

# Senate Bill 1029

Sponsored by COMMITTEE ON RULES

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits commencement of civil action against health care provider until after claim has been submitted to medical legal panel. Establishes membership and procedures for medical legal panels. Provides that costs of medical legal panels be paid by surcharges on health care providers.

Establishes Medical Legal Panel Fund. Continuously appropriates moneys in fund to Chief Justice of Supreme Court for payment of costs of medical legal panels.

Limits plaintiff's attorney fees in civil actions involving health care claims.

Requires disclosure of identity of expert witness and summary of expert's opinions in health care claims.

Imposes qualifications for expert witnesses in civil actions for health care claims.

Requires entry of judgment with installment payments in certain actions in which \$100,000 or more is awarded for losses that will be incurred by plaintiff after entry of judgment.

Modifies law governing liability of individual tortfeasors when more than one tortfeasor is liable for injury, death or property damage. Eliminates reallocation of liability between tortfeasors when court determines that all or part of tortfeasor's share of obligation is uncollectible.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to civil actions; creating new provisions; amending ORS 18.150, 31.600, 31.605, 31.610 and  
3 40.410; appropriating money; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

## MEDICAL LEGAL PANELS

### **SECTION 1. Definitions. As used in sections 1 to 18 of this 2005 Act:**

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9 (1) "Claimant" means a person who files a notice of health care claim under section 3  
10 of this 2005 Act.

11 (2) "Health care claim" means a civil claim alleging personal injury or death arising out  
12 of the provision of health care services by a health care provider.

13 (3) "Health care facility" has the meaning given in ORS 442.015.

14 (4) "Health care practitioner" means emergency medical technicians certified by the De-  
15 partment of Human Services and any person who is licensed or certified by:

16 (a) The State Board of Examiners for Speech-Language Pathology and Audiology;

17 (b) The State Board of Chiropractic Examiners;

18 (c) The State Board of Clinical Social Workers;

19 (d) The Oregon Board of Licensed Professional Counselors and Therapists;

20 (e) The Oregon Board of Dentistry;

21 (f) The Board of Examiners of Licensed Dietitians;

22 (g) The State Board of Massage Therapists;

23 (h) The Board of Naturopathic Examiners;

24 (i) The Oregon State Board of Nursing;

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (j) The Board of Examiners of Nursing Home Administrators;

2 (k) The Oregon Board of Optometry;

3 (L) The State Board of Pharmacy;

4 (m) The Board of Medical Examiners;

5 (n) The Occupational Therapy Licensing Board;

6 (o) The Physical Therapist Licensing Board;

7 (p) The State Board of Psychologist Examiners;

8 (q) The Board of Radiologic Technology; or

9 (r) The Health Licensing Office.

10 (5) "Health care provider" means:

11 (a) A health care practitioner;

12 (b) A business entity engaged in the provision of health care services with majority  
13 ownership held by health care practitioners; or

14 (c) A health care facility.

15 (6) "Health care services" means any services rendered by a health care provider acting  
16 within the scope of the license or certificate issued to the health care provider.

17 (7) "Panel" means a medical legal panel appointed under sections 1 to 18 of this 2005 Act.

18 **SECTION 2. Mandatory submission of claims.** (1) A person may commence a civil action  
19 against a health care provider based on a health care claim only if the person has complied  
20 with sections 1 to 18 of this 2005 Act. A complaint in an action that is subject to this section  
21 must allege compliance with sections 1 to 18 of this 2005 Act.

22 (2) A civil action against a health care provider based on a health care claim may not  
23 be filed until a medical legal panel's findings on the health care claim are filed with the cir-  
24 cuit court.

25 **SECTION 2a. Applicability.** Section 2 of this 2005 Act applies only to civil actions that are  
26 based on a health care claim and commenced as described in ORS 12.020 on or after July 1,  
27 2006.

28 **SECTION 3. Notice of health care claim.** (1) Before commencing a civil action against a  
29 health care provider based on a health care claim, the person asserting the claim must file  
30 a written notice of the health care claim in the circuit court for a county in which the civil  
31 action could be commenced. A notice of health care claim must be clearly titled as a notice  
32 of health care claim and must set forth the health care claim, including all facts and cir-  
33 cumstances relating to the injuries or death giving rise to the health care claim and the  
34 amount of damages sought from the health care provider. A single notice of health care  
35 claim may be filed for health care claims against two or more health care providers. The  
36 notice of health care claim is subject to ORCP 17.

37 (2) A person filing a notice of health care claim must serve a copy of the notice on all  
38 health care providers against which a claim is made in the manner provided in ORCP 7 not  
39 more than 10 days after the claim is filed.

40 (3) A notice of health care claim must contain the following:

41 (a) The names and addresses of all health care providers that are claimed to be at fault;

42 (b) A detailed statement of facts relating to each health care provider's conduct that is  
43 alleged to support the health care claim;

44 (c) The date or dates on which the acts or omissions causing the damages allegedly oc-  
45 curred;

1 (d) The names and addresses of all health care providers that provided care to the  
2 claimant after the date when the acts or omissions causing the damages allegedly occurred;

3 (e) The identity of all expert witnesses on whom the claimant relies, and a summary of  
4 the opinions of the expert witnesses;

5 (f) All other facts on which a claimant relies to establish the health care claim; and

6 (g) An authorization that allows a medical legal panel to obtain access to all health care  
7 provider records and information relating to the health care claim, and that waives any  
8 confidentiality or privilege solely for the purpose of consideration of the records by the panel.

9 (4) The authorization required by subsection (3)(g) of this section does not constitute a  
10 waiver of confidentiality or privilege for any purpose other than consideration of the health  
11 care claim by a panel.

12 (5) A notice of health care claim and all other documents filed with a circuit court in a  
13 proceeding before a panel are confidential and not subject to disclosure under ORS 192.410  
14 to 192.505 or any other provision of Oregon law during the pendency of proceedings before  
15 the panel.

16 (6) A person shall pay to the clerk of the circuit court a filing fee of \$\_\_\_\_\_ at the time  
17 of the filing of a notice of health care claim under this section.

18 **SECTION 4. Response.** Within 20 days after a notice of health care claim is served on a  
19 health care provider under section 3 of this 2005 Act, the health care provider must file an  
20 appearance in the circuit court for the county in which the notice of health care claim is  
21 filed. The health care provider must serve a copy of the appearance on the claimant and the  
22 chair of the medical legal panel in the manner provided by ORCP 9. At the time of filing an  
23 appearance, a health care provider shall pay a filing fee of \$\_\_\_\_\_.

24 **SECTION 5. Source list; master list.** (1) The State Court Administrator shall establish  
25 and maintain a source list of retired Oregon judges, health care practitioners, health care  
26 provider representatives and attorneys who are willing and qualified to serve on medical legal  
27 panels. The source list shall include persons recommended by professional organizations and  
28 other interested parties, and persons who have applied to the State Court Administrator for  
29 inclusion on the source list. An application for inclusion on the source list must set forth  
30 the status of the applicant's professional license or certificate, and the person's qualifica-  
31 tions for serving on a panel.

32 (2) The State Court Administrator shall update the source list prepared under subsection  
33 (1) of this section at least once each year.

34 (3) On or before December 15 of each year, the Chief Justice of the Supreme Court shall  
35 prepare a master list of persons who are willing and qualified to serve on panels. The Chief  
36 Justice shall prepare the master list by selecting persons from the source list prepared under  
37 subsection (1) of this section. The Chief Justice shall make copies of the master list available  
38 to the presiding judges and clerks of the circuit courts.

39 **SECTION 6. Appointment of chair of medical legal panel.** (1) Not more than five days  
40 after a notice of health care claim is filed under section 3 of this 2005 Act, the presiding judge  
41 of the circuit court for the county in which the notice of health care claim is filed shall ap-  
42 point a person to serve as the chair of the medical legal panel that will hear the claim. The  
43 appointment must be made in writing. The person appointed must be a retired Oregon judge,  
44 a person with judicial experience or a person with appropriate civil trial experience. The ap-  
45 pointment must be made from the master list prepared by the Chief Justice of the Supreme

1 Court under section 5 of this 2005 Act.

2 (2) A person appointed to serve as the chair under this section must accept or decline  
3 the appointment within five days after the appointment is made by giving written notice to  
4 the presiding judge who made the appointment.

5 (3) If a person appointed as a chair fails to respond or declines to serve as chair, the  
6 presiding judge shall make a new appointment not later than five days after the date on  
7 which a response was due under subsection (2) of this section.

8 (4) Not more than five days after receipt of a chair's acceptance of the appointment un-  
9 der this section, the presiding judge shall confirm the appointment in writing by providing  
10 the chair with a copy of the notice of health care claim and the master list created under  
11 section 5 of this 2005 Act. The court shall notify the parties of the appointment of the chair.

12 (5) A person is not eligible to serve as chair for a period of 12 months if the person  
13 without good cause:

14 (a) Fails to respond to an appointment within the time specified in subsection (2) of this  
15 section; or

16 (b) Declines to serve as a chair more than once in a calendar year.

17 (6) The clerk of the circuit court for the county in which the notice of health care claim  
18 is filed shall, upon request by the chair and with the consent of the presiding judge of that  
19 circuit court, provide administrative and clerical support to the chair.

20 **SECTION 7. Appointment of members of medical legal panel.** (1) Within 10 days after  
21 receipt of confirmation of appointment as the chair of a medical legal panel, the chair shall  
22 appoint the members of the panel. The appointments must be made from the master list  
23 prepared by the Chief Justice of the Supreme Court under section 5 of this 2005 Act. Except  
24 as provided in subsection (2) of this section, the panel must consist of the chair, an attorney  
25 and a health care practitioner or a representative of a health care provider. If possible, the  
26 chair shall appoint a health care practitioner who practices in the specialty or the profession  
27 of a health care practitioner named in the claim. If a health care claim is made against a  
28 health care facility, the chair may appoint an administrator from the same type of health  
29 care facility named in the claim.

30 (2) If a notice of health care claim contains allegations against more than one health care  
31 provider, the chair may choose two additional panel members who are either health care  
32 practitioners or administrators of a health care facility. Additional panel members selected  
33 under this subsection must be health care practitioners or administrators of health care fa-  
34 cilities whose practices or professions are the same as that of one of the health care pro-  
35 viders named in the claim.

36 (3) With the agreement of all parties to a proceeding before a panel, the chair may ap-  
37 point a person who is not on the master list prepared by the Chief Justice under section 5  
38 of this 2005 Act.

39 (4) As soon as possible after a panel is appointed under this section, the chair shall give  
40 notice of the appointments to the parties and to the presiding judge of the circuit court for  
41 the county in which the notice of health care claim is filed.

42 (5) A party to a proceeding before a panel may challenge the appointment of any person  
43 to the panel on the basis of actual bias. Upon a showing of actual bias by the challenging  
44 party or an acknowledgment of bias by the panel member, the chair shall select a replace-  
45 ment panel member from the master list prepared by the Chief Justice under section 5 of

1 this 2005 Act. If possible, the chair shall select a replacement panel member whose profes-  
2 sional qualifications match those of the removed panel member.

3 (6) If the chair is challenged on the basis of actual bias, the party making the challenge  
4 shall notify the presiding judge of the circuit court for the county in which the notice of  
5 health care claim is filed. The presiding judge shall rule on the challenge within 20 days after  
6 being notified of the challenge. If the presiding judge finds cause for the challenge, the pre-  
7 siding judge shall order the removal of the chair and shall appoint a qualified replacement  
8 chair from the master list within five days after the order is entered.

9 (7) A person appointed under this section who believes that service on the panel would  
10 be inappropriate under the circumstances, or who believes that service would conflict with  
11 duties of professional responsibility as established by law or by a professional organization,  
12 shall decline to serve on the panel and notify the chair in writing as soon as practicable that  
13 the person will not serve. The chair shall select a replacement for the disqualified panel  
14 member from the master list within five days after the chair receives the notice.

15 (8) Panel members are immune from civil liability for all communications, findings,  
16 opinions and conclusions rendered in the course and scope of the duties prescribed by  
17 sections 1 to 18 of this 2005 Act.

18 **SECTION 8. Prehearing procedures.** (1) Within five days after filing an appearance under  
19 section 4 of this 2005 Act, a health care provider or the health care provider's counsel shall  
20 contact the claimant or, if the claimant is represented by counsel, shall contact the claim-  
21 ant's counsel. The health care provider and claimant by agreement shall establish a timeta-  
22 ble for completing discovery and filing all relevant medical and health care provider records  
23 necessary to a determination by the medical legal panel. The claimant shall notify the chair  
24 of the medical legal panel of the timetable.

25 (2) If the parties to a proceeding before a panel are unable to agree on a timetable within  
26 five days after the filing of an appearance, the claimant shall notify the chair. The chair  
27 shall:

28 (a) Establish a timetable for the filing of all relevant records and reasonable discovery;

29 (b) Provide a copy of the timetable to the parties; and

30 (c) File a copy of the timetable with the clerk of the circuit court for the county in which  
31 the notice of health care claim is filed.

32 (3) The chair shall establish a date for the hearing before the panel. If the chair has es-  
33 tablished a timetable under subsection (2) of this section, the hearing may not be scheduled  
34 sooner than 30 days after the copy of the timetable is provided to the parties. Except as  
35 provided in subsection (4) of this section, all hearings on a notice of health care claim must  
36 be held within 120 days after the notice of health care claim is filed.

37 (4) A party to a proceeding before a panel may request an extension for any date specified  
38 in the timetable established under this section, or for the hearing date established for the  
39 hearing. The request must be made in writing to the chair. The chair may grant an exten-  
40 sion, but may not extend any time period that would result in the hearing being held more  
41 than 150 days after the notice of health care claim is filed.

42 (5) The chair shall permit reasonable discovery, including discovery of the identity of an  
43 expert witness. Parties may not depose expert witnesses, but parties may require the pro-  
44 duction of a summary of the opinion of the expert witness. The summary must set forth the  
45 bases upon which the opinion is rendered and must be signed by the expert witness. Any

1 party may depose an opposing party. Except for discovery of the identity of expert witnesses,  
 2 production of a summary of the opinion of an expert witness and depositions of opposing  
 3 parties, all discovery must be approved by the chair before the discovery is requested.

4 (6) The chair has the same power to subpoena as a circuit court judge, and may exercise  
 5 that power without the agreement of panel members.

6 **SECTION 9. Hearing procedure.** (1) Except as otherwise provided in this section, a med-  
 7 ical legal panel shall conduct a combined hearing or hearings for all notices of health care  
 8 claim that relate to a common set of facts. The chair of a medical legal panel may order  
 9 separate hearings on a notice of health care claim that alleges health care claims against  
 10 more than one health care provider that relate to a common set of facts if the parties re-  
 11 quest separate hearings and the chair finds good cause for separate hearings.

12 (2) A claimant or a representative of the claimant shall present the case before the panel.  
 13 The health care provider or a representative of the health care provider shall make a re-  
 14 sponding presentation.

15 (3) The chair shall make all procedural rulings. Rulings by the chair on procedural mat-  
 16 ters are final. The chair shall afford the parties wide latitude in presenting the case, includ-  
 17 ing allowing the use of sworn statements in lieu of testimony. Cross-examination of  
 18 witnesses is permitted, but the chair shall limit cross-examination to the minimum neces-  
 19 sary to allow the panel to make informed findings.

20 (4) The panel may seek the opinion of expert witnesses selected by the panel. Funds to  
 21 compensate expert witnesses for opinions under this subsection shall be drawn from the  
 22 Medical Legal Panel Fund established under section 16 of this 2005 Act.

23 (5) The Oregon Rules of Evidence do not apply to hearings conducted by a panel. The  
 24 chair shall admit evidence if it is the kind of evidence upon which reasonable persons rely  
 25 in the conduct of serious affairs. A party may admit a deposition regardless of whether the  
 26 deponent is available at the hearing. The panel shall make findings upon the evidence that  
 27 is presented at the hearing, including records and any expert opinion provided by or sought  
 28 by the panel or the parties.

29 (6) After presentations by the parties, the panel may request from either party additional  
 30 facts, records or other information to be submitted in writing or at a continued hearing to  
 31 be held as soon as practicable. Panel members who attended the initial hearing must attend  
 32 any continued hearing unless the parties agree otherwise.

33 (7) The panel shall make and keep an audio record of a hearing before the panel. The  
 34 record shall remain confidential and is not subject to disclosure under ORS 192.410 to 192.505  
 35 or any other provision of Oregon law without the consent of all parties. Hearings conducted  
 36 by the panel are not subject to ORS 192.610 to 192.690 and may not be opened to the public  
 37 without the consent of all parties.

38 (8) The parties to a proceeding before a panel may agree to submit the health care claim  
 39 to the panel for a determination of damages. Any determination by the panel regarding  
 40 damages is not binding on the parties.

41 (9) A chair or panel member may not be examined or deposed as to:

42 (a) Any communication to or from a party or the party's legal representative;

43 (b) Communications between panel members; or

44 (c) The findings of a panel on which the member served.

45 **SECTION 10. Dismissal of claims.** (1) A claimant may dismiss a health care claim pending

1 before a medical legal panel at any time. The parties may agree to dismiss a claim by a  
2 stipulation of dismissal signed by all parties who have appeared before the panel. If a chair  
3 for the panel has been appointed, a notice of dismissal may be filed with the chair. If a chair  
4 has not been appointed, the notice of dismissal may be filed with the circuit court for the  
5 county in which the notice of health care claim is filed.

6 (2) The chair may order dismissal of a health care claim or order that a health care  
7 provider is in default if a party fails to comply with rulings of the chair or prehearing and  
8 hearing procedures required under sections 1 to 18 of this 2005 Act. The chair may dismiss  
9 a health care claim or order that a health care provider is in default under this subsection  
10 only upon a motion by the chair or any party, and after providing notice and opportunity to  
11 be heard to all parties.

12 (3) Unless the chair specifies otherwise in an order for dismissal, a dismissal under this  
13 section is with prejudice for purposes of all proceedings before the panel arising out of the  
14 notice of health care claim. If the chair dismisses a health care claim with prejudice, the  
15 chair shall prepare a panel findings statement as required by section 12 of this 2005 Act  
16 showing the health care provider as the prevailing party. If the chair orders that a health  
17 care provider is in default, the chair shall prepare a panel findings statement as required by  
18 section 12 of this 2005 Act showing the claimant as the prevailing party.

19 **SECTION 11. Panel findings.** (1) Within 10 days after the conclusion of the parties' pres-  
20 entations at a hearing, a medical legal panel shall make findings in writing and file the  
21 findings with the circuit court for the county in which the notice of health care claim is filed.  
22 The findings shall be signed by the chair of the medical legal panel and indicate the vote of  
23 each panel member.

24 (2) The panel's findings for each health care claim asserted shall determine:

25 (a) Whether the claimant proved by a preponderance of the evidence that any health care  
26 provider was at fault in at least one of the ways alleged in the health care claim, and that  
27 the health care provider's fault was a cause of damages claimed by the claimant; and

28 (b) Whether any health care provider proved by a preponderance of the evidence that the  
29 claimant was at fault, and that the claimant's fault was a cause of the damages claimed by  
30 the claimant.

31 (3) If the panel finds that both the claimant and one or more health care providers were  
32 at fault, and that the fault of each contributed to the damages claimed by the claimant, the  
33 panel shall compare the fault of the parties. The panel shall assign a percentage of fault to  
34 the claimant and to each health care provider found to have been at fault. Unless the parties  
35 otherwise agree in writing, the panel shall not determine the percentage of damages attrib-  
36 utable to each of the parties.

37 (4) The percentages of fault assigned under subsection (3) of this section must total 100  
38 percent.

39 (5) If the claimant's fault is more than 50 percent of the combined percentage of fault  
40 of all parties, the panel shall make a finding in favor of the health care providers in the  
41 proceeding.

42 (6) If the claimant's fault is 50 percent or less of the combined percentage of fault of all  
43 parties, the panel shall make a finding in favor of the claimant.

44 (7) The chair shall serve a copy of the panel's findings upon the parties by registered or  
45 certified mail within 10 days after the date of the findings. The presiding judge of the circuit

1 court for the county in which the notice of health care claim is filed shall retain a record  
2 of the hearing, including the findings and the notice of health care claim. The records shall  
3 be sealed by the presiding judge, stored and destroyed in accordance with the circuit court's  
4 practices and procedures. The chair shall return all medical and health care provider records  
5 to the parties that furnished the records upon issuance of the panel's findings.

6 **SECTION 12. Admissibility of panel findings in subsequent proceedings.** (1) The findings  
7 of a medical legal panel may be admitted in a subsequent proceeding only in the form speci-  
8 fied in this section. For each health care provider, the chair of the medical legal panel shall  
9 complete a panel findings statement certifying the findings of the panel and shall file the  
10 completed statement in the circuit court for the county in which the notice of health care  
11 claim is filed.

12 (2) A panel findings statement must be in the following form:

13 \_\_\_\_\_

14  
15 Pursuant to sections 1 to 18 of this 2005 Act, I certify the accuracy of the following. A  
16 notice of health care claim(s) was filed in the Circuit Court for \_\_\_\_\_ County  
17 on \_\_\_\_\_ (date). A medical legal panel was appointed under sections 1 to 18 of this 2005  
18 Act to review claimant's health care claim of [insert specific type of claim]  
19 \_\_\_\_\_ asserted by [insert name of claimant] \_\_\_\_\_ against  
20 [insert name of health care provider] \_\_\_\_\_. The findings of the panel are not  
21 binding on any Oregon jury or other trier of fact and may be disregarded by the same.

22 At least a majority of the panel finds:

- 23 (A) \_\_\_\_ In favor of the health care provider.
- 24 (B) \_\_\_\_ In favor of the claimant.

25 /s/ \_\_\_\_\_  
26 medical legal panel Chair Date

27 \_\_\_\_\_

28  
29 **SECTION 13. Panel member compensation.** (1) Members of medical legal panels shall be  
30 compensated at a rate of not less than \_\_\_\_\_ per hour. The Chief Justice of the Supreme  
31 Court shall review the hourly rate once every two years, and shall adjust the amount by rule  
32 when the Chief Justice deems that an adjustment in the amount is necessary to ensure an  
33 adequate number of persons willing and qualified to serve on panels.

34 (2) The Chief Justice shall adopt rules establishing:

- 35 (a) The method by which panel members track and record time spent on panel service;
- 36 (b) A form for panel members to use when requesting compensation;
- 37 (c) Guidelines for the retention of expert witnesses by panels, including the amount of  
38 fees payable to expert witnesses;
- 39 (d) A form for requests for payment of expert witness fees; and
- 40 (e) Fees that may be charged by circuit courts for clerical support of panels.

41 (3) Upon completion of service on a panel, members of the panel shall submit the com-  
42 pensation form established under subsection (2)(b) of this section to the clerk of the circuit  
43 court for the county in which the notice of health care claim is filed. The clerk of the circuit  
44 court shall transmit the compensation form to the Chief Justice, who shall direct payment  
45 to the panel members within 30 days after receiving the compensation form.



1 (4) Panel members are entitled to reimbursement of reasonable travel expenses actually  
 2 incurred as provided in ORS 292.495 (2). Claims for reimbursement of travel expenses must  
 3 be submitted to the Chief Justice.

4 (5) The Chief Justice shall issue an annual report listing the number of claims heard by  
 5 panels, the county in which each notice of health care claim was heard by a panel, the  
 6 findings by each panel as described in the panel findings statements required by section 12  
 7 of this 2005 Act, and the type of health care provider named in the notice of health care  
 8 claims that were heard by the panels.

9 **SECTION 14. Health care provider surcharges.** (1) Once each year, the Chief Justice of  
 10 the Supreme Court shall:

11 (a) Estimate the number of claims likely to be heard by medical legal panels for the fol-  
 12 lowing year;

13 (b) Calculate the funds necessary to compensate members of panels and expert witnesses  
 14 retained by panels and to cover other panel costs during the year; and

15 (c) Determine the surcharges to be assessed upon health care providers for the purpose  
 16 of paying those costs.

17 (2) The Chief Justice shall establish surcharges under this section as follows:

18 (a) Hospitals and long term care facilities, as defined in ORS 442.015, that have a specified  
 19 number of licensed beds shall be assessed proportionately based on the total number of li-  
 20 censed beds, as listed in the most recent compilations of the Department of Human Services.

21 (b) All health care facilities that do not have a specified number of licensed beds shall  
 22 be assessed the same surcharge.

23 (c) All health care providers other than a health care facility shall be assessed the same  
 24 surcharge. The amount of the surcharge may be different than the surcharge assessed on a  
 25 health care facility under paragraph (b) of this subsection.

26 (3) The Chief Justice shall not assess a surcharge against any health care practitioner  
 27 who is employed on a full-time basis by a state agency or the federal government.

28 (4) The Chief Justice shall inform all state agencies listed in section 15 (2) and (3) of this  
 29 2005 Act by October 15 of the surcharges to be assessed for the following calendar year. The  
 30 surcharges must be paid to the Chief Justice on or before December 31 of each calendar year.

31 (5) Before establishing surcharges under this section, the Chief Justice shall consult with  
 32 health care industry associations and government agency representatives, including but not  
 33 limited to the Board of Medical Examiners, the Oregon Medical Association, the Oregon  
 34 Dental Association, the Oregon Association of Hospitals and Health Systems, the Oregon  
 35 State Bar and the Judicial Department.

36 (6) The Chief Justice shall deposit all surcharges paid to the Chief Justice under this  
 37 section in the Medical Legal Panel Fund established under section 16 of this 2005 Act. If the  
 38 amounts in the fund at the end of any calendar year exceed the amounts required for the  
 39 compensation of panel members and other costs of administering panels in the next calendar  
 40 year, the Chief Justice shall reduce the amount of the annual surcharges by appropriate  
 41 amounts. The annual amount of the surcharge assessed against any health care provider  
 42 may not be less than \$15.

43 **SECTION 15. Collection of health care provider surcharges.** (1) Each of the state agen-  
 44 cies listed in subsections (2) and (3) of this section shall adopt rules that establish a deadline  
 45 for collection of surcharges in order to pay the surcharges to the Chief Justice of the Su-

1 preme Court within the time allowed by section 14 (4) of this 2005 Act. Each state agency  
 2 may establish its own deadline for receipt of surcharges in order to coordinate collection of  
 3 the surcharges with the collection of other license and certification assessments. The dead-  
 4 line may not be later than December 15 of the calendar year in which the surcharge is to  
 5 be paid. The rules shall specify that failure to remit the surcharge by the deadline shall re-  
 6 sult in a suspension of license or certification until the surcharge is received.

7 (2) The Department of Human Services shall assess and collect surcharges from emer-  
 8 gency medical technicians certified by the department, from all health care facilities and  
 9 from all business entities engaged in the provision of health care services with majority  
 10 ownership held by health care practitioners.

11 (3) The following state agencies shall collect surcharges from health care practitioners  
 12 licensed or certified by the agency:

13 (a) State Board of Examiners for Speech-Language Pathology and Audiology;

14 (b) State Board of Chiropractic Examiners;

15 (c) State Board of Clinical Social Workers;

16 (d) Oregon Board of Licensed Professional Counselors and Therapists;

17 (e) Oregon Board of Dentistry;

18 (f) Board of Examiners of Licensed Dietitians;

19 (g) State Board of Massage Therapists;

20 (h) Board of Naturopathic Examiners;

21 (i) Oregon State Board of Nursing;

22 (j) Board of Examiners of Nursing Home Administrators;

23 (k) Oregon Board of Optometry;

24 (L) State Board of Pharmacy;

25 (m) Board of Medical Examiners;

26 (n) Occupational Therapy Licensing Board;

27 (o) Physical Therapist Licensing Board;

28 (p) State Board of Psychologist Examiners;

29 (q) Board of Radiologic Technology; and

30 (r) The Health Licensing Office.

31 **SECTION 16. Medical Legal Panel Fund.** The Medical Legal Panel Fund is established  
 32 separate and distinct from the General Fund. Interest earned by the fund shall be credited  
 33 to the fund. The Chief Justice of the Supreme Court shall administer the fund and hold the  
 34 fund in trust for the benefit of claimants and health care providers. All amounts in the  
 35 Medical Legal Panel Fund are continuously appropriated to the Chief Justice of the Supreme  
 36 Court and may be used only to fund the compensation of medical legal panel members and  
 37 pay other costs associated with panels.

38 **SECTION 17. Tolling of statute of limitations.** The applicable statute of limitations for  
 39 any civil action based on a health care claim is tolled from the date that a notice of health  
 40 care claim is filed with a circuit court under section 3 of this 2005 Act until 30 calendar days  
 41 after the date upon which the medical legal panel's findings statement is filed with the cir-  
 42 cuit court under section 12 of this 2005 Act.

43 **SECTION 18. Rules.** The Chief Justice of the Supreme Court shall adopt rules to imple-  
 44 ment the provisions of sections 1 to 18 of this 2005 Act, including rules for proceedings before  
 45 medical legal panels.

1       **SECTION 18a. Operative date.** (1) Except as provided in subsection (2) of this section,  
2 sections 1 to 18 of this 2005 Act become operative on January 1, 2006.

3       (2) Sections 1 to 18 of this 2005 Act become operative on the effective date of this 2005  
4 Act for the purpose of:

5       (a) The creation of source and master lists under section 5 of this 2005 Act;

6       (b) The adoption of rules under section 13 (2) of this 2005 Act;

7       (c) The establishment and collection of surcharges under sections 14 and 15 of this 2005  
8 Act for the purpose of funding medical legal panels in calendar year 2006;

9       (d) The creation of the Medical Legal Panel Fund under section 16 of this 2005 Act; and

10       (e) The adoption of rules under section 18 of this 2005 Act.

11  
12                   **ATTORNEY FEES IN ACTIONS BASED ON HEALTH CARE CLAIMS**

13  
14       **SECTION 19. Attorney fees.** (1) If a civil action is commenced based on a health care  
15 claim as defined in section 1 of this 2005 Act, the attorney fees charged to the claimant in  
16 the action, exclusive of actual expenses and costs reasonably incurred, may not exceed:

17       (a) Twenty-five percent of the first \$100,000 recovered in the action.

18       (b) Twenty percent of the next \$100,000 recovered in the action.

19       (c) Fifteen percent of any amount greater than \$200,000 recovered in the action.

20       (2) The limits imposed by this section:

21       (a) Apply to all attorney fees charged to the claimant, to the claimant's legal represen-  
22 tative or to the claimant's estate;

23       (b) Apply without regard to the number of attorneys representing the claimant;

24       (c) Apply without regard to whether the fees are based on a contingency fee or an hourly  
25 rate; and

26       (d) Apply without regard to whether the amount recovered is received by judgment,  
27 settlement or other arrangement.

28       (3) This section does not affect the ability of a client to negotiate attorney fees with one  
29 or more attorneys that are less than the maximum amounts allowed under this section.

30       **SECTION 19a. Applicability.** Section 19 of this 2005 Act applies only to civil actions that  
31 are based on a health care claim and commenced as described by ORS 12.020 on or after the  
32 effective date of this 2005 Act.

33  
34                   **EXPERT WITNESSES**

35  
36       **SECTION 20.** Section 21 of this 2005 Act is added to and made a part of the Oregon Rules  
37 of Civil Procedure.

38       **SECTION 21.**

39  
40                   **DISCLOSURE OF EXPERT WITNESSES**

41                   **RULE 42**

42  
43       **A Disclosure required.** Unless otherwise directed by the court or agreed to by stipulation,  
44 a party must serve all other parties with a notice that makes the disclosures required by  
45 section B of this rule for any person who will testify at trial as an expert witness under ORS

1 40.410.

2 **B Contents of disclosure.**

3 **B(1) Disclosure generally.** The disclosure required under this section must contain: (a)  
4 The name and address of the person who will testify as an expert witness; (b) A summary  
5 of the expert witness's opinion, signed by the witness, that includes the bases upon which  
6 the opinion is rendered; (c) The qualifications of the expert witness, including a list of all  
7 publications authored by the witness within the immediately preceding five years; (d) The  
8 compensation paid or to be paid to the expert witness for preparation for trial, including  
9 compensation for studies conducted by the witness, and for the witness's appearance at trial;  
10 and (e) A list of any other cases in which the witness has testified as an expert at trial or  
11 by deposition within the preceding five years.

12 **B(2) Modification by court.** Upon motion of any party, or upon the court's own motion,  
13 the court may modify the required disclosures of this section for good cause shown, or may  
14 enter such protective orders as the court deems appropriate. If a party seeks to disclose an  
15 additional expert witness after expiration of the time allowed under section C of this rule,  
16 in addition to any other showing the court may require, the party must establish that at the  
17 time disclosure was required under section C of this rule the party could not have reasonably  
18 anticipated the need for the expert witness.

19 **C Time of disclosure.**

20 **C(1) Initial disclosure.** Subject to subsection (2) of this section, unless otherwise directed  
21 by the court or agreed to by stipulation, the notice required by this rule must be served at  
22 least 90 days before trial.

23 **C(2) Rebuttal disclosure.** Within 45 days after service of notice under subsection (1) of  
24 this section, any party may serve a notice on all other parties that makes the disclosures  
25 required by section B of this rule for any person who will testify at trial for the party as an  
26 expert witness in rebuttal to the testimony of an expert witness disclosed in a notice served  
27 under subsection (1) of this section.

28 **D Supplemental notice.** A party who has served notice under this rule, including any  
29 party who has served notice under subsection C(2) of this rule, must file a supplemental  
30 notice that includes information about a previously disclosed expert witness that was ac-  
31 quired after the notice was served if the party discovers that the notice is incomplete or  
32 incorrect in some material respect. Supplemental notice under this section may not be used  
33 to disclose additional expert witnesses after expiration of the time allowed under section C  
34 of this rule. Supplemental notices under this section must be served no later than 30 days  
35 before trial unless the discovery is made within the 30-day period preceding trial. If the dis-  
36 covery is made within the 30-day period preceding trial, the supplemental notice must be  
37 served within 24 hours after the party makes the discovery.

38 **E Depositions.** An expert witness may not be deposed or otherwise contacted by the  
39 parties to whom notice is given under this rule except with specific authorization from the  
40 court and only for the purpose of showing that the party offering the testimony of the expert  
41 witness failed to comply with the requirements of this rule.

42 **F Sanction.** The court may not allow an expert witness to testify at trial unless the party  
43 offering the testimony has given notice of the name and address of the expert witness in the  
44 manner required by this rule. The court may impose such other sanctions as may be appro-  
45 priate for failure to fully comply with any other disclosure requirement of section B of this

1 rule.

2 **SECTION 22.** Section 21 of this 2005 Act applies only to civil actions commenced as de-  
3 scribed in ORS 12.020 on or after the effective date of this 2005 Act.

4 **SECTION 23.** ORS 40.410 is amended to read:

5 40.410. (1) **Except as provided in subsection (2) of this section,** if scientific, technical or  
6 other specialized knowledge will assist the trier of fact to understand the evidence or to determine  
7 a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or educa-  
8 tion may testify thereto in the form of an opinion or otherwise.

9 (2) **In any civil action for a health care claim as defined in section 1 of this 2005 Act, a**  
10 **person must qualify as an expert witness for the purpose of testifying on the appropriate**  
11 **medical standard of care as follows:**

12 (a) **A person seeking to testify as an expert witness under this subsection must hold an**  
13 **active and unrestricted license or certificate in Oregon or another state in the same pro-**  
14 **fession as the defendant.**

15 (b) **A person seeking to testify as an expert witness under this subsection must be able**  
16 **to demonstrate by competent evidence that, as a result of training, education, knowledge and**  
17 **experience in the evaluation, diagnosis and treatment of the disease or injury that is the**  
18 **subject matter of the health care claim, the person is substantially familiar with the appli-**  
19 **cable standards of care and practice as the standards relate to the acts or omissions that**  
20 **are the subject of the health care claim.**

21 (c) **If the defendant in the civil action is certified by a board recognized by the American**  
22 **Board of Medical Specialties, a person seeking to testify as an expert witness under this**  
23 **subsection must be certified in the same specialty by a board recognized by the American**  
24 **Board of Medical Specialties and must have expertise and training directly related to the**  
25 **particular health care or matter at issue.**

26 (d) **Within five years before the date of the acts or omissions on which the health care**  
27 **claim is based, a person seeking to testify as an expert witness under this subsection must**  
28 **have been in active medical practice in the same discipline or school of practice as the de-**  
29 **fendant, have devoted a substantial portion of person's time teaching at an accredited med-**  
30 **ical school or have devoted a substantial portion of the person's time in university-based**  
31 **research relating to the medical care and type of treatment at issue.**

32 (3) **If a person licensed or certified in another state testifies as an expert witness under**  
33 **subsection (2) of this section, the person is deemed to have a temporary license to practice**  
34 **medicine in this state for the purpose of providing the testimony and is subject to the au-**  
35 **thority of the Board of Medical Examiners and the provisions of ORS chapters 676 and 677.**

36 **SECTION 24.** Section 23 of this 2005 Act applies only to civil actions that are based on a  
37 health care claim and commenced as described in ORS 12.020 on or after the effective date  
38 of this 2005 Act.

## 39 PERIODIC PAYMENTS

40  
41  
42 **SECTION 25. Periodic payments.** (1) **If an award of damages is made in an action for**  
43 **personal injury or death, including damages for emotional injury, distress, loss of consor-**  
44 **tium, property damage or loss of use of property, and the award includes \$100,000 or more**  
45 **for losses that will be incurred by the plaintiff after the entry of the judgment, upon motion**

1 of any party in the action the court shall enter judgment on the award in the following  
2 manner:

3 (a) The judgment shall require that all economic damages, as defined by ORS 31.710, that  
4 are attributable to losses incurred by the plaintiff before the entry of the judgment be im-  
5 mediately due and payable;

6 (b) The judgment shall require that all noneconomic damages, as defined by ORS 31.710,  
7 be paid in installments; and

8 (c) The judgment shall require that all economic damages, as defined by ORS 31.710, that  
9 are attributable to losses that will be incurred by the plaintiff after the entry of the judg-  
10 ment be paid in installments.

11 (2) A person moving for entry of a judgment under this section must submit a proposal  
12 to the court for the manner in which installments will be paid, including actuarial and an-  
13 nuity information supporting the proposal. The court shall allow all of the parties in the  
14 action to submit such other information as may be helpful to the court in determining the  
15 manner in which installments will be paid under the judgment.

16 (3) As a condition to entering a judgment under subsection (1) of this section, a court  
17 may require that the installments be paid through a trust fund, an annuity or other form  
18 of security acceptable to the court.

19 (4) A judgment entered under subsection (1) of this section must include:

20 (a) The name and address of each person who will receive installment payments under  
21 the judgment;

22 (b) The dollar amount of each installment payment, which shall be based on the gross  
23 amount of future damages as awarded by the trier of fact and shall not be based on the  
24 present value of future damages at the time of the award;

25 (c) The schedule for installment payments; and

26 (d) The number of installment payments or the period of time during which installment  
27 payments must be made under the judgment.

28 (5) All amounts in a judgment entered under subsection (1) of this section that are not  
29 immediately paid upon entry of the judgment, including all amounts paid by installment, do  
30 not bear interest.

31 (6) If a judgment entered under subsection (1) of this section requires that installments  
32 be paid through a trust fund, an annuity or other form of security, and any amounts remain  
33 in the trust fund, annuity or other form of security after the final installment is paid, the  
34 remaining amounts shall be paid to the judgment debtor or the judgment debtor's successors  
35 or assigns.

36 (7) If the judgment debtor under a judgment entered under subsection (1) of this section  
37 fails to make payments on the dates established by the judgment three or more times during  
38 a calendar year, upon motion of the judgment creditor the court shall enter a supplemental  
39 judgment against the judgment debtor requiring that, within 30 days after the entry of the  
40 supplemental judgment, the judgment debtor pay the entire balance then remaining due un-  
41 der the judgment, along with all reasonable attorney fees incurred by the judgment creditor  
42 in the proceeding. Subsection (9) of this section does not apply to a supplemental judgment  
43 entered under this subsection.

44 (8) A judgment entered under subsection (1) of this section may not increase the amount  
45 awarded by the trier of fact, and any installment payments attributable to future damages

1 shall cease upon the death of the judgment creditor. Except as follows, a judgment entered  
 2 under subsection (1) of this section is not subject to modification after entry of the judg-  
 3 ment:

4 (a) Modification pursuant to subsection (7) of this section;

5 (b) Modification pursuant to ORCP 71; or

6 (c) Modification to terminate installment payments based on the death of the judgment  
 7 creditor.

8 (9) The title of any judgment entered under subsection (1) of this section must indicate  
 9 that the judgment is entered under this section. Notwithstanding any other provision of law,  
 10 a judgment entered under subsection (1) of this section does not become a lien on real  
 11 property of the judgment debtor and the clerk of the court shall not docket the judgment  
 12 after the judgment is entered.

13 **SECTION 26.** ORS 18.150 is amended to read:

14 18.150. (1) If a judgment document filed with a court administrator under ORS 18.075 (2) includes  
 15 a money award and complies with ORS 18.042 or 18.048, the court administrator shall note in the  
 16 register of a circuit court that the judgment creates a judgment lien unless:

17 (a) The judgment is entered in the small claims department of a circuit court in an amount of  
 18 less than \$3,000, exclusive of costs, and the judgment creditor has not created a judgment lien for  
 19 the judgment as provided in ORS 46.488;

20 (b) The judgment is entered in a criminal action for conviction of a violation, and the court does  
 21 not order under ORS 18.048 (1) that the judgment creates a judgment lien;

22 (c) The judgment is entered under ORS 153.820;

23 **(d) The judgment is entered under section 25 of this 2005 Act; or**

24 [(d)] (e) The judgment does not create a lien by operation of other law.

25 (2) Except as provided in this section, if the court administrator notes in the register that a  
 26 judgment creates a judgment lien, the judgment has the following effect in the county in which the  
 27 judgment is entered:

28 (a) When the judgment is entered, the judgment lien attaches to all real property of the judg-  
 29 ment debtor in the county at that time; and

30 (b) The judgment lien attaches to all real property that the judgment debtor acquires in the  
 31 county at any time after the judgment is entered and before the judgment lien expires.

32 (3) Except as provided in this section, if the court administrator notes in the register that a  
 33 judgment creates a judgment lien and the judgment contains a support award, the support award  
 34 portion of the judgment has the following effect in the county in which the judgment is entered:

35 (a) When an installment becomes due under the terms of the support award and is not paid, a  
 36 support arrearage lien for the unpaid installment attaches to all real property of the judgment  
 37 debtor in the county at that time; and

38 (b) When an installment becomes due under the terms of the support award and is not paid, a  
 39 support arrearage lien attaches to all real property that the judgment debtor thereafter acquires in  
 40 the county for the purpose of enforcing the unpaid installment, and remains attached to that prop-  
 41 erty until satisfaction is made for the installment or the judgment lien arising from support award  
 42 portion of the judgment expires.

43 (4) Real property may be conveyed or encumbered free of a judgment lien created by the support  
 44 award portion of a judgment, but the conveyance or encumbrance is subject to any support  
 45 arrearage lien that attached to the real property under this section or ORS 18.152.

1 (5) A judgment lien does not attach to any real property of a judgment debtor acquired after the  
 2 debt giving rise to the judgment is discharged under federal bankruptcy laws. Debts are presumed  
 3 to have not been discharged in bankruptcy until the judgment debtor establishes that the debt has  
 4 been discharged.

5 (6) A court administrator may rely on the judgment document to determine whether a judgment  
 6 creates a judgment lien.

7 (7) This section does not apply to justice courts, municipal courts or county courts performing  
 8 judicial functions.

9 **SECTION 27. The amendments to ORS 18.150 by section 25 of this 2005 Act apply only to**  
 10 **judgments entered on or after the effective date of this 2005 Act.**

11  
 12 **COMPARATIVE NEGLIGENCE**

13  
 14 **SECTION 28.** ORS 31.600 is amended to read:

15 31.600. (1) Contributory negligence shall not bar recovery in an action by any person or the le-  
 16 gal representative of the person to recover damages for death or injury to person or property if the  
 17 fault attributable to the claimant was not greater than the combined fault of all persons [*specified*  
 18 *in*] **considered by the trier of fact pursuant to** subsection (2) of this section, but any damages  
 19 allowed shall be diminished in the proportion to the percentage of fault attributable to the claimant.  
 20 This section is not intended to create or abolish any defense.

21 (2) The trier of fact shall compare the fault of the claimant with the fault of any party against  
 22 whom recovery is sought, the fault of third party defendants who are liable in tort to the claimant,  
 23 [*and*] the fault of any person with whom the claimant has settled **and the fault of any other per-**  
 24 **son who is not immune from liability to the claimant.** The failure of a claimant to make a direct  
 25 claim against a third party defendant does not affect the requirement that the fault of the third  
 26 party defendant be considered by the trier of fact under this subsection. Except for persons who  
 27 have settled with the claimant, there shall be no comparison of fault with any person[:]

28 [(a)] who is immune from liability to the claimant[:]

29 [(b) *Who is not subject to the jurisdiction of the court; or*]

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

32 (3) A defendant who files a third party complaint against a person alleged to be at fault in the  
 33 matter, or who alleges that a person who has settled with the claimant **or who has otherwise not**  
 34 **been made a defendant in the action** is at fault in the matter, has the burden of proof in estab-  
 35 lishing:

36 (a) The fault of the third party defendant or [*the fault of the*] **other** person [*who settled with the*  
 37 *claimant*]; and

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

40 (4) **Notwithstanding subsection (2) of this section, if the claimant has settled with any**  
 41 **person in an action subject to this section, any defendant in the action may elect to withdraw**  
 42 **consideration of the fault of the person from the trier of fact. If consideration of the fault**  
 43 **of a person who settled is withdrawn from the trier of fact under this subsection, the de-**  
 44 **fendant need not establish the fault of the person and the court shall reduce the total**  
 45 **amount of damages awarded in the action by the amounts paid to the person in settlement**



1 **before making the calculation required by ORS 31.610 (2).**

2 [(4)] (5) Any party to an action may seek to establish that the fault of a person should not be  
3 considered by the trier of fact *[by reason that]* **because** the person *[does not meet the criteria estab-*  
4 *lished by subsection (2) of this section for the consideration of fault by the trier of fact]* **is immune**  
5 **from liability to the plaintiff.**

6 [(5)] (6) This section does not prevent a party from alleging that the party was not at fault in  
7 the matter because the injury or death was the sole and exclusive fault of a person who is not a  
8 party in the matter.

9 **SECTION 29.** ORS 31.605 is amended to read:

10 31.605. (1) When requested by any party the trier of fact shall answer special questions indi-  
11 cating:

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

14 (b) The degree of fault of each person *[specified in]* **considered by the trier of fact pursuant**  
15 **to** ORS 31.600 [(2)]. The degree of each person's fault so determined shall be expressed as a per-  
16 centage of the total fault attributable to all persons considered by the trier of fact pursuant to ORS  
17 31.600.

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

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

22 (4) For the purposes of subsection (1) of this section, the court may order that two or more  
23 persons be considered a single person for the purpose of determining the degree of fault of the  
24 persons *[specified in]* **considered by the trier of fact pursuant to** ORS 31.600 [(2)].

25 **SECTION 30.** ORS 31.610 is amended to read:

26 31.610. (1) Except as otherwise provided in this section, in any civil action arising out of bodily  
27 injury, death or property damage, including claims for emotional injury or distress, loss of care,  
28 comfort, companionship and society, and loss of consortium, the liability of each defendant for  
29 damages awarded to plaintiff shall be several only and shall not be joint.

30 (2) In any action described in subsection (1) of this section, the court shall determine the award  
31 of damages to each claimant in accordance with the percentages of fault determined by the trier of  
32 fact under ORS 31.605 and shall enter judgment against each party determined to be liable. The  
33 court shall enter a judgment in favor of the plaintiff against any third party defendant who is found  
34 to be liable in any degree, even if the plaintiff did not make a direct claim against the third party  
35 defendant. The several liability of each defendant and third party defendant shall be set out sepa-  
36 rately in the judgment, based on the percentages of fault determined by the trier of fact under ORS  
37 31.605. The court shall calculate and state in the judgment a monetary amount reflecting the share  
38 of the obligation of each person *[specified in]* **considered by the trier of fact pursuant to** ORS  
39 31.600 [(2)]. Each person's share of the obligation shall be equal to the total amount of the damages  
40 found by the trier of fact, with no reduction for amounts paid in settlement of the claim or by way  
41 of contribution, multiplied by the percentage of fault determined for the person by the trier of fact  
42 under ORS 31.605.

43 [(3)] *Upon motion made not later than one year after judgment has become final by lapse of time*  
44 *for appeal or after appellate review, the court shall determine whether all or part of a party's share*  
45 *of the obligation determined under subsection (2) of this section is uncollectible. If the court determines*

1 that all or part of any party's share of the obligation is uncollectible, the court shall reallocate any  
 2 uncollectible share among the other parties. The reallocation shall be made on the basis of each party's  
 3 respective percentage of fault determined by the trier of fact under ORS 31.605. The claimant's share  
 4 of the reallocation shall be based on any percentage of fault determined to be attributable to the  
 5 claimant by the trier of fact under ORS 31.605, plus any percentage of fault attributable to a person  
 6 who has settled with the claimant. Reallocation of obligations under this subsection does not affect any  
 7 right to contribution from the party whose share of the obligation is determined to be uncollectible.  
 8 Unless the party has entered into a covenant not to sue or not to enforce a judgment with the claimant,  
 9 reallocation under this subsection does not affect continuing liability on the judgment to the claimant  
 10 by the party whose share of the obligation is determined to be uncollectible.]

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

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

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

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

22 [(6)] (3) This section does not apply to:

23 (a) A civil action resulting from the violation of a standard established by Oregon or federal  
 24 statute, rule or regulation for the spill, release or disposal of any hazardous waste, as defined in  
 25 ORS 466.005, hazardous substance, as defined in ORS 453.005 or radioactive waste, as defined in ORS  
 26 469.300.

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

29 **SECTION 31. The amendments to ORS 31.600, 31.605 and 31.610 by sections 28, 29 and 30**  
 30 **of this 2005 Act apply only to actions commenced as described in ORS 12.020 on or after the**  
 31 **effective date of this 2005 Act.**

32  
 33 **MISCELLANEOUS**

34  
 35 **SECTION 32. The unit and section captions used in sections 1 to 20 and 22 to 33 of this**  
 36 **2005 Act are provided only for the convenience of the reader and do not become part of the**  
 37 **statutory law of this state or express any legislative intent in the enactment of this 2005 Act.**

38 **SECTION 33. This 2005 Act being necessary for the immediate preservation of the public**  
 39 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**  
 40 **on its passage.**