the-counter drugs or vitamins, or other items of merchandise commonly sold in a retail or general merchandising establishment. [1989 c.1012 §2]

30.895 [1987 c.774 §11; renumbered 31.230 in 2003]

PRODUCT LIABILITY ACTIONS

30.900 "Product liability civil action" defined. As used in ORS 30.900 to 30.920, "product liability civil action" means a civil action brought against a manufacturer, distributor, seller or lessor of a product for damages for personal injury, death or property damage arising out of:

(1) Any design, inspection, testing, manufacturing or other defect in a product;

(2) Any failure to warn regarding a product; or

(3) Any failure to properly instruct in the use of a product. [1977 c.843 §1]

30.902 Products provided by physicians. A physician licensed pursuant to ORS chapter 677 is not a manufacturer, distributor, seller or lessor of a product for the purposes of ORS 30.900 to 30.920 if the product is provided by the physician to a patient as part of a medical procedure and the physician was not involved in the design or manufacture of the product. [2009 c.485 §9]

30.905 Time limitation for commencement of action. (1) Subject to the limitation imposed by subsection (2) of this section, a product liability civil action for personal injury or property damage must be commenced not later than two years after the plaintiff discovers, or reasonably should have discovered, the personal injury or property damage and the causal relationship between the injury or damage and the product, or the causal relationship between the injury or damage and the conduct of the defendant.

(2) A product liability civil action for personal injury or property damage must be commenced before the later of:

(a) Ten years after the date on which the product was first purchased for use or consumption; or

(b) The expiration of any statute of repose for an equivalent civil action in the state in which the product was manufactured, or, if the product was manufactured in a foreign country, the expiration of any statute of repose for an equivalent civil action in the state into which the product was imported.

(3) Subject to the limitation imposed by subsection (4) of this section, a product liability civil action for death must be commenced not later than three years after the decedent, the personal representative for the decedent or a person for whose benefit an action could be brought under ORS 30.020 discovers, or reasonably should have discovered, the causal relationship between the death and the product, or the causal relationship between the death and the conduct of the defendant.

(4) A product liability civil action for death must be commenced before the earlier of:

(a) Three years after the death of the decedent;

(b) Ten years after the date on which the product was first purchased for use or consumption; or

(c) The expiration of any statute of repose for an equivalent civil action in the state in which the product was manufactured, or, if the product was manufactured in a foreign country, the expiration of any statute of repose for an equivalent civil action in the state into which the product was imported.

(5) This section does not apply to a civil action brought against a manufacturer, distributor, seller or lessor of a manufactured dwelling, as defined in ORS 446.003, or of a prefabricated structure, as defined in ORS 455.010. Actions described in this subsection are subject to the statute of limitations provided by ORS 12.135. [1977 c.843 §3; 1983 c.143 §1; 1987 c.4 §1; 1993 c.259 §6; 2003 c.768 §1; 2009 c.485 §1]

Note: Section 2, chapter 485, Oregon Laws 2009, provides:

Sec. 2. The amendments to ORS 30.905 by section 1 of this 2009 Act apply only to causes of action that arise on or after the effective date of this 2009 Act [January 1, 2010]. [2009 c.485 §2]

30.907 Action for damages from asbestos-related disease; limitations. (1) A product liability civil action for damages resulting from asbestos-related disease must be commenced not later than two years after the date on which the plaintiff first discovered, or in the exercise of reasonable care should have discovered, the disease and the cause thereof.

(2) A product liability civil action for damages resulting from asbestos-related disease is not subject to ORS 30.905 or any other statute of limitation or statute of ultimate repose in Oregon Revised Statutes.

(3) A product liability civil action may not be brought against a contractor, as defined in ORS 701.005, for damages resulting from asbestos-related disease if the contractor:

(a) Used or installed products containing asbestos pursuant to plans, specifications or directions prepared for a project by or on behalf of the owner of the project;

(b) Is not the manufacturer or distributor of the products containing asbestos; and

(c) Did not furnish the products containing asbestos independent of the provision of labor.

(4) Subsection (3) of this section does not affect a plaintiff's ability to bring a product liability civil action against a contractor if:

(a) The contractor substituted a product containing asbestos on a project when the plans, specifications or directions for the project prepared by or on behalf of the owner did not specify the use or installation of a product containing asbestos; and

(b) The owner or the owner's representative did not expressly direct or consent to the substitution of the product containing asbestos. [1987 c.4 §3; 2005 c.740 §1; 2009 c.485 §7]

30.908 Action arising out of injury from breast implants; limitations. (1) Notwithstanding ORS 30.020, a product liability civil action for death, injury or damage resulting from breast implants containing silicone, silica or silicon as a component must be commenced not later than two years after the date on which the plaintiff first discovered, or in the exercise of reasonable care should have discovered:

(a) The death or specific injury, disease or damage for which the plaintiff seeks recovery;

(b) The tortious nature of the act or omission of the defendant that gives rise to a claim for relief against the defendant; and

(c) All other elements required to establish plaintiff's claim for relief.

(2) A product liability civil action for death, injury or damage resulting from breast implants containing silicone, silica or silicon as a component is not subject to ORS 30.905 or any other statute of limitation or statute of ultimate repose in Oregon Revised Statutes.

(3) For the purposes of subsection (1) of this section, an action for wrongful death must be commenced not later than two years after the earliest date that the discoveries required by subsection (1) of this section are made by any of the following persons:

(a) The decedent;

(b) The personal representative for the decedent; or

(c) Any person for whose benefit the action could be brought.

(4) Subsections (1) to (3) of this section do not apply to a person that supplied component parts or raw materials to manufacturers of breast implants containing silicone, silica or silicon as a component, and the person shall remain subject to the limitations on actions imposed by ORS 30.020 and 30.905, if:

(a) The person did not manufacture breast implants containing silicone, silica or silicon as a component at any time; and

(b) The person was not owned by and did not own a business that manufactured breast implants containing silicone, silica or silicon as a component at any time.

(5) A health care facility licensed under ORS chapter 441 is not a manufacturer, distributor, seller or lessor of a breast implant for the purposes of ORS 30.900 to 30.920 if the implant is provided by the facility to a patient as part of a medical implant procedure. [1993 c.259 §§4,5; 2007 c.71 §10; 2009 c.485 §10; 2011 c.9 §3]

30.910 Product disputably presumed not unreasonably dangerous. It is a disputable presumption in a products liability civil action that a product as manufactured and sold or leased is not unreasonably dangerous for its intended use. [1977 c.843 §2]

30.915 Defenses. It shall be a defense to a product liability civil action that an alteration or modification of a product occurred under the following circumstances:

(1) The alteration or modification was made without the consent of or was made not in accordance with the instructions or specifications of the manufacturer, distributor, seller or lessor;

(2) The alteration or modification was a substantial contributing factor to the personal injury, death or property damage; and

(3) If the alteration or modification was reasonably foreseeable, the manufacturer, distributor, seller or lessor gave adequate warning. [1977 c.843 §4]

30.920 When seller or lessor of product liable; effect of liability rule. (1) One who sells or leases any product in a defective condition unreasonably dangerous to the user or consumer or to the property of the user or consumer is subject to liability for physical harm or damage to property caused by that condition, if:

(a) The seller or lessor is engaged in the business of selling or leasing such a product; and

(b) The product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold or leased.

(2) The rule stated in subsection (1) of this section shall apply, even though:

(a) The seller or lessor has exercised all possible care in the preparation and sale or lease of the product; and

(b) The user, consumer or injured party has not purchased or leased the product from or entered into any contractual relations with the seller or lessor.

(3) It is the intent of the Legislative Assembly that the rule stated in subsections (1) and (2) of this section shall be construed in accordance with the Restatement (Second) of Torts sec. 402A, Comments a to m (1965). All references in these comments to sale, sell, selling or seller shall be construed to include lease, leases, leasing and lessor.

(4) Nothing in this section shall be construed to limit the rights and liabilities of sellers and lessors under principles of common law negligence or under ORS chapter 72. [1979 c.866 §2]

30.925 Punitive damages. (1) In a product liability civil action, punitive damages shall not be recoverable except as provided in ORS 31.730.

(2) Punitive damages, if any, shall be determined and awarded based upon the following criteria:

(a) The likelihood at the time that serious harm would arise from the defendant's misconduct;

(b) The degree of the defendant's awareness of that likelihood;

(c) The profitability of the defendant's misconduct;

(d) The duration of the misconduct and any concealment of it;

(e) The attitude and conduct of the defendant upon discovery of the misconduct;

(f) The financial condition of the defendant; and

(g) The total deterrent effect of other punishment imposed upon the defendant as a result of the misconduct, including, but not limited to, punitive damage awards to persons in situations similar to the claimant's and the severity of criminal penalties to which the defendant has been or may be subjected. [1979 c.866 §3; 1995 c.688 §4]

30.927 When manufacturer of drug not liable for punitive damages; exceptions. (1) Where a drug allegedly caused the plaintiff harm, the manufacturer of the drug shall not be liable for punitive damages if the drug product alleged to have caused the harm:

(a) Was manufactured and labeled in relevant and material respects in accordance with the terms of an approval or license issued by the federal Food and Drug Administration under the Federal Food, Drug and Cosmetic Act or the Public Health Service Act; or

(b) Is generally recognized as safe and effective pursuant to conditions established by the federal Food and Drug Administration and applicable regulations, including packaging and labeling regulations.

(2) Subsection (1) of this section does not apply if the plaintiff proves, in accordance with the standard of proof set forth in ORS 30.925 (1), that the defendant, either before or after making the drug available for public use, knowingly in violation of applicable federal Food and Drug Administration regulations withheld from or misrepresented to the agency or prescribing physician information known to be material and relevant to the harm which the plaintiff allegedly suffered.

(3) Nothing contained in this section bars an award of punitive damages where a manufacturer of a drug intentionally fails to conduct a recall required by a valid order of a federal or state agency authorized by statute to require such a recall.

(4) For the purposes of this section, the term "drug" has the meaning given to the term in section 1201 (g)(1) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 321 (g)(1). [1987 c.774 §5]

Note: Sections 1 and 2, chapter 536, Oregon Laws 2007, provide:

Sec. 1. (1) As used in this section, "COX-2 inhibitor" means a medication that is intended to inhibit the enzyme known as cyclooxygenase-2.

(2) A civil action for injury, including any product liability action under ORS 30.900 to 30.920 and any action based on negligence, resulting from the use of a COX-2 inhibitor must be commenced not later than four years after the date on which the plaintiff first discovered, or in the exercise of reasonable care should have discovered, the injury and the causal relationship between the injury and the product, or the causal relationship between the injury and the conduct of the defendant.

(3) A civil action for death, including any product liability action under ORS 30.900 to 30.920 and any action based on negligence, resulting from the use of a COX-2 inhibitor must be commenced not later than six years after the date on which the plaintiff first discovered, or in the exercise of reasonable care should have discovered, the causal relationship between the death and the product, or the causal relationship between the death and the conduct of the defendant. [2007 c.536 §1]

Sec. 2. (1) Except as provided in subsection (2) of this section, section 1 of this 2007 Act applies only to causes of action arising on or before January 1, 2007.

(2) Section 1 of this 2007 Act does not apply to any causes of action for which a judgment was entered in the register of a court before the effective date of this 2007 Act [January 1, 2008]. [2007 c.536 §2]

30.928 Time limitation for actions for damages caused by certain light bulbs. (1) As used in this section, "R type metal halide or mercury vapor light bulb" means a metal halide or mercury vapor light bulb that does not have an internal mechanism that shuts off the light automatically within 15 minutes after the bulb is broken.

(2) A product liability civil action for damages caused by R type metal halide or mercury vapor light bulbs may not be commenced more than two years after the date on which the plaintiff first discovered, or in the exercise of reasonable care should have discovered, the injury and the causal relationship between the injury and the conduct of the defendant.

(3) A product liability civil action for damages caused by R type metal halide or mercury vapor light bulbs is subject only to the limitation imposed by this section and is not subject to ORS 30.905 or any other statute of limitation or statute of ultimate repose. [2009 c.485 §11]

Note: Section 12, chapter 485, Oregon Laws 2009, provides:

Sec. 12. (1) Except as provided in subsection (2) of this section, section 11 of this 2009 Act [30.928] applies only to deaths, personal injuries or property damage that occur on or after the effective date of this 2009 Act [January 1, 2010].

(2) Section 11 of this 2009 Act revives a cause of action for death, personal injury or property damage that occurred before the effective date of this 2009 Act if:

(a) A civil action for the death, personal injury or property damage was filed within the time provided by section 11 of this 2009 Act; and

(b) A final judgment was entered in the civil action on or after January 1, 2008, and before the effective date of this 2009 Act.

(3) A civil action based on a cause of action revived by subsection (2) of this section must be refiled within one year after the effective date of this 2009 Act. [2009 c.485 §12]

FARMING AND FOREST PRACTICES

30.930 Definitions for ORS 30.930 to 30.947. As used in ORS 30.930 to 30.947:

(1) "Farm" means any facility, including the land, buildings, watercourses and appurtenances thereto, used in the commercial production of crops, nursery stock, livestock, poultry, livestock products, poultry products, vermiculture products or the propagation and raising of nursery stock.

(2) "Farming practice" means a mode of operation on a farm that:

(a) Is or may be used on a farm of a similar nature;

(b) Is a generally accepted, reasonable and prudent method for the operation of the farm to obtain a profit in money;

(c) Is or may become a generally accepted, reasonable and prudent method in conjunction with farm use;

(d) Complies with applicable laws; and

(e) Is done in a reasonable and prudent manner.

(3) "Forestland" means land that is used for the growing and harvesting of forest tree species.

(4) "Forest practice" means a mode of operation on forestland that:

(a) Is or may be used on forestland of similar nature;

(b) Is a generally accepted, reasonable and prudent method of complying with ORS 527.610 to 527.770 and the rules adopted pursuant thereto;

(c) Is or may become a generally accepted, reasonable and prudent method in conjunction with forestland;

(d) Complies with applicable laws;

(e) Is done in a reasonable and prudent manner; and

(f) May include, but is not limited to, site preparation, timber harvest, slash disposal, road construction and maintenance, tree planting, precommercial thinning, release, fertilization, animal damage control and insect and disease control.

(5) "Pesticide" has the meaning given that term in ORS 634.006. [1981 c.716 §1; 1983 c.730 §1; 1993 c.792 §32; 1995 c.703 §1; 2005 c.657 §2]

30.931 Transport or movement of equipment, device, vehicle or livestock as farming or forest practice. Notwithstanding ORS 30.930, if the activities are conducted in a reasonable and prudent manner, the transport or movement of any equipment, device or vehicle used in conjunction with a farming practice or a forest practice on a public road or movement of livestock on a public road is a farming or forest practice under ORS 30.930 to 30.947. [1995 c.703 §9]

30.932 Definition of "nuisance" or "trespass." As used in ORS 30.930 to 30.947, "nuisance" or "trespass" includes but is not limited to actions or claims based on noise, vibration, odors, smoke, dust, mist from irrigation, use of pesticides and use of crop production substances. [1993 c.792 §33; 1995 c.703 §2]

30.933 Legislative findings; policy. (1) The Legislative Assembly finds that:

(a) Farming and forest practices are critical to the economic welfare of this state.

(b) The expansion of residential and urban uses on and near lands zoned or used for agriculture or production of forest products may give rise to conflicts between resource and nonresource activities.

(c) In the interest of the continued welfare of the state, farming and forest practices must be protected from legal actions that may be intended to limit, or have the effect of limiting, farming and forest practices.

(2) The Legislative Assembly declares that it is the policy of this state that:

(a) Farming practices on lands zoned for farm use must be protected.

(b) Forest practices on lands zoned for the production of forest products must be protected.

(c) Persons who locate on or near an area zoned for farm or forest use must accept the conditions commonly associated with living in that particular setting.

(d) Certain private rights of action and the authority of local governments and special districts to declare farming and forest practices to be nuisances or trespass must be limited because such claims for relief and local government ordinances are inconsistent with land use policies, including policies set forth in ORS 215.243, and have adverse effects on the continuation of farming and for-

est practices and the full use of the resource base of this state. [1993 c.792 §31]

30.934 Prohibition on local laws that make forest practice a nuisance or trespass; exceptions. (1) Any local government or special district ordinance or regulation now in effect or subsequently adopted that makes a forest practice a nuisance or trespass or provides for its abatement as a nuisance or trespass is invalid with respect to forest practices for which no claim or action is allowed under ORS 30.936 or 30.937.

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

(a) City rules, regulations or ordinances adopted in accordance with ORS 527.722; or

(b) Any forest practice conducted in violation of a solar energy easement that complies with ORS 105.880 to 105.890. [1993 c.792 §38]

30.935 Prohibition on local laws that make farm practice a nuisance or trespass. Any local government or special district ordinance or regulation now in effect or subsequently adopted that makes a farm practice a nuisance or trespass or provides for its abatement as a nuisance or trespass is invalid with respect to that farm practice for which no action or claim is allowed under ORS 30.936 or 30.937. [1981 c.716 §2; 1985 c.565 §4; 1993 c.792 §37]

30.936 Immunity from private action based on farming or forest practice on certain lands; exceptions. (1) No farming or forest practice on lands zoned for farm or forest use shall give rise to any private right of action or claim for relief based on nuisance or trespass.

(2) Subsection (1) of this section shall not apply to a right of action or claim for relief for:

(a) Damage to commercial agricultural products; or

(b) Death or serious physical injury as defined in ORS 161.015.

(3) Subsection (1) of this section applies regardless of whether the farming or forest practice has undergone any change or interruption. [1993 c.792 §34; 1995 c.547 §8; 1995 c.703 §3; 2001 c.401 §1]

30.937 Immunity from private action based on farming or forest practice allowed as preexisting nonconforming use; exceptions. (1) No farming or forest practice allowed as a preexisting nonconforming use shall give rise to any private right of action or claim for relief based on nuisance or trespass.

(2) Subsection (1) of this section shall not apply to a right of action or claim for relief for:

(a) Damage to commercial agricultural products; or

(b) Death or serious physical injury as defined in ORS 161.015.

(3) Subsection (1) of this section applies only where a farming or forest practice existed before the conflicting nonfarm or nonforest use of real property that gave rise to the right of action or claim for relief.

(4) Subsection (1) of this section applies only where a farming or forest practice has not significantly increased in size or intensity from November 4, 1993, or the date on which the applicable urban growth boundary is changed to include the subject farming or forest practice within its limits, whichever is later. [1993 c.792 §35; 1995 c.703 §4]

30.938 Attorney fees and costs. In any action or claim for relief alleging nuisance or trespass and arising from a practice that is alleged by either party to be a farming or forest practice, the prevailing party shall be entitled to judgment for reasonable attorney fees and costs incurred at trial and on appeal. [1993 c.792 §36]

30.939 When use of pesticide considered farming or forest practice. (1) Notwithstanding ORS 30.930 (2), the use of a pesticide shall be considered to be a farming practice for purposes of ORS 30.930 to 30.947, if the use of the pesticide:

(a) Is or may be used on a farm of a similar nature;

(b) Is a reasonable and prudent method for the operation of the farm to obtain a profit in money;

(c) Is or may become customarily utilized in conjunction with farm use;

(d) Complies with applicable laws; and

(e) Is done in a reasonable and prudent manner.

(2) Notwithstanding ORS 30.930 (4), the use of a pesticide shall be considered to be a forest practice for purposes of ORS 30.930 to 30.947, if the use of the pesticide:

(a) Is or may be used on forestland of a similar nature;

(b) Is a reasonable and prudent method of complying with ORS 527.610 to 527.770;

(c) Is or may become customarily utilized in conjunction with forestland;

(d) Complies with applicable laws;

(e) Is done in a reasonable and prudent manner; and

(f) Includes, but is not limited to, site preparation, timber harvest, slash disposal, road construction and maintenance, tree planting, precommercial thinning, release, fertilization, animal damage control and in-

sect and disease control. [1993 c.792 §32a; 1995 c.703 §5]

30.940 Effect on other remedies. The provisions of ORS 30.930 to 30.947 shall not impair the right of any person or governmental body to pursue any remedy authorized by law that concerns matters other than a nuisance or trespass. [1981 c.716 §3; 1985 c.565 §5; 1993 c.792 §39]

30.942 Rules. (1) The State Department of Agriculture may adopt rules to implement the provisions of ORS 30.930 to 30.947.

(2) The State Forestry Department may adopt rules to implement the provisions of ORS 30.930 to 30.947. [1993 c.792 §41]

30.943 Certain agencies not required to investigate complaints based on farming or forest practice. The Department of Environmental Quality, Department of State Lands, State Department of Agriculture or State Forestry Department is not required to investigate complaints if the agency has reason to believe that the complaint is based on practices protected by ORS 30.930 or 30.947. [1995 c.703 §8]

30.945 [1981 c.716 §4; repealed by 1995 c.703 §12]

30.947 Effect of siting of destination resorts or other nonfarm or nonforest uses. The fact that a comprehensive plan and implementing ordinances allow the siting of destination resorts or other nonfarm or nonforest uses as provided in ORS 30.947, 197.435 to 197.467, 215.213, 215.283 and 215.284, does not in any way affect the provisions of ORS 30.930 to 30.947. [1987 c.886 §13; 1995 c.703 §6]

30.950 [1979 c.801 §1; 1987 c.774 §13; 1997 c.249 §19; 1997 c.841 §1; 2001 c.534 §1; renumbered 471.565 in 2001]

30.955 [1979 c.801 §2; repealed by 1987 c.774 §14]

30.960 [1979 c.801 §3; 1991 c.860 §5; 1995 c.618 §31; 2001 c.791 §5; renumbered 471.567 in 2001]

ACTIONS ARISING OUT OF FOOD-RELATED CONDITION

30.961 Actions against sellers of food for food-related condition. (1) As used in this section:

(a) "Food" has the meaning given that term in 21 U.S.C. 321, as in effect on January 1, 2006.

(b) "Food-related condition" means:

(A) Weight gain;

(B) Obesity;

(C) A health condition associated with weight gain or obesity; or

(D) A generally recognized health condition alleged to be caused by, or alleged to likely result from, long-term consumption of food rather than a single instance of consumption of food.

(2) A person may not maintain an action for a claim of injury or death caused by a food-related condition against a person involved in the selling of food, as described in ORS 616.210.

(3) This section does not apply to a claim that includes as an element of the cause of action that a food-related condition was caused by:

(a) Adulterated food, as described in ORS 616.235;

(b) Reliance on information about food that has been misbranded, as described in ORS 616.250;

(c) Violation of a provision of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 301 et seq., as in effect on January 1, 2006, prohibiting adulterated or misbranded food; or

(d) Knowing and willful violation of any other state or federal law related to the manufacturing, marketing, distribution, advertisement, labeling or sale of food.

(4) A violation of law is knowing and willful for the purposes of subsection (3)(d) of this section if the person engaged in the conduct that constituted the violation with the intent to deceive or injure or with actual knowledge that the conduct was deceptive or injurious.

(5) This section does not create any claim, right of action or civil liability. This section does not affect any government agency's statutory authority to enforce laws relating to adulteration or misbranding of food. [2005 c.658 §1]

30.963 Claim requirements for actions involving food-related conditions. (1) As used in this section:

(a) "Food" has the meaning given that term in 21 U.S.C. 321, as in effect on January 1, 2006.

(b) "Food-related condition" means:

(A) Weight gain;

(B) Obesity;

(C) A health condition associated with weight gain or obesity; or

(D) A generally recognized health condition alleged to be caused by, or alleged to likely result from, long-term consumption of food rather than a single instance of consumption of food.

(2) A complaint, cross-claim, counterclaim or third-party complaint asserting a claim described in ORS 30.961 (3) must plead with particularity each element of the cause of action, including a description of all of the following:

(a) The law that allegedly was violated.

(b) The facts that are alleged to constitute a violation of the law identified in paragraph (a) of this subsection.

(c) The facts that are alleged to demonstrate that the food-related condition was caused by the violation.

(d) If the violation was of a law described in ORS 30.961 (3)(d), facts sufficient to support a reasonable inference that the violation was committed with the intent to deceive or injure or with actual knowledge that the conduct was deceptive or injurious.

(3) In any action for a claim of injury or death caused by a food-related condition, a court shall stay all discovery and other proceedings during the pendency of any motion to dismiss. The court, on motion and for good cause shown, shall order that specified discovery be conducted notwithstanding the stay imposed under this subsection. [2005 c.658 §3]

SKIING ACTIVITIES

30.970 Definitions for ORS 30.970 to 30.990. As used in ORS 30.970 to 30.990:

(1) "Inherent risks of skiing" includes, but is not limited to, those dangers or conditions which are an integral part of the sport, such as changing weather conditions, variations or steepness in terrain, snow or ice conditions, surface or subsurface conditions, bare spots, creeks and gullies, forest growth, rocks, stumps, lift towers and other structures and their components, collisions with other skiers and a skier's failure to ski within the skier's own ability.

(2) "Injury" means any personal injury or property damage or loss.

(3) "Skier" means any person who is in a ski area for the purpose of engaging in the sport of skiing or who rides as a passenger on any ski lift device.

(4) "Ski area" means any area designated and maintained by a ski area operator for skiing.

(5) "Ski area operator" means those persons, and their agents, officers, employees or representatives, who operate a ski area. [1979 c.665 §1]

30.975 Skiers assume certain risks. In accordance with ORS 31.600 and notwithstanding ORS 31.620 (2), an individual who engages in the sport of skiing, alpine or nordic, accepts and assumes the inherent risks of skiing insofar as they are reasonably obvious, expected or necessary. [1979 c.665 §2]

30.980 Notice to ski area operator of injury to skier; injuries resulting in death; statute of limitations; informing skiers of notice requirements. (1) A ski area operator shall be notified of any injury to a skier by registered or certified mail within 180 days after the injury or within 180 days after the skier discovers, or reasonably should have discovered, such injury.

(2) When an injury results in a skier's death, the required notice of the injury may be presented to the ski area operator by or on behalf of the personal representative of the deceased, or any person who may, under ORS 30.020, maintain an action for the wrongful death of the skier, within 180 days after the date of the death which resulted from the injury. However, if the skier whose injury resulted in death presented a notice to the ski area operator that would have been sufficient under this section had the skier lived, notice of the death to the ski area operator is not necessary.

(3) An action against a ski area operator to recover damages for injuries to a skier shall be commenced within two years of the date of the injuries. However, ORS 12.160 and 12.190 apply to such actions.

(4) Failure to give notice as required by this section bars a claim for injuries or wrongful death unless:

(a) The ski area operator had knowledge of the injury or death within the 180-day period after its occurrence;

(b) The skier or skier's beneficiaries had good cause for failure to give notice as required by this section; or

(c) The ski area operator failed to comply with subsection (5) of this section.

(5) Ski area operators shall give to skiers, in a manner reasonably calculated to inform, notice of the requirements for notifying a ski area operator of injury and the effect of a failure to provide such notice under this section. [1979 c.665 §3]

30.985 Duties of skiers; effect of failure to comply. (1) Skiers shall have duties which include but are not limited to the following:

(a) Skiers who ski in any area not designated for skiing within the permit area assume the inherent risks thereof.

(b) Skiers shall be the sole judges of the limits of their skills and their ability to meet and overcome the inherent risks of skiing and shall maintain reasonable control of speed and course.

(c) Skiers shall abide by the directions and instructions of the ski area operator.

(d) Skiers shall familiarize themselves with posted information on location and degree of difficulty of trails and slopes to the extent reasonably possible before skiing on any slope or trail.

(e) Skiers shall not cross the uphill track of any surface lift except at points clearly designated by the ski area operator.

(f) Skiers shall not overtake any other skier except in such a manner as to avoid contact and shall grant the right of way to the overtaken skier.

(g) Skiers shall yield to other skiers when entering a trail or starting downhill.

(h) Skiers must wear retention straps or other devices to prevent runaway skis.

(i) Skiers shall not board rope tows, wire rope tows, j-bars, t-bars, ski lifts or other similar devices unless they have sufficient ability to use the devices, and skiers shall follow any written or verbal instructions that are given regarding the devices.

(j) Skiers, when involved in a skiing accident, shall not depart from the ski area without leaving their names and addresses if reasonably possible.

(k) A skier who is injured should, if reasonably possible, give notice of the injury to the ski area operator before leaving the ski area.

(L) Skiers shall not embark or disembark from a ski lift except at designated areas or by the authority of the ski area operator.

(2) Violation of any of the duties of skiers set forth in subsection (1) of this section entitles the ski area operator to withdraw the violator's privilege of skiing. [1979 c.665 §4]

30.990 Operators required to give skiers notice of duties. Ski area operators shall give notice to skiers of their duties under ORS 30.985 in a manner reasonably calculated to inform skiers of those duties. [1979 c.665 §5]